

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 21 September 2020	Committee Clerk
Meeting time: 09.30	0300 200 6565
	SeneddLJC@senedd.wales

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

Informal pre-meeting (09.00–09.30)

1 Introduction, apologies, substitutions and declarations of interest
09.30

**2 UK Government's Internal Market proposals and general scrutiny
of EU exit-related legislation: Evidence session**
09.30–11.30 (Pages 1 – 43)

Jeremy Miles MS, Counsel General

Christopher Warner, Welsh Government

Dr Robert Parry, Welsh Government

CLA(5)–25–20 – Briefing 1 – Brexit Legislation

CLA(5)–25–20 – Briefing 2 – UK Internal Market Bill

CLA(5)–25–20 – Paper 1 – Letter from the Counsel General, 14 August 2020

**CLA(5)–25–20 – Paper 2 – Letter to the Counsel General and the Minister for
Finance and Trefnydd, 23 July 2020**

**CLA(5)–25–20 – Paper 3 – Letter from the Counsel General and the Minister
for Finance and Trefnydd, 11 September 2020**

**CLA(5)–25–20 – Paper 4 – Statement by the Counsel General, 15 September
2020**



CLA(5)-25-20 – Paper 5 – Background briefing on the EU Single Market

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

11.30–11.35

(Page 44)

CLA(5)-25-20 – Paper 6 – Statutory Instrument with clear reports

Negative Resolution Instruments

3.1 SL(5)606 – The Healthy Start Scheme (Description of Healthy Start Food) (Wales) (Miscellaneous Amendments) Regulations 2020

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

11.35–11.40

Negative Resolution Instruments

4.1 SL(5)605 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020

(Pages 45 – 59)

CLA(5)-25-20 – Paper 7 – Report

CLA(5)-25-20 – Paper 8 – Regulations

CLA(5)-25-20 – Paper 9 – Explanatory Memorandum

CLA(5)-25-20 – Paper 10 – Letter from the Minister for Finance and Trefnydd, 3 September 2020

CLA(5)-25-20 – Paper 11 – Written statement, 3 September 2020

Made Affirmative Resolution Instruments

4.2 SL(5)607 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020

(Pages 60 – 81)

CLA(5)-25-20 – Paper 12 – Report

CLA(5)-25-20 – Paper 13 – Regulations

CLA(5)-25-20 – Paper 14 – Explanatory Memorandum

CLA(5)-25-20 – Paper 15 – Letter from the First Minister, 8 September 2020

CLA(5)-25-20 – Paper 16 – Written statement, 7 September 2020

- 4.3 SL(5)612 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No.9) Regulations**
(Pages 82 – 100)
- CLA(5)–25–20 – Paper 17 – Report
CLA(5)–25–20 – Paper 18 – Regulations
CLA(5)–25–20 – Paper 19 – Explanatory Memorandum
CLA(5)–25–20 – Paper 20 – Letter from the First Minister, 11 September 2020
CLA(5)–25–20 – Paper 21 – Written statement, 11 September 2020
- 4.4 SL(5)611 – The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020**
(Pages 101 – 132)
- CLA(5)–25–20 – Paper 22 – Report
CLA(5)–25–20 – Paper 23 – Regulations
CLA(5)–25–20 – Paper 24 – Explanatory Memorandum
CLA(5)–25–20 – Paper 25 – Letter from the First Minister, 11 September 2020
- 5 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered**
11.40–11.45
- 5.1 SL(5)574 – The European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020**
(Pages 133 – 135)
- CLA(5)–25–20 – Paper 26 – Report
CLA(5)–25–20 – Paper 27 – Welsh Government response
- 5.2 SL(5)592 – The Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020**
(Pages 136 – 195)
- CLA(5)–25–20 – Paper 28 – Report
CLA(5)–25–20 – Paper 29 – Welsh Government response
- 5.3 SL(5)603 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020**
(Pages 196 – 197)

CLA(5)–25–20 – Paper 30 – Report

6 Subordinate legislation that raises issues to be reported to the Senedd under Standing Order 21.7

11.45–11.50

6.1 SL(5)613 – Modification of Curriculum Requirements in Wales Notice 2020

(Pages 198 – 204)

CLA(5)–25–20 – Paper 31 – Report

CLA(5)–25–20 – Paper 32 – Notice

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

11.50–11.55

7.1 SICM(5)29 – The Waste (Circular Economy) (Amendment) Regulations 2020

(Pages 205 – 237)

CLA(5)–25–20 – Paper 33 – Statutory Instrument Consent Memorandum

CLA(5)–25–20 – Paper 34 – Regulations

CLA(5)–25–20 – Paper 35 – Explanatory Memorandum

CLA(5)–25–20 – Paper 36 – Letter from the Deputy Minister for Housing and Local Government, 2 September 2020

CLA(5)–25–20 – Paper 37 – Legal advice note

8 Papers to note

11.55–12.00

8.1 Letter from the Minister for Environment, Energy and Rural Affairs: Committee report on the Supplementary Legislative Consent Memorandum on the Agriculture Bill

(Pages 238 – 254)

CLA(5)–25–20 – Paper 38 – Letter from the Minister for Environment, Energy and Rural Affairs, 11 September 2020

8.2 Letter from the Minister for International Relations and the Welsh Language: Committee report on the Legislative Consent Memorandum on the Trade Bill

(Pages 255 – 266)

CLA(5)-25-20 – Paper 39 – Letter from the Minister for International Relations and the Welsh Language, 11 September 2020

CLA(5)-25-20 – Paper 40 – Letter from the Minister for International Relations and the Welsh Language to the Lord Speaker, 11 September 2020

CLA(5)-25-20 – Paper 41 – Letter from the Minister for International Relations and the Welsh Language to the Minister of State for Trade Policy, 11 September 2020

8.3 Letter from the First Minister: Scrutiny of regulations arising from the UK's exit from the European Union – Protocol between the Welsh Government and the Legislation, Justice and Constitution Committee of Senedd Cymru

(Pages 267 – 270)

CLA(5)-25-20 – Paper 42 – Letter from the First Minister, 16 September 2020

CLA(5)-25-20 – Paper 43 – Letter to the First Minister, 23 July 2020

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

(Pages 271 – 272)

CLA(5)-25-20 – Paper 44 – Letter from the Counsel General, 17 September 2020

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

12.00

10 UK Government's Internal Market proposals and scrutiny of EU exit related legislation: Consideration of evidence

12.00–12.15

11 Supplementary Legislative Consent Memorandum on the Fisheries Bill: Consideration of draft report

12.15–12.30

(Pages 273 – 294)

CLA(5)-25-20 – Paper 45 – Draft report

CLA(5)-25-20 – Paper 46 – Legal advice note

12 Renting Homes (Amendment) (Wales) Bill: Consideration of draft report

12.30-12.45

(Pages 295 – 322)

CLA(5)-25-20 – Paper 47 – Draft report

Date of the next meeting – 28 September 2020

Jeremy Miles AS/MS

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



Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee

Llywodraeth Cymru
Welsh Government

David Rees MS
Chair, External Affairs and Additional Legislation Committee

14 August 2020

Dear Chairs,

I am writing to draw your attention to the Welsh Government's analysis of the UK Government's White Paper on the UK Internal Market, which I have sent to the Secretary of State for BEIS today and is attached for your information.

I look forward to engagement with your Committees in due course on the matters covered in the analysis.

Yours sincerely,



Jeremy Miles AS/MS

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

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

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

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd Counsel
General and Minister for European Transition



Llywodraeth Cymru
Welsh Government

The Rt. Hon Alok Sharma MP
Secretary of State for Business, Energy & Industrial Strategy
secretary.state@beis.gov.uk

14 August 2020

Dear Alok,

I am writing further to the UK Government's White Paper on the UK Internal Market, published just four weeks ago.

Prior to the Paper's publication, I wrote to you and the Chancellor of the Duchy of Lancaster (7 July) to set out our position on the UK Internal Market and the steps we believe we should take to ensure future regulatory and economic cooperation across the UK, as a result of the UK leaving the EU Single Market. Our position and thoughts on a potential approach to this issue, as set out in my letter, have not changed.

The Welsh Government is concerned that the long-term survival of the United Kingdom is under great strain and that the approach taken in the White Paper will exacerbate those tensions in a way which, if not addressed, will accelerate the break-up of the Union. Our initial view was that the White Paper was fundamentally flawed and misleading – further analysis of the substance of your proposals has confirmed this view.

We have already made clear that we are not opposed to an internal market for the United Kingdom, neither are we opposed to legislation being brought forward to support the functioning of a UK Internal Market. Wales' interests, and those of the UK as a whole, are best served by ensuring smooth trading arrangements for businesses across all four nations. However, your proposals do not deliver this and in any case, this should be a collaborative piece of work in which all the governments within the UK have the opportunity to participate fully and on an equal basis.

Legislation of the kind proposed in your White Paper is simply not necessary, and we do not recognise the need for this type of solution as the UK Internal Market is already highly integrated.

The proposals also undermine three years of collaboration via Common Frameworks. Our commitment to the Frameworks programme remains and we continue to focus on the effective delivery of the programme.

Our reading of the proposals is that the proposed legislation would prevent the Senedd or Welsh Ministers from imposing mandatory requirements relating to lawful sale of goods and services in Wales – even where there were justified by public health objectives,

environmental concerns or any other public policy reason. This would represent a direct attack on the current model of devolution. The power – even if untouched – to regulate for goods and services produced in Wales would moreover be severely undermined, if not made completely impractical as in almost any sector, only a minority of goods and services consumed in Wales are produced here.

The White Paper would thus remove or emasculate the current rights of the devolved institutions to implement changes to the regulatory environment in devolved policy areas governed to date by EU law, such as labelling, or environmental standards.

Attached to this letter is the Welsh Government's analysis to the substance of the UK Government's White Paper. I cannot emphasise strongly enough that, in our view, the model of primary legislation envisaged in the White Paper is unnecessary, unworkable, heavy-handed, and will not secure legislative consent from the Senedd.

I ask that you resume multilateral discussions on the future UK Internal Market, underpinned by our continuing and joint efforts to put in place Common Frameworks, to design and agree appropriate arrangements which serve the interests of the whole of the United Kingdom.

I am copying this letter to the Chancellor of the Duchy of Lancaster, the Secretary of State for Wales, the Scottish Government's Cabinet Secretary for the Constitution, Europe and External Affairs, and the First Minister and deputy First Minister of Northern Ireland.

Yours sincerely,



Jeremy Miles AS/MS

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

The UK Government's White Paper on a UK Internal Market Welsh Government Analysis

Claims of risk / harm without legislative underpinning

The assertion that the UK Government, through the proposals in the White Paper, will 'give' the DAs new powers is misleading – the powers in question are not reserved and, in the absence of UK legislation to reverse the devolution settlement, would automatically and properly come back to the devolved institutions in any case.

The risks of harm to the UK economy if an Internal Market Bill is not introduced are overstated and are based on speculation on the extent of regulatory differences which *may* emerge, rather than the current situation within the UK which includes, and has included for some time, managed regulatory divergence. We have been clear from the outset that policy and regulatory divergence already exists within the UK, and this ability to diverge has led to innovative solutions being developed in one nation and subsequently introduced across the UK.

We note that the White Paper refers to construction and building regulations as examples where differences in regulations could create complexities over time. With the transfer of functions in 2012, England and Wales have diverged on their approach to building regulations as a reflection of each administration's policies and priorities. The construction sector has become accustomed to dealing with differing processes and performance standards set through regulations and associated statutory advice, in particular with regard to energy performance of buildings and fire safety. Liaison amongst the four administrations ensures that, where practical and of mutual benefit, policy work is shared – divergence is not considered a barrier to development.

Generally, the White Paper's analysis is very focussed on hypothetical examples of policy and/or regulatory divergence and there is no study of the impact of current divergence, such as building regulations, on businesses and how they manage current regulatory practices within the UK. There is no evidence of any engagement with stakeholders already operating in areas of current divergence in regulations.

We would question the economic modelling and analysis used to support the Paper's assertions of risk and the basis for a legislative underpinning of the kind proposed. For example, the use of Germany as a model to determine the economic cost to the UK if trade costs increased (pages 36 & 90), however with the clear caveat on page 89 that this data should not be used as a prediction for the UK market. This is deeply concerning.

It is clear that the evidence to support the White Paper's proposals is flawed in many ways. Stakeholder views and evidence should be analysed from across the UK and across a variety of sectors with differing levels of current divergence – this evidence should reflect the needs of the *whole* of the UK, not solely one nation.

Mutual Recognition & Non-discrimination

The Welsh Government has already clearly stated that the mutual recognition model proposed in the White Paper would undermine the Welsh and wider UK economy, our work on Common Frameworks, inter-governmental relations and the devolution settlements.

Whilst we recognise that the UK Government's proposals are careful not to suggest that there will be a constraint on devolved legislative competence to make regulations for goods

and services produced in Wales, it seems inevitable that the legislation will limit the Senedd's competence to legislate on goods which are placed on the market in Wales. Moreover, the effects of an overarching Internal Market Bill would also hollow out our competence in these areas. The economic dominance of England within the UK would undermine any policy innovation that could only apply to Welsh goods in Wales, as Welsh laws will not apply to goods and services being sold in Wales.

In addition, whilst the principles of mutual recognition and non-discrimination are well-established elements of the architecture of the EU Single Market, they are balanced by a commitment to subsidiarity and proportionality, a baseline of minimum standards and by the recognition that certain public policy concerns, for example in terms of environmental protection or public health, can in certain circumstances over-ride these principles. This is not reflected in the UK Government's proposals within the White Paper. It is also widely recognised by academics that there is a big difference between what is being suggested by the UK Government and how the EU Single Market works, and the context of the UK is key. By legislating in this way, the UK Government would be imposing a model of mutual recognition and non-discrimination on the three other nations of the UK, whereas the EU Single Market is a result of Member States voluntarily coming together to negotiate and agree a set of rules to which they are all bound.

We also note that the principles of mutual recognition and non-discrimination will apply in an unqualified way to goods and services from Northern Ireland being put on the market in Great Britain. This will not be the case in the reverse direction, since the Northern Ireland Protocol requires a large proportion of goods which are placed on the market there to conform to EU standards. We are concerned that there is a distinct lack of detail within the UK Government's proposals of how an Internal Market Bill will work alongside the Northern Ireland Protocol.

We have also made clear in past discussions with BEIS officials that comparing the UK's Internal Market to mutual recognition systems in other countries such as Australia is flawed as these comparisons do not reflect our structures, levels of devolution and way of working within the UK. Indeed, the closest comparison to be made would be with Spain, which also has a system of asymmetric devolution – where, in 2017, the law establishing the principle of mutual recognition was cancelled following a ruling by the Spanish Constitutional Court.

In addition, the non-discrimination provisions, while mentioned by UK Government during our discussions, were not interrogated in detail as part of our collaborative work on the Internal Market and continue to lack substance within the White Paper.

The economic weight of England and its impact on the rest of the UK's nations must be fully recognised and considered, and any adverse impact mitigated or minimised. What actions is the UK Government putting in place to ensure this?

Why is it proposed that mutual recognition will apply to all goods and services placed on the market in the UK rather than only to those originating in the UK?

How will the UK Government ensure that arrangements for the UK Internal Market reflect the unique multinational character of the UK and that learning from other systems is properly analysed in both home and UK contexts?

Services and Qualifications

The White Paper makes explicit that services and professional qualifications will be covered by the mutual recognition principle. This is an area of divergence which already exists and

each nation of the UK already has its own regulators overseeing areas such as social care and education.

The current Provision of Services Regulations 2009 implement the EU's 'Services Directive'. The UK 2009 Regulations facilitate both the cross-border provision of services within the EU *and* intra-UK access, therefore allowing people to live and work freely within the UK. Importantly, the 2009 Regulations also allow for divergence and exceptions, if justified – therefore allowing each nation of the UK to amend its rules if they believe it is within the public interest.

It is not clear whether this exception will be preserved if the system under the 2009 Regulations is brought within the Internal Market system, as proposed by the White Paper.

Case study: teachers' qualifications

This is illustrated by teachers' qualifications. Presently, in order to teach in maintained settings in Wales teachers must hold Qualified Teacher Status (QTS) and be registered with the Education Workforce Council. Teachers trained and awarded QTS in England are currently automatically recognised as being able to teach in Wales. For a number of years the route to being awarded QTS and the standards underpinning QTS have diverged significantly between England and Wales. Student teachers studying in Wales must hold GCSE (or equivalent) qualifications at a certain level, complete a degree level academic qualification as well as be assessed against the Welsh QTS Standards. In addition the Scottish regulatory model for teachers is also continuing to be altered in a policy direction slightly different from that in Wales in order to support their own education system effectively.

In England, the entry requirements to the teaching profession are lower and the English version of QTS can be awarded without undertaking an academic qualification. The policy direction in England continues to move towards an unregulated professional space or at least with minimal statutory requirements or academic qualifications in order to teach in schools. This is an example of an existing regulatory difference – while we would need to seek confirmation that this position can be maintained and will be outside the scope of the legislation, the worst case scenario of the proposed system of mutual recognition could be the significant reduction of the standards of the teaching workforce in Wales. Also, should the requirements to gain QTS continue to fall in England, potential student teachers could be attracted by lower cost and lower standard routes into teaching in England and seek to undertake their training there before returning to teach in Wales, undermining the requirements set to gain QTS in Wales.

Can the UK Government clarify how their proposals will affect (and indeed protect) the system of divergence for services and qualifications, already in place within the UK?

Common Frameworks

We have previously set out our proposals for future economic and regulatory cooperation across the UK. These proposals were, and continue to be, based on the Common Frameworks programme – and the development of other tools such as regulatory impact assessments – which would ensure any detrimental effect to the Internal Market of any policies are identified and could be weighed against any identified benefits such as public policy reasons.

Common Frameworks are expressly designed to allow for managed divergence in areas where all four Governments agree there is a need for this. In setting up the Common Frameworks programme, the UK Government identified the areas they considered may need a Framework to ensure the functioning of the UK Internal Market – these areas are supposed to cover all areas of returning powers. This would suggest, on the UK Government's own analysis, that there are no other areas outside the Frameworks areas which require agreement on divergence. Since that exercise, and in good faith, policy areas have been considering to what extent any Frameworks are needed in specific areas based on the fact-specific circumstances of each Framework area. This work has been developed on the basis of collaboration and cooperation across the UK's nations, in line with the Inter-governmental Agreement already agreed.

The UK Government, through the proposals set out in the White Paper, now suggests that the Common Frameworks programme does not go far enough in protecting the integrity of the UK's Internal Market. We have been clear that, while we agree that every aspect of the Internal Market is not covered by current Frameworks, this is not a justification for a heavy-handed piece of legislation which goes much further than areas covered by retained EU law.

The UK Government has stated on numerous occasions that Common Frameworks do not go far enough to protect the UK Internal Market.

Which areas fall outside the scope of Common Frameworks and are in need of an overarching legislative underpinning?

How has the UK Government reached the conclusion that legislation of this type is justified to govern those areas?

As Common Frameworks provide the mechanism for agreeing in specific detail what divergence is possible in all areas identified as part of that programme – why do these areas require a blunt, catch-all Bill that fails to reflect or recognise the years of work undertaken on Common Frameworks?

Exemptions & Exclusions

The list of exclusions from mutual recognition and non-discrimination within the White Paper is very limited, with no provision made for future exceptions. This does not allow for a sustainable, future-proofed way of working, neither does it allow for future changes to be made based on agreement by consensus.

The proposed exclusions do not reflect the current position in EU law which allow derogations for public policy reasons, neither are they consistent with similar arrangements in other countries such as Canada.

We will also need to consider the scope of any exceptions under the principle of non-discrimination and how this would apply in practice – the White Paper is very lacking in detail in this area. For example, it is not clear how the proposals may impact Welsh language requirements.

The Paper also makes reference to existing regulatory differences being excluded. However, it is not clear how this would impact changes to existing regulation – where there is existing divergence – and where the underlying policy remains. It raises the question what level of changes to existing policies would render a policy 'changed' and therefore within scope of the Internal Market system.

Why has the UK Government limited the exceptions and exclusions in such a way which is inconsistent with systems already in operation in other parts of the world?

Maintaining high standards

While the UK Government has stressed in discussions and publicly that their intention is to continue to apply high standards, for example in environmental and animal welfare areas, there is no suggestion within the White Paper that the legislation would set these standards in law, nor set a mechanism for agreeing them, and create a baseline for minimum, maximum or unitary standards, as exists within the EU mutual recognition model. At an EU level, Member States voluntarily agree to these standards and agreement is made by collaboration – the Welsh Government has also been involved in this process via the Committee of the Regions and also in discussion with the UK Government to shape the negotiating position. It is therefore deeply concerning that this is not set within the UK Government's proposals.

Welsh business groups have also made clear that this setting of a baseline for standards is absolutely crucial to ensure certainty for business. Without such a baseline, the risk of deregulation by one of the nations of the UK is great and in itself would lead to uncertainty for business, as the risk would be vastly differing standards across the UK which would ultimately lead to radical deregulation and a 'race to the bottom'.

Case study: single use plastic items

This is illustrated by the ban on single use plastic items. While the Welsh Government's proposals to introduce a ban on the sale of nine single use plastic items in Wales aligns with the nine items included in Article 5 of the EU's Single Use Plastics (SUP) Directive¹, the UK Government's proposal for a similar ban for England will only apply to three of the nine items. Therefore, the sale of three of the items banned in Wales would also be banned in England, the sale of the other six items would be lawful in England. The mutual recognition principle could mean that Wales would not be able to introduce legislation or, if legislation is introduced, enforce the ban on the sale of these six items in Wales, irrespective of their origin. A ban that could only apply to Welsh produced plastics would undermine the policy and render it ineffective. Furthermore, even if the UK Government were to bring its ban in line with the SUP Directive in the future, it would not be possible for Wales to go further and ban other single use plastic products without the policy being undermined by such plastics from other parts of the UK being sold in Wales.

Case study: food standards

A second example concerns food standards. Under the current EU regime, common standards are agreed at EU level on the basis of negotiation and compromise. Moreover, it is open to the Welsh Government to specify higher standards for food put on the market in Wales provided this can be justified in terms of public policy and is not discriminatory.

However, should the UK Parliament legislate, for example, to permit the use of hormones in beef cattle, the mutual recognition principle as envisaged by the White Paper would mean that meat from such cattle could be placed on the market in Wales, even if our current regulations – which forbid such techniques – remained in place in respect of cattle reared in Wales. Moreover, it would most likely be impossible for the Welsh Government to insist on labelling to identify beef produced from hormone-injected cattle, since beef products which originated elsewhere in the UK would only have to respect the labelling regulations of the

¹ Article 5 of Directive (EU) 2019/904 (the Single Use Plastics Directive) – see Annex C for further detail.

part of the UK in which they were produced. And since the legislation would apply to all goods, whether produced in the UK or imported, provided the UK Parliament had legislated to reduce standards in this way in England, the Welsh Government would have no possibility of excluding English produced or imported beef from sale in Wales or even making consumers aware of what they were buying.

While the UK Government, at this time, may publicly commit to maintaining high standards, these proposals would mean that any *future* reduction in standards would result in lower standard products entering the Welsh market.

How will the UK Government ensure that high standards will be agreed and preserved?

Governance

The section within the White Paper focussed on governance and independent monitoring is relatively light on detail, including on mechanisms for dispute resolution.

The reference to the oversight role of the UK Parliament (para. 154) suggests no role for the devolved legislatures in any new system which could be created to manage the UK Internal Market. As any new system would impact the whole of the UK, this is wholly unacceptable.

On independent advice and monitoring, the Paper states that there is a “range of potential vehicles” to explore. There is no real detail included, specifically in terms of the functions, constitution and accountability of an independent body.

In a country such as the UK, close collaboration and cooperation via a clear system of governance, based on strong inter-governmental relations and parity of participation, and agreed at the outset by each of the UK nations, is vital.

How does the UK Government envisage an independent body would be scrutinised and held accountable?

What governance and oversight role is envisaged for the devolved legislatures?

Subsidies regime / State aid

Currently, the Government of Wales Act 2006 (GoWA) does not include State aid in its list of reservations, and therefore State aid is not a reserved matter. The White Paper implicitly accepts this view by stating that the UK Government intends to “legislate to expressly provide that subsidy control is a reserved matter”, rolling back the process of devolution and constraining the Senedd’s ability to legislate on this matter.

We have made clear, through discussion with the UK Government, that we cannot foresee any way in which the Senedd would give legislative consent to changes to GoWA which would introduce a reservation on State aid policy.

Whilst the Paper commits to “work[ing] closely with all the devolved administrations to seek to agree the shape of a UK-wide domestic subsidy control regime” (para. 174) the inference is that the future UK subsidy regime will be developed to reflect the interests of the UK Government, rather than be the results of a collaborative development process, as is currently the case for the EU State aid rules.

The White Paper also gives little detail on the UK's future subsidy regime and makes no reference to an independent regulator for a future regime.

What are the UK Government's plans for a future subsidy regime and why do these require changes to the devolution settlements if the intention is to proceed by agreement?

Procurement

Despite the fact that procurement is a devolved competence, the White Paper confirms that the UK Government is considering extending the non-discrimination duty to the procurement of goods.

In raising the issue of the non-discrimination principle in relation to procurement, the UK Government is seeking to resolve an anomaly caused by the UK's exit from the EU, in relation to the WTO's Government Procurement Agreement (GPA). This issue has been raised as part of the discussions in relation to the Common Framework for procurement, the current draft of which states "The parties will... maintain principles of non-discrimination, equal treatment and transparency in respect of economic operators from the UK". No Party to the draft Concordat has objected to the inclusion of this intra-UK non-discrimination commitment.

This begs the question of why this provision should be included in an overarching Internal Market Bill. By unnecessarily extending the proposed UK non-discrimination provision to the procurement of goods there may be unintended adverse consequences for policy making in Wales and/or our devolved competence in this area.

What justification can the UK Government give to including this area within their proposals?

What impact will these proposals have on work already underway to agree a Common Framework for procurement?

Spending powers

It is not clear from the White Paper what is meant by 'spending powers', which at paras 47, 126 and 128 are characterised as new or "clarified" powers for the UK Government but at para 182 are described as for "all levels of Government". Reference is also made at para 182 to powers "for the UK Government to construct replacements of EU programmes". There is no further detail or substance about the rationale or impact of this, or about how this relates to ongoing intergovernmental discussions about the Shared Prosperity Fund and continued participation on programmes such as Erasmus+.

Could the UK Government clarify the meaning of 'spending powers' in this context and how they will ensure that any plans respect the current devolution settlements?

Jeremy Miles MS
Counsel General

Rebecca Evans MS
Minister for Finance and Trefnydd

23 July 2020

Dear Rebecca and Jeremy,

EU exit related subordinate legislation

We are aware that there is likely to be a large volume of subordinate legislation before the end of the year as a result of the UK exiting the European Union.

In his written statement on the legislative programme issued on 15 July, the First Minister said:

“A significant body of EU-related secondary legislation will still be required by the end of this year. This includes work to implement EU law coming into force this year; to ensure retained EU law ‘works’ at the end of the transition period; and to implement new regimes arising from our withdrawal from the EU. (...)

In these best of circumstances there will be real challenges in responding to the speed and complexity of Brexit-related legislation in an autumn where the Senedd will still be dealing with health and economic consequences of the pandemic, the annual budget process and the demands of even the slimmed down legislative programme (...)

If the autumn sees a resurgence in coronavirus and an aggressive form of seasonal flu, then managing Brexit legislation alongside everything else will be a challenge of a very different order.”

Within the context of this statement and for the purpose of planning our work for the coming months, we would be grateful if you could provide us with an update on the likely volume of EU exit related subordinate legislation that will be made before 31 December 2020. As referenced by the First Minister in his statement, it would be helpful to receive information on the subordinate legislation that will be required “to implement EU law coming into force this year; to ensure retained EU law ‘works’ at the end of the



transition period; and to implement new regimes arising from our withdrawal from the EU”.

We would be grateful to receive this update by the first week of September in order to help inform our plans for the autumn term.

In addition, we would like to invite you to discuss these matters further during our meeting on the morning of 28 September. This session would also include scrutiny of the forthcoming draft Order in Council to be made under section 109 of the *Government of Wales Act 2006*, which we understand will seek to amend Schedules 7A and 7B to the 2006 Act and which we understand will be laid before the Senedd in early September.

We would be grateful if you could confirm your availability for this session at your earliest convenience.

Yours sincerely

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

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

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



Jeremy Miles MS
Y Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

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



Llywodraeth Cymru
Welsh Government

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

11 September 2020

Dear Mick,

Thank you for your letter regarding EU exit related subordinate legislation.

A very significant amount of secondary legislation will be required this calendar year. Based on the most recent estimate we have had of UK Government statutory instruments in devolved areas related to EU transition, specifically in the areas of further corrections to retained EU law and for the implementation of the Withdrawal Agreement and the EEA/EFTA Separation Agreement and the Swiss Citizens' Rights Agreement, around 45 UK SIs will require formal consent through correspondence with the Welsh Ministers.

Estimated timescales are being revised by the UK Government and we have sought assurance that the programme will not be compacted further towards the end of this year.

We have much less certainty regarding the legislation to implement a possible treaty on the future relationship with the EU and for Free Trade Agreements with third countries. There is also remaining uncertainty about the SIs relating to the Ireland/Northern Ireland Protocol. We continue to press for more details from the UK Government for how all the necessary legislation can be passed by the end of December.

The successful delivery of the necessary legislation requires a cross-UK approach, or at least understanding, and this cannot be achieved without co-operation from the UK Government.

In terms of the Welsh SIs to be made for further corrections and implementation of the Withdrawal Agreement and related agreements and post-transition domestic regimes, the current estimate is around 30, though that is still subject to change based on further discussions around the Ireland/Northern Ireland Protocol. As with the previous programme of correcting SIs, a number will be dependent on the content of UK legislation and so their timing will be affected by progress elsewhere.

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

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

We are copying this letter to the Llywydd, as the Chair of Business Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Miles'.

Jeremy Miles MS

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

A handwritten signature in black ink, appearing to read 'Rebecca Evans'.

Rebecca Evans MS

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

STATEMENT BY THE WELSH GOVERNMENT

TITLE **The UK Internal Market Bill**
DATE **15th September 2020**
BY **Jeremy Miles MS, Counsel General and Minister for European
Transition**

Last Wednesday, the UK Government published its Internal Market Bill – only eight weeks after a White Paper purportedly consulting on the proposals contained within it saw the light of day. The UK Government is not publishing the responses to the consultation and its ‘analysis’ of them is flimsy to say the least. But we know it is not just the devolved governments which questioned the need for the legislation and the assumptions within the White Paper, with organisations such as NFU Cymru and the Education Workforce Council being amongst Welsh respondents who were critical.

A government sure of its footing in respect of such a far-reaching and contentious piece of legislation would surely publish the responses it has received.

There will be an opposition debate on the Internal Market Bill tomorrow, so today I will set out the factual basis for our serious concerns. At the outset, I want to make clear that we have no issue with the objective of ensuring the UK Internal Market can work smoothly after the end of EU Transition. On the contrary, we were among the first to point out that after we had left the EU we would need to develop a new form of joint governance to manage the intersection between devolved competence and the internal market.

For three years we have worked tirelessly on Common Frameworks in all the areas where the UK Government has identified that there is a risk of unnecessary barriers to the internal market being erected.

This work is now coming to fruition and there have been no examples of irretrievable breakdown or one Government blocking progress in any of the 28 Frameworks in which Wales is involved.

Yet, the Bill effectively undermines this work by providing the UK Government with a way of hollowing out the right of this Senedd to regulate within those areas of devolved competence as it sees fit.

Parts 1 and 2 of the Bill would enforce the principles of mutual recognition and non-discrimination in the case of almost all goods and services which originate or are legally imported to any part of the United Kingdom (defined in the case of non-discrimination as merely goods which 'pass through').

This would mean, for example, that while we could follow through our intention of banning nine types of single use plastics in Wales if they were produced in or imported into Wales, we could not prevent these same products which were produced in or imported into England or Scotland from being sold in Wales if they could be lawfully sold there. It also appears that it would be illegal to insist on them being labelled in a way which highlighted their damaging impact on the environment. While not specifically preventing the Senedd from exercising its powers, it renders them meaningless, in a context where the vast majority of goods for sale in Wales come or pass through other parts of the United Kingdom.

While this part of the Bill supposedly merely replaces the application of the same principles in EU law, the crude proposals in the Bill have none of the protections – of subsidiarity, proportionality and significant public policy exceptions – that apply in the approach it seeks to replicate. Crucially, it doesn't provide a floor of standards which divergence across the UK during the era of devolution has been built upon.

Part 3 seeks to impose the same approach on professional qualifications – though declaring my interest as a lawyer, I note that the legal profession is exempt. As a lawyer also, I can point out that this is a complex piece of drafting which will also bring joy to litigants up and down the land. We are not yet clear whether this would actually make it impossible to prevent teachers from other parts of the UK who lack the qualifications and experience required by our legislation from registering with the Education Workforce Council to teach in Wales, but it could tie that Council up in legal knots for years to come.

Part 4 of the Bill gives the Competition and Markets Authority a new role in providing the Office of the Internal Market. The functions proposed for this Office are ones which we broadly could endorse, but it is wholly inappropriate that a non-Ministerial Department of the UK Government, whose main function relates to matters which are wholly reserved, should be given this role without extensive reform of its governance arrangements.

Part 5 of the Bill relates to the Northern Ireland Protocol. It is somewhat odd – probably unprecedented – to find myself on the same side of any debate as Lords Howard and Lamont but that will tell you how broad is the range of voices which finds this part of the Bill utterly repugnant. Anyone who believes in the importance of the rule of law, and the importance of abiding to legal agreements you have freely

entered into – even if for the simple expedient of ensuring that other parties in future will be willing to make agreements with you – will be appalled that a Government could propose ministerial powers which so directly flout both domestic law and international agreements. The provisions in this part also exacerbate a potential threat to Welsh ports by incentivising freight from the island of Ireland to use ferry routes from Northern Ireland to Great Britain.

Part 6 of the Bill gives UK Ministers for the first time in the 21 years since devolution powers to fund activity in policy areas which are devolved to Wales – not just in economic development but in health, housing and education infrastructure, sport and culture. Let us be clear about one thing – a Government in Westminster that seeks both the power to spend in devolved areas, and the power to control the funding available, is a government that seeks to neuter devolution. And a Government which has so manifestly failed to invest in Wales in respect of the things they already have responsibility for – railways, broadband infrastructure, the tidal lagoon and large-scale energy – plainly intends to fund its own priorities by top-slicing the budget which this Senedd currently controls, leaving us with even less scope and flexibility to meet the needs of the Welsh people we are elected to serve.

Part 7 of the Bill explicitly changes the devolution settlement by adding state aid to the list of reserved matters. Llywydd, the preoccupation with state aid by this Conservative Government leads it to risk sacrificing a Free Trade Agreement with the EU and peace in Northern Ireland. But plainly the intention here is to shut us out from co-creation of a robust state aid regime for the whole of the UK and it is a significant threat to Welsh businesses.

And finally, Part 8 contains the proposal to make the whole of the Bill a protected enactment, not capable of amendment by this Senedd even when it impacts, as this surely does, on devolved matters – a power which should surely be used sparingly but which has been applied more times in the last three years than in the 18 previous ones.

The Welsh Government believes this is a badly thought through and highly damaging piece of legislation. We will work with politicians of all parties and of none in Parliament to ensure that – unless overhauled through amendment – this Bill does not get onto the Statute Book. We have proposed constructive alternative proposals, a wise Government in Westminster would look at them anew.

Check against delivery

The EU Single Market

14 September 2020

Introduction

On 16 July the UK Government published [its White Paper](#) on proposals for a UK Internal Market. The [UK Internal Market Bill](#) was subsequently published on 9 September.

Part of the UK Government's rationale for the Bill is that it is needed to replace the EU rules that governed the operation of the UK market whilst it was a Member of the EU and that still currently apply by virtue of the requirements of the transition period.

To aid Members in their consideration of the Bill, a piece of work was commissioned from Dr Kathryn Wright at York University using the Senedd's Brexit Academic Framework, to set out the key rules and principles that govern the operation of the EU's Single Market, on what grounds Member States are able to diverge from them e.g. to introduce laws that prevent the free movement of goods for public health grounds and how the rules of the EU's Single Market currently apply at sub-state level. It includes a case study of the minimum alcohol price legislation introduced firstly by the Scottish



Government and subsequently by the Welsh Government to illustrate some of the papers main points. The paper is included below.

Dr Kathryn Wright, is a member of York Law School and an expert in EU law.

Senedd

Framework Agreement for Research and Briefing Services in relation to Brexit

EU INTERNAL MARKET BRIEFING

Dr Kathryn Wright

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28 August 2020

Contents:

1. Historical context of the EU internal market
2. Key principles and features of the EU internal market
3. An overview of harmonised and non-harmonised sectors
4. The governance of the internal market and the role of different institutions
5. The 'wholly internal' situation and the sub-State context
6. Case study: Scotch Whisky case on minimum pricing of alcohol

1. Historical context of the EU internal market

The internal market is an area without internal barriers based on the '**four freedoms**': free movement of goods, persons, services and capital. As the ultimate interpreter of EU law, the Court of Justice of the European Union (CJEU) has played a central role in market integration, defining concepts laid down in the Treaties and developing key principles such as mutual recognition.

There are two elements to removing internal barriers:

- removing tariffs, which is the function of a customs union, and
- dealing with regulatory barriers. These non-tariff barriers are more significant, both in terms of number and complexity.

The EU has developed from a customs union to a common market to a single - or internal - market. The **customs union** means that there are no tariffs for trade within the EU and there is one single customs tariff for trade with non-EU Member States: the Common External Tariff (CET). External trade is an exclusive competence of the EU, which is why Member States are not free to set their own individual trade policies.

A **common market** is a free trade area with no tariffs for goods and relatively free movement of capital and of services, but not so advanced in reduction of non-tariff trade barriers. The Common Market - the European Economic Community (EEC) - was mostly associated with the idea of 'negative integration' - that is, the removal of existing barriers to trade.

The **Single, or Internal, Market**, goes further regarding non-tariff barriers with more focus on 'positive integration' - that is, harmonising regulations and recognising remaining national measures as equivalent. The internal market is made up of various policy areas subject to the shared competence of the EU and the Member States.

The Single Market ambition was a response to the oil crisis of the 1980s which led to inflation and unemployment. The European Commission's 1985 White Paper, under its then President Jacques Delors, identified physical and technical obstacles that still needed to be removed to complete the Single Market. It set out around 300 specific measures to be achieved in stages by 1993.

After the fall of the Berlin Wall, the European integration project became more ambitious in terms of political as well as economic integration. Among other features, the Maastricht Treaty introduced the concept of EU citizenship, set a timetable for monetary union, and introduced a three-pillar system: the Economic Community (EC), Justice & Home Affairs (JHA), and the Common Foreign and Security Policy (CFSP). The latter two pillars were characterised by more intergovernmental decision-making. To accommodate the interests of some Member States, the Treaty allowed for opt-outs for the first time, such as for Euro membership. Subsequently the Treaty of Amsterdam allowed for 'enhanced cooperation' among Member States wanting to integrate at a faster pace in particular areas.

The internal market has developed through successive treaties and the enlargement of the EU from the original 6 to 28 (now 27) Member States. It is an ongoing project. The goods market is more integrated than services, and a Digital Single Market strategy was announced in May 2015 to take account of progress in technology.

Key dates

1957 Treaty of Rome, creating the European Economic Community (EEC).
Common market established – free movement of goods, services, capital and people

1968 Customs union created: all import tariffs between the 6 EEC Member States removed

1986 Single European Act, creating the European Community (EC) (in force 1987) – 12 Member States by now - set timetable for the completion of the Single Market by 1 January 1993

1992 Maastricht Treaty: Treaty on European Union (in force 1993) – greater political and economic integration, three pillars, foundation for Economic & Monetary Union (EMU), opt-outs

1993 completion of Single Market – physical borders removed

2002 euro notes and coins in circulation and national currencies phased out

2007 Treaty of Lisbon (in force 2009): updating and consolidating the previous Treaties into two: the Treaty on European Union (TEU), and the Treaty on the Functioning of the European Union (TFEU), the latter containing the rules on the internal market – 27 Member States at this point

2. Key principles and features of the EU internal market

The legal basis for the internal market is Art 26 TFEU, which refers to the **free movement of goods, services, capital and persons**. Firms and people from one EU Member State should be able to operate in another Member State market under the same laws and conditions as those applying to the host Member State's own nationals. Member States cannot create unjustified barriers to trade. In EU law there is a general **principle of non-discrimination** on grounds of nationality. In the context of free movement of goods and services it is bound up with the principle of mutual recognition, discussed in this section. Whereas in its early case law the Court focused on discrimination, it increasingly applies a market access approach i.e. does a national rule prevent or hinder a claimant's access to that market?

This briefing discusses free movement of goods and services, with a focus on physical goods.

Barriers to trade in services

The core provisions governing the single market for **services** are the **freedom to establish** a company in another EU country (Art 49 TFEU), and the **freedom to provide or receive services** in an EU country other than the one where the company or consumer is established (Art 56 TFEU).

In terms of exceptions, activities directly connected with the exercise of official authority are excluded from freedom of establishment and provision of services (Art 51 TFEU). Member States may exclude the production of or trade in war material (Art 346(1)(b) TFEU) and retain rules for non-nationals in respect of public policy, public security or public health (Art 52(1) TFEU).

Freedom of establishment and free movement of services have been further developed through the Court of Justice of the EU's case law. Some case law has been codified into the Services Directive (Directive 2006/123/EC) which includes sectors such as retail, tourism, construction and business services. The directive covers services provided within countries as well as between Member States. There are also separate directives on particular sectors, such as financial services, transport, telecommunications, postal services, broadcasting and patient rights, supported by other rules such as recognition of professional qualifications.

Implementation of the Services Directive, initially due in 2009, has been delayed in some Member States, so the internal market in services is not as integrated as in goods.

Barriers to trade in goods

Free movement of **goods** is governed by Article 34 TFEU, which provides that **quantitative restrictions** on imports and **all measures having equivalent effect** [abbreviated as 'MEQRs' or 'MEEs'] shall be prohibited between Member States. Art 35 TFEU is the similar provision applying to exports.

A **quantitative restriction** is a measure which amounts to a total or partial restraint of imports, exports or goods in transit (case 2/73 *Geddo*). An example would be a quota, prohibiting or limiting importation by amount or by volume. Most national measures are not direct quantitative restrictions but may have a similar effect, hence the prohibition against equivalent measures too.

'Measures having equivalent effect' to quantitative restrictions encompass "all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially", trade within the EU (case 8/74 *Dassonville*, concerning a Belgian rule preventing the sale of products such as Scotch whisky without a certificate of authenticity). It should be noted that this definition has a broad scope. For example, these measures may relate to a product's content, its labelling or sale conditions, or its use.

In the *Keck* case (C-267/91), the Court of Justice of the European Union (CJEU) decided that rules on 'selling arrangements' (as opposed to 'product characteristics') that are non-discriminatory and impose an equal burden on imported and domestic products in law and in fact, fall outside Art 34 TFEU altogether. However, more recent case law focuses on the impact on market access regardless of the type of measure.

In a case concerning a Swedish law prohibiting the advertisement of alcohol on radio, television and in magazines (case C-405/98 *Gourmet International*), the CJEU focused on factual (in)equality: did the national measure impede access to the national market more for imported products than for domestic products? Although they could still advertise in the trade press to retailers and restaurants owners, the ban affected potential importers more heavily as they could not access potential consumers directly.

In C-110/05 *Commission v Italy (Trailers)*, which concerned an Italian ban on the use of certain road vehicle trailers, the CJEU ruled:

“measures adopted by a Member State the object or effect of which is to treat products coming from other Member States less favourably are to be regarded as measures having equivalent effect to quantitative restrictions on imports... Any other measure which hinders access of products originating in other Member States to the market of a Member State is also covered by that concept.” The Court also noted that a ban on the use of a product in the territory of a Member State has a considerable influence on the behaviour of consumers, which also affects the access of that product to the national market.

A similar approach is found in the cases on free movement of services. Under Art 56 TFEU, restrictions on freedom to provide services are prohibited in respect of Member State nationals who are established in a Member State other than that of the person for whom the services are intended. This covers all measures “liable to hinder or make less attractive the exercise of fundamental freedoms” (C-55/94 Gebhard) or that “prohibit, impede, or render less advantageous the activities of a service provider established in another Member State where they lawfully provide similar services” (cases C-369 & C-376/96 Arblade).

Showing again the focus on market access, in case C-384/93 Alpine Investments a ban on cold-calling potential customers deprived the firm of a “rapid and direct technique for marketing and for contacting potential clients in another Member State.” (However, the ban could be justified on grounds of consumer protection – justifications are discussed below.)

Mutual recognition

Where there are harmonised rules, all EU and non-EU operators must comply with them within the internal market. In harmonised sectors EU countries do not have the option of introducing divergent national rules.

For non-harmonised products, a central feature of free movement of goods is the **principle of mutual recognition**. This covers approximately 25% of products on the EU market (European Commission, Evaluation of the Application of the mutual recognition principle in the field of goods, June 2015, p.31).

The principle of mutual recognition provides that if a product or service has been lawfully placed on the market in one Member State, there is no valid reason why it cannot be marketed in another Member State. This creates a presumption in favour of free movement. The principle was established by the Court of Justice in the important Cassis de Dijon case (case 120/78).

That case concerned the sale of cassis de Dijon, a type of crème de cassis (blackcurrant liqueur), in Germany by an importer and retailer, Rewe. A German law stipulated that products sold as fruit liqueur must contain at least 32% alcohol by volume, whereas crème de cassis produced in France only contains 15-20%. The relevant section of the German Federal Ministry of Finance told Rewe that the cassis de Dijon could be imported. On the other hand, it advised that it could not be marketed as a liqueur in Germany. This represented an MEQR.

The Cassis de Dijon case also categorised national rules into 'distinctly' and 'indistinctly' applicable measures according to their effect on imported and domestic products:

A **distinctly applicable measure** is one that is overtly discriminatory as it only applies to imported products and not to national products. For example, minimum or maximum prices for imported products; payment conditions for imported products which differ from those for domestic products; conditions in respect of packaging, composition, identification, size, weight, etc, which apply only to imported goods; a government campaign encouraging consumers to favour domestic products.

An **indistinctly applicable measure** on the face of it applies to all products – both domestic and imported – but in practice imposes a greater restriction on imported products. For example, an advertising ban which may make it more difficult for potential importers to reach a new market.

This categorisation is important as the type of measure influences the range of justifications open to Member States for diverging. In practice most measures are indistinctly applicable.

The possibility for Member States to diverge

As noted above, there is no lawful basis for Member States to diverge where harmonised rules apply.

There are possibilities to diverge in non-harmonised sectors where the principle of mutual recognition applies. These are known as Member State **derogations**. The Member State's justification for divergence must be based on grounds laid down in EU law, necessary, proportionate and genuine. In the traditional analysis, measures applying exclusively to non-national goods can only be justified by a narrow, closed category laid down in the Treaty. When the measures affect both national and non-national goods there is a wider scope for justification through the case law discussed below. The burden of proof shifts to the Member State to show that the restriction on trade is justified.

Traditionally, **distinctly applicable measures** can only be justified under the exhaustive list of derogations in Art 36 TFEU, which are:

- public morality,
- public policy or public security,
- protection of health and life of humans, animals or plants,
- protection of national treasures possessing artistic, historic or archaeological value, and
- protection of industrial and commercial property

Art 36 also states that Member States' measures "shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States." Economic protectionism is not allowed, as confirmed by case law such as case 40/82 Commission v UK on Christmas turkeys, and case C-1/00 Commission v France after the end of the BSE crisis in British beef, where the UK and France respectively unsuccessfully tried to invoke public health grounds.

Regarding **indistinctly applicable measures**, the Cassis de Dijon case also allows for the possibility of other derogations through a '**rule of reason**'. It mentions 'mandatory requirements' relating in particular to:

- effectiveness of fiscal supervision,
- protection of public health,
- fairness of commercial transactions, and
- defence of the consumer

This list of '**mandatory requirements**' is not exhaustive, so it is open to a Member State to justify an indistinctly applicable measure on another ground. For example, the Italian ban on the use of trailers breached Art 34 TFEU but could be justified on grounds of road safety (C-110/05 Commission v Italy (Trailers)). Similarly, a Swedish ban on the use of jet skis on all public waterways could be justified on the grounds of public and environmental nuisance (case C-145/02 Mickelsson v Roos).

On occasion the Court has taken a less strict approach to the derogations for distinctly applicable measures, blurring the distinction between the categories of justifications. It has done this by not explicitly labelling a measure as distinctly applicable – simply deciding it is an MEQR, or by allowing mandatory requirements to be considered as justifications (e.g. in C-54/05 Commission v Finland, allowing import licences to be justified by road safety).

In the Walloon Waste case (C-2/90 Commission v Belgium), the Walloon Regional Council prohibited waste originating in another Member State or in another region of Belgium to be stored or dumped in Wallonia. This could be considered a distinctly applicable measure because it did not apply to waste originating in Wallonia itself. The Court assessed environmental protection as a justification, although that is not one of the options in Art 36 TFEU. (This case can also be seen in line with other judgments on measures imposed by sub-State administrations, outlined in section 5.)

In free movement of services, the Säger case concerning patent attorney services (case C-76/90) established that only rules applying to all service providers pursuing an activity in the State of destination (i.e. indistinctly applicable measures) are potentially permissible. They must be justified by “imperative reasons relating to the public interest” Distinctly applicable measures are not justifiable at all.

Any justifications are also subject to a **proportionality** test. The national measure must be appropriate for securing its intended objective and must not go beyond what is necessary in order to achieve it. This includes considering whether alternative, less trade-restrictive, measures are available to achieve the aim. This operation of the proportionality test is discussed in more detail in the case study on Scotch Whisky in the final section of this briefing.

Potential justification of national measures on goods

distinctly applicable national
measure

(only applies to imports)

Object

↓

justifiable under Art 36 TFEU
(exhaustive list)

indistinctly applicable national
measure

(applies to imports and domestic
products, but restrictive of trade
between States)

effect

↓

justifiable according to 'rule of
reason' test in the Cassis de Dijon
case ('mandatory requirements' -
non-exhaustive) or
Art 36 TFEU

+

proportionality

National derogations give an opportunity to diverge from the free movement rules, in non-harmonised areas. However, they must be justified on a case-by-case basis according to the facts, and they are only allowed in the context of the institutional governance structures of the EU. Governance is discussed in more detail in section 4 below.

The Single Market Transparency Directive 2015/1535 also aims to prevent barriers before they materialise for products which are not, or only partially, harmonised. Member States are required to notify any draft regulations concerning these products to the European Commission at least three months before their proposed adoption (the 'standstill' period). These measures are recorded in the Technical Regulation Information System ('TRIS') database. The Commission then analyses them in light of EU legislation, and other Member States can also give their opinion on the notified draft regulations.

Practical operation of mutual recognition

Mutual recognition within the internal market is also governed by legislation. The new Mutual Recognition Regulation (Regulation 2019/515 - applied from 19 April 2020) outlines rules and procedures on the application of the mutual recognition principle in individual cases. It includes:

- an assessment procedure to be followed by national authorities when assessing goods
- compulsory elements to be included in an administrative decision that restricts or denies market access
- a voluntary mutual recognition declaration, which businesses can use to demonstrate that their products are lawfully marketed in another EU country
- a problem-solving procedure, based on the existing SOLVIT service, that includes the possibility of an assessment from the European Commission on the compatibility of a national decision restricting or denying market access with EU law. SOLVIT is a practical problem-solving network to assist EU citizens or businesses when they encounter a problem in another Member State because a public authority is not respecting their obligations under EU law.
- stronger administrative cooperation to improve the application of the mutual recognition principle
- more information to businesses through reinforced product contact points and a single digital gateway

(see European Commission, Mutual recognition of goods: https://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition_en)

3. An overview of harmonised and non-harmonised sectors

Harmonised sectors account for 70-75% of products on the EU market. These sectors include toys, electronic and electric equipment, such as electric motors, laptops, domestic refrigerators/freezers, gardening equipment, petrol pumps, air conditioners and integrated circuits, machinery, measuring instruments, lifts,

medical devices, recreational craft, fireworks, personal protective equipment, fireworks, automotive, chemicals.

In most harmonised sectors, EU legislation is limited to essential health and safety and environmental standards. Manufacturers then adhere to technical specifications or voluntary standards to show compliance. These standards are separately drafted through European Standards Organisations involving industry actors. In other sectors (automotive, chemicals), technical specifications for particular products are detailed in specific legislation itself.

Different aspects of a product can be harmonised: for toys, EU legislation covers all characteristics; for other products, it lays down only the technical characteristics (such as level of noise, chemical substances) or the rules concerning labelling (e.g. for composition of clothes and shoes, energy efficiency labelling for household electric appliances).

Concerning harmonised product rules, Regulation (EU) 2019/1020 on market surveillance and compliance of products aims to strengthen market surveillance rules for non-food products. It increases coordination of market surveillance, clarifies procedures for a mutual assistance mechanism, and requires non-EU manufacturers to designate a responsible authority for compliance information.

Non-harmonised sectors include certain foodstuffs, medicines, food additives and food supplements, furniture, textiles, bicycles, automotive spare parts, construction products, fertilisers, cooking implements, precious metals.

Conformity assessment by an accredited body is needed before a product (such as medicines) can be placed on the EU market, showing that it meets all the applicable requirements. CE marking denotes conformity with high safety, health, and environmental protection requirements.

The European Commission's 'Blue Guide' (July 2016) is a handbook on the implementation of EU product rules on non-food and non-agricultural products. It aims to help businesses, trade and consumer associations, standardisation bodies and conformity assessment bodies and national inspectors apply the rules consistently across different sectors and throughout the single market.

4. The governance of the internal market and the role of different institutions

The European Commission, the CJEU, European standardisation bodies and national courts and authorities are involved in internal market governance.

The European Commission is the guardian of the Treaties. It promotes the general interest of the EU, implements policies, and proposes and oversees the implementation of EU legislation. It is the approximate equivalent of the civil service for the EU. EU legislation is passed by the Council of the EU, comprising Member State ministers, and the European Parliament, made up of directly elected representatives.

Regulations are directly applicable from their adoption, whereas Directives need to be transposed into national law by Member States within two years, or by the date specified in the legislation. The measures taken to implement the Directive must be notified to the European Commission. If a country fails to implement a Directive properly, notify the Commission, or otherwise violates the Treaties, the Commission may start infringement proceedings under Art 258 TFEU.

The first step is a letter of formal notice requesting further information from the Member State, which must send a detailed reply within a specified period. If the Commission considers the response unsatisfactory, it sends a 'reasoned opinion', formally requesting that the country complies with EU law. It explains why the Commission considers there is a breach, and again asks the Member State to

inform the Commission of the measures taken by a specified deadline, usually 2 months. If the Member State still does not comply, the Commission may decide to refer the case to the Court of Justice. Most cases are settled before this point. If the Court of Justice finds that the Member State has breached EU law, the national authorities must take action to comply with its judgment. If this still does not happen the Commission can propose that the Court apply financial penalties.

The Court of Justice of the EU (CJEU) interprets EU law to ensure it is applied consistently, and adjudicates cases between national governments and EU institutions. CJEU rulings are binding on the Member States. It is important to note that it is not an appeal court from the Member States.

In free movement cases the CJEU would have jurisdiction in two ways: European Commission infringement proceedings brought against a Member State e.g. for non-implementation of legislation as explained above; or through the preliminary reference procedure after a case is brought in a national court to enforce an individual's or a firm's free movement rights.

Under the preliminary reference procedure (Art 267 TFEU), if a national court is unsure of the interpretation of EU law applicable to a case, it can (and must, in the case of the highest court) make a reference to the CJEU. Once the CJEU has given its binding interpretation - 'the **preliminary ruling**' - on the point of EU law raised, the national judge applies that ruling to the dispute between the parties.

Member States' courts and authorities play an important role in enforcing EU law. Flowing from the foundation principle of supremacy of EU law, they are required and empowered to:

- give effect to EU law: the principle of **direct effect** (case 26/62 Van Gend en Loos)
- interpret national law in line with EU law: the principle of **indirect effect** (case C-106/89 Marleasing)
- set aside national provisions which conflict with EU law (case 70/77 Simmenthal)

The principle of direct effect means that individuals and firms can enforce their free movement rights in national courts by challenging State measures on the basis of the Treaty. They do not need to go to the CJEU, and in fact the CJEU does not have jurisdiction to hear their cases, except indirectly through the preliminary reference procedure.

As noted above, European Standards Organisations are responsible for drawing up technical specifications, which meet the essential requirements laid down in Regulations and Directives. If producers comply with these standards there is a presumption of conformity with the essential requirements. These standards may define requirements for products, production processes, services or test methods. They are developed by industry actors following principles of consensus, openness, transparency and non-discrimination. Standards are aimed at ensuring interoperability and safety, reducing costs and facilitating integration. The European Standardisation Organisations are the European Committee for Standardisation (CEN – known by its French acronym), the European Committee for Electrotechnical Standardisation (CENELEC), and the European Telecommunications Standards Institute (ETSI).

5. The ‘wholly internal’ situation and the sub-State context

If there is no movement between Member States in a particular case, free movement rights in EU law are not engaged.

In the context of free movement of goods, Article 34 TFEU applies to obstacles to trade “between Member States”. An inter-State element is therefore a prerequisite and it does not apply to ‘wholly internal’ situations i.e. the measure should be “capable of hindering, directly or indirectly, actually or potentially” trade between Member States (the *Dassonville* case). It does not apply to measures only affecting domestic goods. The need for an inter-State element means that EU law does not prevent Member States from treating their domestic products less favourably than imports i.e. **reverse discrimination** (although they would be unlikely to want to do that deliberately).

However, Art 34 TFEU does apply where a domestic product leaves the Member State but is imported back again (case 78/70 Deutsche Grammophon) - unless the sole purpose is to circumvent the domestic rules (case 229/83 Leclerc). It also applies to goods in transit (C-320/03 Commission v Austria). Irrespective of the place where they are originally produced inside or outside the internal market, once they are in free circulation all goods benefit from the principle of free movement (Cassis de Dijon).

Potential effects on inter-State movement have allowed national producers to successfully challenge national rules applying to all producers, on the grounds that the rule could also create a disadvantage for non-national producers in accessing the market (e.g. C-184/96 Commission v France - foie gras; C-321-324/94 Pistre). Similarly an obstacle or delay posed to national producers may have a knock-on effect further along the chain, indirectly affecting later cross-border trade (C-293/02 Jersey Potatoes).

The Lancry case (C-363/93, C-409/93 & C-411/93) concerned different parts of the same State. Dock dues imposed by Réunion (as a French overseas territory) on all goods, including those from mainland France, to boost local production were held to infringe Art 34. The Court found it would be “inconsistent to hold that a charge applied to all goods crossing a regional frontier, whatever their origin, should be classified as a charge having equivalent effect when it applies to goods from other Member States but not when it applies to goods from another part of the same State.”

The Walloon Waste case, discussed above in section 2, demonstrates that a measure adopted by a sub-State administration which affects producers in other sub-State territories as well as other States is open to justification.

6. Case study: the Scotch Whisky case on minimum pricing of alcohol

Summary: The key issue in the Scotch Whisky case was the proportionality of the Scottish legislation introducing a minimum price unit for alcohol, and whether there were less trade-restrictive measures, such as taxation, which would be equally effective at achieving the intended aim of protecting human life and health. Scotland ultimately implemented a minimum price of 50p per unit of alcohol in 2018.

Facts

In 2012, the Scottish Parliament approved a minimum unit price for alcoholic drinks through s.6A(1) of the Licensing (Scotland) Act 2005, amended by the Alcohol (Minimum Pricing) (Scotland) Act. Its aim was to increase the price of alcohol to discourage excessive drinking, so protecting human life and health.

The legislation was not implemented initially as the Scotch Whisky Association and other alcohol lobby groups challenged it through a judicial review. Some of its arguments were based on EU law, namely that imposing a minimum unit price would breach the free movement of goods rules and EU Regulation 1308/2013 on the common organisation of agricultural markets. The Scotch Whisky Association was able to invoke EU law as it could argue that importers from other EU Member States were also affected by the legislation. When the case reached the Court of Session in Edinburgh on appeal, it made a preliminary reference to the EU Court of Justice (case C-333/14 Scotch Whisky v Lord Advocate).

Applying the free movement of goods framework to the case:

-
- The proposed minimum unit price was a ‘measure having equivalent effect to a quantitative restriction’ (MEQR) according to Art 34 TFEU and the Dassonville definition
 -
 - It was an ‘indistinctly applicable’ measure: it applied to Scottish and other UK producers of alcoholic drinks as well as those from other EU Member States
 -
 - It was justified: ‘protection of health and life of humans’ is explicitly one of the grounds in Art 36 TFEU, and consumer protection is also considered a ‘mandatory requirement’
 -
 - Therefore, the key issue was the proportionality of the proposed minimum price unit for alcohol

The Court of Justice of the EU’s ruling

The CJEU applied the market access test i.e. would the minimum unit price present an obstacle to importers’ access to the market and affect fair competition? A manufacturer who could lawfully produce an alcoholic drink in other Member States more cheaply due to lower production or labour costs would not be able to compete by offering their products below the set minimum unit price in Scotland.

The CJEU accepted the objective of the legislation: “the protection of the health and life of humans... ranks foremost among the assets or interests protected by Article 36 TFEU. It is for the Member States, within the limits imposed by the Treaty, to decide what degree of protection they wish to assure” (para 35 of the judgment)

When it came to assessing whether the minimum unit price was proportionate to the aim of protecting human life and health, the Court examined whether there were less trade-restrictive alternatives which would be equally effective. In particular it considered that a fiscal measure which increases the taxation of alcoholic drinks is likely to be less restrictive of trade in those products within the EU than a measure imposing a minimum unit price. An MUP significantly restricts the freedom of economic operators to determine their retail selling prices in a way that taxation does not (para 46). The fact that increased taxation of alcoholic drinks entails a general increase in prices, affecting both moderate drinkers and

those whose consumption is harmful, does not necessarily mean that increased taxation is less effective (para 47).

As explained above, in the preliminary reference procedure it is ultimately for the national court to decide the case on the facts, applying the CJEU's binding ruling on the interpretation of the EU rule. In this case the CJEU gave a strong direction:

“Articles 34 TFEU and 36 TFEU must be interpreted as precluding a Member State choosing, in order to pursue the objective of the protection of human life and health by means of increasing the price of the consumption of alcohol, the option of legislation ... which imposes an MUP for the retail selling of alcoholic drinks, and rejecting a measure, such as increased excise duties, that may be less restrictive of trade and competition within the European Union. It is for the referring court to determine whether that is indeed the case, having regard to a detailed analysis of all the relevant factors in the case before it. The fact that [taxation] may bring additional benefits and be a broader response to the objective of combating alcohol misuse cannot, in itself, justify the rejection of that measure.” (para 50)

However, the burden of proof on the Member State “cannot extend to creating the requirement that, where the competent national authorities adopt national legislation imposing a measure such as the MPU, they must prove, positively, that no other conceivable measure could enable the legitimate objective pursued to be attained under the same conditions” (para 55)

In deciding the case, the national court should ensure that the relevant national authorities bring sufficient evidence to justify their measure (para 49, 54). The national court could take into account scientific uncertainty, and the fact that the minimum unit price had a time limit of 6 years unless the Scottish Parliament decided to extend it (para 57).

Outcome

The case returned to the domestic courts to apply the CJEU's ruling, first in the Court of Session and then in the UK Supreme Court on appeal. The UK Supreme Court ultimately found the minimum unit price to be lawful (*Scotch Whisky Association & Ors v The Lord Advocate & Anor (Scotland) [2017] UKSC 76* (15 November 2017)). Following the principles in the CJEU's judgment, the court emphasised the evidence behind the policy, the consideration of alternatives and the suitability of the measure for its intended objective. A minimum price of 50p per unit of alcohol was implemented in Scotland on 1 May 2018.

Similarly, Wales adopted a 50p minimum unit price on 2 March 2020 under the Public Health (Minimum Price for Alcohol) (Wales) Act 2018. The regulations specifying and explaining the minimum price unit had to be notified to the European Commission under the Single Market Transparency Directive before the measure came into force.

For more information contact:

Nia Moss



0300 200 6313



Nia.Moss@Senedd.Wales

Agenda Item 3

Statutory Instruments with Clear Reports

21 September 2020

SL(5)606 – The Healthy Start Scheme (Description of Healthy Start Food) (Wales) (Miscellaneous Amendments) Regulations 2020

Procedure: Negative

The Healthy Start scheme provides vouchers to pregnant women under 18 years old or who receive certain qualifying benefits, and families with a child under four years old who receive certain qualifying benefits to help buy some basic foods such as fruit, vegetables, milk and infant formula. Those that qualify can also receive free vitamins.

The scheme is not devolved in Wales, although the Welsh Ministers have powers to exercise certain functions, such as prescribing Healthy Start foods. These Regulations are intended to ensure parity in the delivery of the scheme in England and Wales.

These Regulations amend the Healthy Start Scheme (Description of Healthy Start Food) (Wales) Regulations 2006 by:

- removing the restriction that vitamins on the scheme may only be provided in a tablet or drop form; and
- expanding the definition of “Healthy Start foods” to include canned fruit and vegetables and pulses.

These Regulations also amend the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 by removing the contractual requirement placed on General Medical Practitioners to provide evidence of pregnancy to an individual when the individual is applying for the Healthy Start scheme (the requirement is unnecessary as a certificate evidencing pregnancy signed by a healthcare professional is no longer required as part of an individual’s application to the scheme).

Parent Act: National Health Service (Wales) Act 2006

Date Made: 07 September 2020

Date Laid: 08 September 2020

Coming into force date: 01 October 2020



SL(5)605 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) 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 remove the Greek islands of Mykanos, Zakynthos (Zante), Lesbos, Paros and Antiparos and Crete as well as Portugal (with the exception of the Azores and Madeira), French Polynesia and Gibraltar.

The Regulations also add a further event to the list of specified sporting events in Schedule 4 to the International Travel Regulations, which except certain individuals involved with those sporting events from the 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 point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

These Regulations came into force before they were laid before the Senedd. This also means that there is a breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative procedure statutory instrument is laid before the Senedd and the date the



instrument comes into force). We note the explanation provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 3 September 2020 that:

“Not adhering to the 21 day convention and bringing them into force before they were laid 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.”

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

15 September 2020



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

2020 No. 944 (W. 210)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 8)
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 Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205).

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 remove the Greek territories of Antiparos, Crete, Lesvos, Mykanos, Paros and Zakynthos from the list of exempt countries and territories.

Regulation 2 also removes Portugal (with the exception of the Azores and Madeira), French Polynesia and Gibraltar from the list of exempt countries and territories.

Regulation 3 of these Regulations makes transitional provision relating to these countries and territories’ 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 regulation 2 of these Regulations.

Regulation 4 of these Regulations adds a further event to the list of specified 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.

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

2020 No. 944 (W. 210)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 8)
Regulations 2020**

Made 3 September 2020

*Coming into
force at 4.00 a.m. on 4 September 2020*

*Laid before Senedd
Cymru at 11.00 a.m. on 4 September 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. 8) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 4 September 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 and territories in Schedule 3 to the International Travel Regulations

Amendments to the list of exempt countries and territories

2.—(1) In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area)—

- (a) at the appropriate place insert—
 - “the Azores”
 - “Madeira”;
- (b) after “Greece” insert “, except the territories of Antiparos, Crete, Lesvos, Mykanos, Paros, and Zakynthos”;
- (c) omit “French Polynesia”;
- (d) omit “Portugal”.

(2) In Part 2 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit—

“Gibraltar”.

Transitional provision in connection with regulation 2

3.—(1) Paragraph (3) applies where a person (“P”)—

- (a) arrives in Wales at or after 4.00 a.m. on 4 September 2020, and
- (b) was last in a country or territory to which paragraph (2) applies—
 - (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 4 September 2020.

(2) The countries and territories to which this paragraph applies are—

(1) S.I. 2020/574 (W. 132) 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), S.I. 2020/886 (W. 196) and S.I. 2020/917 (W. 205).

- (a) the Greek territories of Antiparos, Crete, Lesvos, Mykanos, Paros and Zakynthos;
- (b) French Polynesia;
- (c) Portugal, with the exception of the Azores and Madeira;
- (d) Gibraltar.

(3) P is, by virtue of having been in a country or territory to which paragraph (2) applies, 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.

(4) Regulation 3(3) and (4) of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020(1) is revoked, except in relation to the Azores and Madeira.

PART 3

Amendment to the list of sporting events in Schedule 4 to the International Travel Regulations

Addition to the list of specified sporting events

4. In paragraph 14 of Schedule 4 (specified sporting events), at the end insert—

“(e) Hennessy Sports – European Boxing
Union Super Featherweight
Championship Title.”

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
3 September 2020

(1) S.I. 2020/886 (W. 196)

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No.8) 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. 8) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

4 September 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 sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations came into force before they were laid.

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. The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel Regulations provides further information on these powers.

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 28 August 2020.

Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in Greece is currently categorised as medium risk. However, the advice considers that there is a high risk posed to public health by travellers returning to the UK from certain territories within Greece. On the basis of this advice the Government consider that isolation requirements should now be introduced for travellers coming into Wales from the Greek islands of Mykanos, Zakynthos (Zante), Lesbos, Paros and Antiparos and Crete.

Further, the advice from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in French Polynesia, Gibraltar and Portugal has risen. In respect of Azores and Madeira however the risk is lower as the islands have entry screening (either pre travel testing or testing on arrival with quarantine until result available) for all travellers from outside the islands (including mainland Portugal). On the basis of this advice the Government considers that isolation requirements should now be reintroduced for travellers coming into Wales from French Polynesia, Gibraltar and Portugal (except for those arriving from the Azores and Madeira).

An amendment is also 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 4 September 2020. 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.



Ein cyf/Our ref: MA/VG/2854/20

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

3 September 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument came into force before it was laid. 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.

The Regulations made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove the following countries and territories from the list of exempt countries and territories:

- Gibraltar
- French Polynesia
- Portugal (with the exception of the Azores and Madeira), and
- the following Greek islands: Mykanos, Zakynthos, Lesvos, Paros and Antiparos and Crete

The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from those countries and islands.

The Regulations also make a further amendment in respect of the insertion of an additional sporting event into Schedule 4.

Not adhering to the 21 day convention and bringing them into force before they were laid 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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

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

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

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,

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

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 **3 September 2020**

BY **Vaughan Gething MS, 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 also considered the clear advice from the Joint Biosecurity Centre (JBC) report that travel from the following countries and territories constitutes a public health risk. I have decided to remove mainland Portugal (the Azores and Madeira will remain exempt), Gibraltar, French Polynesia and the Greek islands of Mykonos, Zakynthos, Lesbos, Paros and Antiparos and Crete from the list of exempt countries and territories.

These changes will come into force at 04:00 on Friday 4th September, and I will lay the Regulations and Explanatory Memorandum before the Senedd tomorrow.

This action is being taken as a result of a large number of cases of coronavirus have been imported into Wales from tourists returning from the Greek islands, in particular. In the last week, there have been more than 20 cases confirmed in passengers on one flight from Zante to Cardiff.

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.

Agenda Item 4.2

SL(5)607 – The Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No.8) (Caerphilly) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020 (“the Principal Regulations”) to introduce restrictions in respect of a ‘local health protection area’ and apply those restrictions to the area of Caerphilly County Borough Council. These amendments:

These Regulations amend the principal regulations to introduce restrictions in respect of a ‘local health protection area’, and apply those restrictions to the area of Caerphilly County Borough Council. The effect of this is to:

- provide that no household within the area may be treated as forming part of an extended household and prohibiting the formation of an extended household by such a household;
- prohibiting persons living in the area from leaving or remaining away from the area without reasonable excuse;
- require residents of the area to work from home, unless it is not reasonably practicable for them to do so;
- prohibit people outside of the area entering the area without reasonable excuse;
- require people present in the area to wear a face covering (subject to certain exemptions and exceptions) if they are in open premises; and
- require the restrictions and requirements introduced by these amendments for the area of Caerphilly Borough Council to be reviewed on or before 24 September, and at least once every seven days thereafter.

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

The following points are 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

These Regulations, at regulation 2(6)(b)(iii), refer to regulations 18(6) and 18(6ZA)(a) in the English language version but the Welsh language version only provides reference to the paragraphs within that regulation; '(6) neu (6ZA)(a)'. This regulation amends regulation 20(3)(a) of the principal Regulations. The inconsistency results in the Welsh language version of the amended regulation not being as clear as the English language version.

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

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The explanatory memorandum states 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 Minister for Health and Social Services informed Members of the Senedd, in a written statement issued in the afternoon of 7 September, of the intention to impose the restrictions achieved in the Regulations made today. These proposed changes were subsequently widely reported by the media."

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

The Committee notes that these Regulations introduce a tightening of covid-19 related restrictions to the area of Caerphilly County Borough Council. As such, these Regulations fall within the territory of human rights considerations again for individual rights under the Human Rights Act 1998/European Charter of Fundamental Rights and against the necessary 'proportionality' test.

Additionally, the Committee notes the further consideration and explanation by the Welsh Government of human rights in the Explanatory Memorandum and are content to see specifically, the built in review period of the restrictions imposed by these Regulations by the Government in the timescales as set out from the EM below:

"These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion);



Article 11 (freedom of information); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus in Caerphilly County Borough and is proportionate to that aim. The requirements not to leave or enter the area are subject to a person having a reasonable excuse to do so, which includes being able to access essential services and public services and to provide care to vulnerable persons. The requirement to wear face coverings in open premises is subject to a number of exemptions and exceptions. Additionally the Welsh Ministers must, by 24 September, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve, and do so at least once every seven days thereafter."

Implications arising from exiting the European Union

None

Welsh Government response

A Welsh Government response is required for the technical report point but is not needed for the two merits points.

Legal Advisers

Legislation, Justice and Constitution Committee

16 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.

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

2020 No. 961 (W. 215)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 8) (Caerphilly)
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 impose additional requirements and restrictions in relation to Caerphilly County Borough, which is designated as a “local health protection area”. In particular—

- (a) households within the area may not form extended households under regulation 2A of the principal Regulations and any household within the area which is already in an extended household is no longer to be treated as part of the extended household;

- (b) persons living in the area may not leave the area unless they have a reasonable excuse to do so (examples of reasonable excuses are listed in paragraph 3(2) of new Schedule 4A to the principal Regulations);
- (c) persons outside the area may not enter it without a reasonable excuse (examples of reasonable excuses are listed in paragraph 4(2) of new Schedule 4A);
- (d) persons living in the area may not leave their home to go to work, or to provide voluntary or charitable services, if it is reasonably practical for them to work or provide those services from home (see paragraph 5 of new Schedule 4A);
- (e) face coverings must be worn in “open premises” (that is premises open to the public and required to take all reasonable measures to minimise the risk of exposure to coronavirus under regulation 12 of the principal Regulations), unless an exemption applies or the person has a reasonable excuse for not wearing the face covering (see paragraph 6 of new Schedule 4A).

These Regulations also make further amendments to the principal Regulations which are consequential on the provisions about the creation of a local health protection area.

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

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

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

2020 No. 961 (W. 215)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 8) (Caerphilly)
Regulations 2020**

Made at 2.00 p.m. on 8 September 2020

*Laid before Senedd
Cymru at 5.45 p.m. on 8 September 2020*

*Coming into
force at 6.00 p.m. on 8 September 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. 8) (Caerphilly) Regulations 2020 and they come into force at 6.00 p.m. on 8 September 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 paragraph (q) insert—

“(r) “local health protection area” has the meaning given by Schedule 4A.”

(3) For regulation 4, substitute—

“Review

4.—(1) The Welsh Ministers must review the need for restrictions and requirements imposed by these Regulations (other than the restrictions and requirements imposed by Schedule 4A), and whether those restrictions and requirements are proportionate to what the Welsh Ministers seek to achieve by them—

- (a) by 10 September 2020;
- (b) at least once in the period of 21 days beginning on 11 September 2020;
- (c) at least once in each subsequent period of 21 days.

(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)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/884 (W. 195)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/912 (W. 204)).

(2) The Welsh Ministers must review the need for restrictions and requirements imposed by Schedule 4A, and whether those restrictions and requirements are proportionate to what the Welsh Ministers seek to achieve by them—

- (a) by 24 September 2020;
- (b) at least once in the period of 7 days beginning on 25 September 2020;
- (c) at least once in each subsequent period of 7 days.”

(4) After regulation 14B insert—

“PART 4A

Local restrictions

Local health protection area

14C. Schedule 4A contains provision about restrictions and requirements applying in relation to a local health protection area (including provisions modifying the effect of other provisions of these Regulations as they apply in relation to that area).”

(5) In regulation 18—

(a) after paragraph (3B) insert—

“(3C) If an enforcement officer has reasonable grounds to suspect that a person (“P”) is contravening (or is about to contravene) paragraph 6(1) of Schedule 4A, the officer may—

- (a) direct P not to enter the premises;
- (b) remove P from the premises, and may use reasonable force, if necessary, to do so.”;

(b) after paragraph (4) insert—

“(4A) Where an enforcement officer has reasonable grounds for suspecting that a person (“P”) is contravening (or is about to contravene) paragraph 3(1) or 4(1) of Schedule 4A, the officer may—

- (a) direct P to return to the place where P is living;
- (b) remove P to that place.”;

(c) in paragraph (5)—

- (i) in sub-paragraph (a), after “(4)” insert “or (4A)”;
- (ii) in sub-paragraph (b), after “(c)” insert “or (4A)(b)”;

(d) after paragraph (6) insert—

“(6ZA) Where an enforcement officer has reasonable grounds to suspect that a person (“P”) is contravening, or is about to contravene, paragraph 3(1) or 4(1) of Schedule 4A and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the officer may direct I to take P to the place where P is living, and
 - (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the officer to P.”;
 - (e) in paragraph (6A), after “12(A)(1)” insert “or paragraph 6(1) of Schedule 4A”;
 - (f) in paragraph (7), after “(6)” insert “, (6ZA)”.
- (6) In regulation 20—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), after “12A(1),” insert “or paragraph 5(1) of Schedule 4A,”;
 - (ii) in sub-paragraph (b), after “14B(1),” insert “or paragraph 3(1), 4(1) or 6(1) of Schedule 4A”;
 - (b) in paragraph (3)(a)—
 - (i) after “18(3A)(a),” insert “18(3C)(a),”;
 - (ii) after “18(4),” insert “18(4A)(a),”;
 - (iii) for “or 18(6)” substitute “, 18(6) or 18(6ZA)(a)”.
- (7) After Schedule 4 insert—

“**SCHEDULE 4A** Regulation
14C

Local restrictions

Local health protection area

1. For the purposes of these Regulations, Caerphilly County Borough is a local health protection area.

Prohibition on forming extended households

2.—(1) Despite regulation 2A, no household living in a local health protection area may agree to be treated as an extended household with other households.

(2) Where, before this paragraph came into force, a household living in a local health protection area agreed to be treated as being in an extended household with other households—

- (a) that household is not to be treated as being in the extended household, and
- (b) the other households continue to be treated as an extended household (provided they are not living in a local health protection area) and regulation 2A applies to those households accordingly.

Requirement to stay within local health protection area

3.—(1) No person living in a local health protection area may, without a reasonable excuse, leave the area or remain away from the area.

(2) A reasonable excuse includes the need to do the following outside the local health protection area—

- (a) obtain—
 - (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
- (b) obtain money from or deposit money with any business or service listed in paragraph 6 or 7 of Schedule 4;
- (c) obtain or provide medical assistance, including accessing any of the services referred to in paragraph 10 of Schedule 4 or accessing veterinary services;
- (d) provide or receive care or assistance, including relevant personal care, within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006⁽¹⁾, where the person receiving the care is a vulnerable person;
- (e) work or provide voluntary or charitable services, where it is not reasonably practicable to do so from home;
- (f) where the person is an elite athlete, train and compete;
- (g) provide or receive emergency assistance;

(1) 2006 c. 47. Paragraph 7(3B) was inserted by section 66(2) of the Protection of Freedoms Act 2012 (c. 9).

- (h) attend a solemnization of a marriage or formation of a civil partnership—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (i) attend a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (j) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (k) access or receive public services;
- (l) access or receive childcare or education services;
- (m) in relation to children who do not live in the same household as their parents, or one of their parents, continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (n) move home;
- (o) undertake activities in connection with the purchase, sale, letting, or rental of residential property;
- (p) avoid injury or illness or escape a risk of harm.

(3) For the purposes of sub-paragraph (1), it is not a reasonable excuse for a person to leave, or remain away from, a local health protection area to do anything if it would be reasonably practicable for the person to do that thing within the area.

(4) Sub-paragraph (1) does not apply to a person who is homeless.

Requirement not to enter local health protection area

4.—(1) No person may, without reasonable excuse, enter a local health protection area or remain in it.

(2) A reasonable excuse includes the need to do the following in the local health protection area—

- (a) obtain—
 - (i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
 - (ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
- (b) obtain money from or deposit money with any business or service listed in paragraph 6 or 7 of Schedule 4;
- (c) obtain or provide medical assistance, including accessing any of the services referred to in paragraph 10 of Schedule 4 or accessing veterinary services;
- (d) provide or receive care or assistance, including relevant personal care, within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006, where the person receiving the care is a vulnerable person;
- (e) work or provide voluntary or charitable services;
- (f) where the person is an elite athlete, train and compete;
- (g) provide or receive emergency assistance;
- (h) attend a solemnization of a marriage or formation of a civil partnership—
 - (i) as a party to the marriage or civil partnership,
 - (ii) if invited to attend, or
 - (iii) as the carer of a person attending;
- (i) attend a funeral—
 - (i) as a person responsible for arranging the funeral,
 - (ii) if invited by a person responsible for arranging the funeral, or
 - (iii) as the carer of a person attending;
- (j) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (k) access or receive public services;

- (l) access or receive childcare or education services;
- (m) in relation to children who do not live in the same household as their parents, or one of their parents, continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (n) move home;
- (o) undertake activities in connection with the purchase, sale, letting, or rental of residential property;
- (p) avoid injury or illness or escape a risk of harm;
- (q) travel to reach a place outside the area.

(3) For the purposes of sub-paragraph (1), it is not a reasonable excuse for a person to enter, or remain in, a local health protection area to do anything if it would be reasonably practicable for the person to do that thing outside the area.

Requirement to work from home where practicable

5.—(1) No person living in a local health protection area may leave the place where they are living, or remain away from that place, in order to go to work or for work-related purposes.

(2) But sub-paragraph (1) does not apply if it is not reasonably practicable for the person to work from the place where they are living.

(3) No person living in a local health protection area may leave the place where they are living, or remain away from that place, in order to provide voluntary or charitable services.

(4) But sub-paragraph (3) does not apply if it is not reasonably practicable for the person to provide the voluntary or charitable services from the place where they are living.

(5) For the purposes of this paragraph, the place where a person is living includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises.

Requirement to wear face covering in certain public places

6.—(1) A person (“P”) must wear a face covering in open premises in a local health protection area.

(2) But this is not required—

- (a) where an exemption applies under sub-paragraph (3);
- (b) where P has a reasonable excuse not to wear a face covering, as to which see sub-paragraph (4).

(3) An exemption to the requirement to wear a face covering applies—

- (a) where P is a child under the age of 11;
- (b) where P is in premises where food or drink is sold, or otherwise provided, for consumption on those premises.

(4) The circumstances in which P has a reasonable excuse to not wear a face covering include—

- (a) where P is unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010⁽¹⁾);
- (b) where P has to remove the face covering to communicate with another person who has difficulty communicating (in relation to speech, language or otherwise);
- (c) where P has to remove the face covering in order to avoid harm or injury, or the risk of harm or injury, to themselves or others;
- (d) where P is at the premises to avoid injury, or to escape a risk of harm, and does not have a face covering;
- (e) where P has to remove the face covering to—
 - (i) take medication;
 - (ii) eat or drink, where reasonably necessary;
- (f) where P is asked to remove the face covering by an enforcement officer.

(5) For the purposes of sub-paragraph (3)(b), where food or drink is sold or otherwise provided for consumption in a part of premises, the exemption only applies where P is in that part.”

(1) 2010 c. 15.

Mark Drakeford

First Minister, one of the Welsh Ministers

At 2.00 p.m. on 8 September 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) 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. 8) (Caerphilly) Regulations 2020.

Mark Drakeford
First Minister

8 September 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. The Welsh Ministers are of the opinion that the restrictions now being imposed in relation to the area of Caerphilly County Borough Council are necessary and proportionate as a public health response to the current threat posed by coronavirus.

The Welsh Ministers must review the restrictions and requirements imposed by the Regulations by 24 September and at least once every seven days thereafter.

European Convention on Human Rights

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

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 Regulations impose restrictions and requirements in relation to a local health protection area, which for the purposes of the principal Regulations means the area of Caerphilly County Borough in particular prohibiting leaving or remaining away from or entering the area without reasonable excuse; providing that no household within the area being treated as forming part of an extended household and prohibiting the formation of an extended household by such a household and requiring face coverings to be worn within open premises, subject to exemptions and exceptions. These restrictions and requirements will, or may, engage rights under Article 8 (right

to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of information); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus in Caerphilly County Borough and is proportionate to that aim. The requirements not to leave or enter the area are subject to a person having a reasonable excuse to do so, which includes being able to access essential services and public services and to provide care to vulnerable persons. The requirement to wear face coverings in open premises is subject to a number of exemptions and exceptions. Additionally the Welsh Ministers must, by 24 September, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve, and do so at least once every seven days thereafter.

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 to introduce restrictions in respect of a 'local health protection area', and apply those restrictions to the area of Caerphilly County Borough Council. The effect of this is to:

- provide that no household within the area may be treated as forming part of an extended household and prohibiting the formation of an extended household by such a household;
- prohibiting persons living in the area from leaving or remaining away from the area without reasonable excuse;
- require residents of the area to work from home, unless it is not reasonably practicable for them to do so;
- prohibit people outside of the area entering the area without reasonable excuse;
- require people present in the area to wear a face covering (subject to certain exemptions and exceptions) if they are in open premises; and

- require the restrictions and requirements introduced by these amendments for the area of Caerphilly Borough Council to be reviewed on or before 24 September, and at least once every seven days thereafter.

The Regulations come into force at 6.00 p.m. on 8 September 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 introducing the requirements and restrictions in relation to the area of Caerphilly County Borough 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, 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 Public Health Wales, and local authority and NHS bodies for the Caerphilly area.

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 Minister for Health and Social Services informed Members of the Senedd, in a written statement issued in the afternoon of 7 September, of the intention to impose the restrictions achieved in the Regulations made today. These proposed changes were subsequently widely reported by the media.

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.



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

8 September 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 8) (Caerphilly) 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 6.00pm today. 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

Bae Caerdydd • Cardiff Bay
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CF99 1NA

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Introduction of local measures across Caerphilly County Borough Council area to control coronavirus
DATE	7 September
BY	Vaughan Gething MS, Health Minister

On 18 August, the Welsh Government published the *Coronavirus Control Plan*, which set out our approach to controlling local outbreaks of coronavirus based on the principles of caution, proportionality and subsidiarity. Preventing the spread of coronavirus is our overriding priority, but any interventions we take must be proportionate, using local knowledge and expertise.

The virus has not gone away. Over the summer we have seen an increase in cases as people have returned from holidays abroad; as people have socialised at home and with friends but without following social distancing guidelines.

There has been a significant increase in cases in the Caerphilly Borough County Council area both in absolute terms and as a proportion of the number of people being tested.

In response, the local authority, Public Health Wales and the Aneurin Bevan University Health Board have put in place a number of measures. This has included additional testing capacity at Caerphilly Leisure Centre, additional protective measures at care homes and a public appeal through a broad range of channels to reiterate the behaviours we can all undertake to keep ourselves safe. Gwent Police has increased its enforcement activity in the area.

Today, following a request by public authorities in Caerphilly - and as per the process set out in the *Coronavirus Control Plan* – Ministers have decided to introduce a series of tighter measures to control the virus and protect public health:

- All residents in the local authority area over the age of 11 will be required to wear face coverings in indoor places, such as shops, where social distancing

is difficult;

- Meeting people indoors will not be allowed for the time being – this includes meeting members of an extended household, if one has been set up, and overnight stays. People will continue to be able to meet outdoors.
- People will not be permitted to enter or leave the Caerphilly County Borough Council area without a reasonable excuse. A reasonable excuse includes travelling for work, if it is not possible to work from home.

These new measures will come into force at 6pm on Tuesday. They will be kept under constant review to measure their impact on cases of coronavirus in the borough. Working with the local authority and Public Health Wales, we will introduce further restrictions if necessary to protect public health.

I understand the reintroduction of restrictions will be very disappointing and concerning news. I hope, with the support of the residents of Caerphilly borough, these actions will mean the rise in coronavirus cases will be brought under control quickly.

We can only bring coronavirus cases under control with the help and support of everyone living and working in Caerphilly County Borough Council area. Together, we can reduce the rates of transmission and protect the most vulnerable.

The Welsh Government will continue to closely monitor conditions across Wales. I hope that the local measures I have set out above will not be needed in other areas.

Agenda Item 4.3

SL(5)612 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 9) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”). The amendments:

- (a) Restrict gatherings indoors of members of an extended household to 6 persons, not including any children aged under 11 (this does not affect the general rule that no person may gather indoors with anyone from outside their household);
- (b) Require face coverings to be worn in the indoor public areas of “open premises” (that is premises open to the public and required to take all reasonable measures to minimise the risk of spread of, coronavirus under regulation 12 of the principal Regulations) and transport hubs, unless an exemption applies or the person has a reasonable excuse for not wearing the face covering;
- (c) Make it clear that under paragraph 4 of Schedule 4A to the principal Regulations, it is not a reasonable excuse to enter a local health protection area for work, or to provide voluntary or charitable services, if it is reasonably practicable to do the work or provide the service outside the area;
- (d) Make minor amendments including amendments consequential on the changes mentioned above and on the making of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020.

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 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

There has been no public consultation or regulatory impact assessment prepared in relation to these Regulations. However, an integrated impact assessment is being developed and will be published shortly, according to the Explanatory Memorandum.

Regarding the lack of public consultation, the Welsh Government explains in the Explanatory Memorandum that this is due to the serious and imminent threat arising from coronavirus and the need for an urgent public response. Furthermore, the First Minister explains 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 and me. Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. I informed Members of the Senedd, in a written statement issued earlier today, of the intention to impose the restrictions achieved in these Regulations. I also led a press conference following which the proposed changes have been reported by the media.”

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.”

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

The Committee notes that these Regulations introduce a tightening of coronavirus (COVID-19) related restrictions. As such, these Regulations fall within the territory of human rights considerations for individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights. These must be considered against the necessary ‘proportionality’ test.

The Committee notes the further consideration and explanation provided by the Welsh Government in the Explanatory Memorandum. The Welsh Government states that:

“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.

[...]

The Regulations, in particular, limit the number of persons who may meet indoors and require face coverings to be worn within open premises, subject to exemptions and exceptions. These restrictions and requirements will, or may, engage rights under Article



8 (right to respect for family and private life); Article 9 (freedom of thought, conscience and religion); Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination). The Welsh Ministers consider that to the extent that the requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus across Wales and is proportionate to that aim. The restriction on indoor gatherings responds to threats to health and the requirement to wear face coverings, in open premises in subject to a number of exemptions and exceptions, including in mental illness or impairment, or, otherwise as a result of difficulties in communicating.”

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

16 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.

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

2020 No. 985 (W. 222)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 9) 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) restrict gatherings indoors of members of an extended household to 6 persons not including any children aged under 11 (this does not affect the general rule that no person may gather indoors with anyone from outside their household);
- (b) require face coverings to be worn in the indoor public areas of “open premises” (that is premises open to the public and required to

take all reasonable measures to minimise the risk of exposure to, and spread of, coronavirus under regulation 12 of the principal Regulations) and transport hubs, unless an exemption applies or the person has a reasonable excuse for not wearing the face covering;

- (c) make it clear that under paragraph 4 of Schedule 4A to the principal Regulations, it is not a reasonable excuse to enter a local health protection area for work, or to provide voluntary or charitable services, if it is reasonably practicable to do the work or provide the service outside the area;
- (d) make minor amendments including amendments consequential on the changes mentioned above and on the making of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020.

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

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

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

2020 No. 985 (W. 222)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (No. 2) (Wales)
(Amendment) (No. 9) Regulations
2020**

Made at 4.35 p.m. on 11 September 2020

*Laid before Senedd
Cymru at 7.30 p.m. on 11 September 2020*

Coming into force 14 September 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,

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

it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 9) Regulations 2020 and they come into force on 14 September 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 2A, for paragraph (3) substitute—

“(3) Where households agree to be treated as an extended household—

(a) any reference in these Regulations (other than in this regulation and regulation 14(1)(b)(i)) to a “household” is to be read as including the households that have so agreed, and

(b) regulation 14 applies to a gathering consisting of persons from more than one household in an extended household as if, for paragraph (1), there were substituted—

“(1) A gathering in premises indoors may not, without reasonable excuse, consist of—

(a) more than 6 members of an extended household, not including any children under the age of 11;

(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)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/884 (W. 195)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/912 (W. 204)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (S.I. 2020/961 (W. 215)).

- (b) a person who is not a member of the extended household apart from—
 - (i) the carer of a member of the extended household, or
 - (ii) a person to whom a member of the extended household is providing care.”.”

(3) Omit regulation 11.

(4) After regulation 12A insert—

“Requirement to wear face covering in certain indoor public places

12B.—(1) A person (“P”) must wear a face covering in relevant indoor premises.

(2) But this is not required—

- (a) where an exemption applies under paragraph (3);
- (b) where P has a reasonable excuse not to wear a face covering, as to which see paragraph (4).

(3) An exemption to the requirement to wear a face covering applies—

- (a) where P is a child under the age of 11;
- (b) where P is in premises where food or drink is sold, or otherwise provided, for consumption on those premises.

(4) The circumstances in which P has a reasonable excuse to not wear a face covering include—

- (a) where P is unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010⁽¹⁾);
- (b) where P is undertaking an activity and wearing a face covering during that activity may reasonably be considered to be a risk to P’s health;
- (c) where P has to remove the face covering to communicate with another person who has difficulty communicating (in relation to speech, language or otherwise);
- (d) where P has to remove the face covering in order to avoid harm or

(1) 2010 c. 15.

injury, or the risk of harm or injury, to themselves or others;

- (e) where P is at the premises to avoid injury, or to escape a risk of harm, and does not have a face covering;
- (f) where P has to remove the face covering to—
 - (i) take medication;
 - (ii) eat or drink, where reasonably necessary;
- (g) where P is asked to remove the face covering by an enforcement officer.

(5) For the purposes of paragraph (3)(b), where food or drink is sold or otherwise provided for consumption in a part of premises, the exemption only applies where P is in that part.

(6) For the purposes of this regulation, “relevant indoor premises” means the indoor public areas of—

- (a) open premises;
- (b) bus stations;
- (c) railway stations;
- (d) airports;
- (e) sea ports.”

(5) In regulation 17—

- (a) in paragraph (1)(c)—
 - (i) after paragraph (i) insert “or”;
 - (ii) omit paragraphs (iii) and (iv);
- (b) in paragraph (1)(d)—
 - (i) after paragraph (i) insert “or”;
 - (ii) omit paragraphs (iii) and (iv);
- (c) in paragraph (2), omit “, 11(4)”;
- (d) omit paragraph (3).

(6) In regulation 18—

- (a) omit paragraph (3);
- (b) in paragraph (3C), in the words before sub-paragraph (a), for “paragraph 6(1) of Schedule 4A” substitute “regulation 12B(1)”;
- (c) in paragraph (6A), for “paragraph 6(1) of Schedule 4A” substitute “regulation 12B(1)”.

(7) In regulation 20, in paragraph (1)—

- (a) in sub-paragraph (a), omit “, 11(4) or 12A(1),”;
- (b) in sub-paragraph (b)—
 - (i) after “regulation” insert “12A(1), 12B(1),”;

(ii) for “, 4(1) or 6(1)” substitute “or 4(1)”.

(8) In regulation 21—

- (a) in paragraph (10), after “Regulations” insert “or Regulations mentioned in paragraph (11)”;
- (b) in paragraph (11), after “2020” insert “and the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020⁽¹⁾”;
- (c) omit paragraph (15).

(9) In Schedule 4A—

- (a) in paragraph 4(2)(e) after “services” insert “where it is not reasonably practicable to carry out the work or provide the service from a place outside the area”;
- (b) omit paragraph 6.

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 4.35 p.m. on 11 September 2020

(1) S.I. 2020/977 (W. 218).

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 9) 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. 9) Regulations 2020.

Mark Drakeford
First Minister

11 September 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.

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

European Convention on Human Rights

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

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 adaptation 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 Regulations, in particular, limit the number of persons who may meet indoors and require face coverings to be worn within open premises, subject to exemptions and exceptions. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of thought, conscience and religion); Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination). The Welsh Ministers consider that to the extent that the requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus across Wales and is proportionate to that aim. The restriction on indoor

gatherings responds to threats to health and the requirement to wear face coverings in open premises is subject to a number of exemptions and exceptions, including in respect of children under 11, the inability to wear coverings due to a physical or mental illness or impairment, or, otherwise as a result of difficulties in communicating.

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 to:

- restrict the number of people who may meet socially indoors. This will be limited to no more than 6 people from an (exclusive) extended household (excluding any child under 11 years of age). This limit applies to all indoor settings, including homes, restaurants and pubs.
- require people to wear face coverings while in shops and certain other indoor public places and transport hubs. There is an exemption for those under the age of 11, and when anyone is on premises where food or drink is sold or otherwise provided, for consumption on those premises. (Where only part of a premises is available for consumption of food/drink, the requirement to wear a face covering will still apply in the other parts of the premises.) The Regulations also provide that where a person has a reasonable excuse (examples of which are given) a face covering need not be worn. These new requirements are in addition to the existing requirement that already applies (across Wales) to wear face coverings on public transport.

Earlier this week the principal Regulations were amended to introduce stricter restrictions in respect of Caerphilly County Borough, which was designated as a 'local health protection area'. This included the requirement to wear face coverings. In light of the expansion of this requirement across Wales as a whole, the principal Regulations are amended by these Regulations so as to remove the specific requirement for face coverings from the local health protection area provisions.

- make a further amendment to the provisions on the local health protection area in respect of the requirement to work from home, unless it is not reasonably practicable to do so. From 8 September this applied to persons living in the local health protection area, but did not apply to persons living outside but working in

that area. From 14 September, it will not be a reasonable excuse to enter Caerphilly County Borough to work if it reasonably practicable for the work to be done outside the area.

Further amendments are also being made to the principal Regulations, by these Regulations, in consequence of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020. Duties imposed on local authorities, National Park authorities, Natural Resources Wales and the National Trust have been removed from the principal Regulations and reproduced in the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020.

The Regulations come into force at the beginning of 14 September 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 introducing these requirements and 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, 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 and me. Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. I informed Members of the Senedd, in a written statement issued earlier today, of the intention to impose the restrictions achieved in these Regulations. I also led a press conference following which the proposed changes have been reported by the media.

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.

An integrated impact assessment is being developed and will be published shortly.



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

11 September 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No.9) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No.9) Regulations 2020, which come into force on at the beginning of 14 September 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

Bae Caerdydd • Cardiff Bay
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Review of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020**

DATE **11 September 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 minimise 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 few weeks have seen children and young people from across Wales return to school for the first time since the start of the pandemic. The clear scientific advice I have received is this welcome return means there is no capacity to make further significant easements to the restrictions at this time.

Alongside this, the public health and scientific advice is that we are seeing a rapid increase in the number of cases across the UK, including a rise in cases in Wales.

The Welsh Government's *Coronavirus Control Plan*, which was published last month, sets out our approach to monitoring cases and controlling localised outbreaks of coronavirus based on the principles of caution, proportionality and subsidiarity.

Preventing the spread of coronavirus is our overriding priority but any interventions we take must be proportionate, using local knowledge and expertise.

Following a significant and rapid increase in cases in the Caerphilly County Borough Council area, we worked with the local authority and other partners to introduce local restrictions on 8 September.

We are closely monitoring rates in a number of other areas in Wales and, working with partners, will consider the introduction of further appropriate measures if the situation requires, in line with the *Coronavirus Control Plan*.

Overall, there has been an increase in the number of cases across Wales, both in absolute terms and as a proportion of the number of people being tested. However, the wider picture is more complex as while some parts of the country have become coronavirus hotspots, others have seen just single-digit increases in cases.

The evidence clearly suggests that where we have seen increases, these have primarily resulted from social interactions within and between households and social groups not observing social distancing and current regulations and guidance.

Taking all of this into account, Ministers have decided to take a number of immediate steps to help control the spread of the virus.

From Monday 14 September, all residents in Wales over the age of 11, will be required to wear face coverings in indoor public spaces, such as shops. There will be exemptions and exceptions, which will be set out in guidance.

For the time being the requirement to wear a face covering will not extend to pubs and restaurants. However, we will carry out a rapid review of the evidence to determine whether the hospitality industry should be included.

From Monday 14 September, we will introduce a maximum limit of six on the number of people who can meet indoors at any one time. They must be from the same exclusive household group – or bubble – which can be made from four households joining together. Children under 11 will not be included in this rule of six.

This limit will apply to indoor settings, including pubs and restaurants. People should only go to pubs and restaurants with members of their own household or extended household.

There will be exceptions and exemptions, including for a single household with more than six members. There are currently no changes to the rules for meeting outdoors but it is important that social distancing is maintained at all times.

This will not apply in Caerphilly County Borough Council while local restrictions are in place.

We will provide local authorities with new powers to be able to close premises on public health grounds from Monday 14 September. This will support rapid intervention as outbreaks occur and enable local authorities to take action to close off land or individual premises, and stop local gatherings or events.

I would remind all those responsible for premises open to the public that they can already be closed if reasonable measures to minimise exposure to coronavirus are not taken. I expect local authorities to make full use of existing and these new powers where necessary.

The risk of transmission of coronavirus is higher in indoor settings, which is why it is important that everyone follows the rules and guidelines to protect themselves, their loved ones to keep Wales safe.

As part of the formal 21-day review of existing restrictions, there is one very modest change to the restrictions, which we will be including – permanent skating rinks will be able to reopen from 3 October, subject to the conditions at the time.

Developments in the past week have provided further proof that the virus has not gone away and I have taken early action to curb the spread of the virus. Everyone now has a part to play in if we are to avoid further, tighter restrictions.

It is essential that we all continue to play our part to Keep Wales safe.

SL(5)611 – The Health Protection (Coronavirus, Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020

Background and Purpose

These Regulations provide local authorities across Wales with additional powers 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 include powers for local authorities, by issuing directions to relevant people, to:

- close individual premises, or impose restrictions or requirements in respect of the use of, access to, or number of people on, the premises;
- prohibit certain events (or types of event) from taking place or impose restrictions or requirements in respect of the holding of, access to, or number of people attending, the event; and
- restrict access to, or close, public outdoor places (or types of outdoor public places).

These Regulations also continue a duty already imposed on local authorities, a National Park authority, Natural Resources Wales and the National Trust to close public footpaths and land accessible by the public in Wales where congregation of people may lead to a high risk of exposure to coronavirus.

Procedure

Made affirmative.

These 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

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

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

One of the enabling powers cited in the preamble to these Regulations is section 45C of the Public Health (Control of Disease) Act 1984 (the 1984 Act). Subject to section 45R of the



1984 Act, an instrument containing regulations under section 45C of the 1984 Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Senedd.

These Regulations confirm that they were made under section 45R of the 1984 Act. By virtue of section 45R(2) of the 1984 Act, an instrument may be made without a draft having been laid and approved as required by section 45C(4) of the 1984 Act if the instrument contains a declaration that the person making it is of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved. Although the Explanatory Memorandum to the Regulations includes such a declaration, the declaration has not been included in the Regulations as required by section 45R(2) of the 1984 Act.

The instrument purports to be made in partial reliance on a provision (section 45R(2) of the 1984 Act) which requires the declaration to be contained in the instrument and therefore there has not been compliance with the statutory requirements of including a declaration in the instrument.

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

In regulation 2(g), there is a reference to regulation 7(1), which should contain the definition of "public place". This is incorrect and should instead refer to regulation 7(2). The correct reference is included in the Welsh version of these Regulations.

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

In regulation 16(9), there is a reference to paragraph (9), which refers to an enforcement officer having reasonable grounds to suspect that a person is contravening, or is about to contravene, regulation 14(4). This is incorrect and should instead refer to paragraph (8). The correct reference is included in the Welsh version.

Merits Scrutiny

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

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

Regulation 9 requires a local authority to have regard to any guidance issued by the Welsh Ministers about directions under Part 2. There are a number of provisions which would appear to benefit from further explanation that would be set out in such guidance, for example indication of what constitutes "critical infrastructure" for the purposes of regulation 5(3), "essential goods and public services" for the purposes of regulation 5(5) or a "reasonable excuse" for acting in contravention of a direction.



At the time of writing, the “Enforcement and fines” section of the Coronavirus regulations: frequently asked questions page of the Welsh Government’s website refer to the enforcement and fines regime under the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, but not these Regulations. The page states that it was last updated on 14 September 2020.

The guidance in relation to these Regulations does not appear to be published on the Welsh Government website, or at least it is not easily identifiable.

We think that making the guidance available, or more easily accessible, would be a helpful aid for local authorities and members of the public wishing to understand the impact of these Regulations.

5. 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 require a local authority to take reasonable steps to give prior notice of a premises direction, event direction or public place direction. That prior notice must be given:

- in relation to a premises direction, to a person carrying on a business from the premises and, if different, any person who owns or occupies the premises;
- in relation to an event direction, to a person involved in the organisation of the event and, if different, any person who owns or occupies the premises at which the event will take place; and
- in relation to a public place direction, to persons carrying on a business from premises within the public place and ensure it is brought to the attention of any person who owns, occupies or is responsible for any premises in the public place.

Regulation 11 requires a local authority to give a direction to:

- in the case of a premises direction, a person carrying on a business from the premises and, if different, a person who owns, occupies or is otherwise responsible for the premises;
- in the case of an event direction, a person involved in organising the event and, if different, a person who owns, occupies or is otherwise responsible for the premises at which the event takes, or is proposed to take, place; and
- in the case of a public place direction, a person carrying on a business from premises within the public place and each person who owns, occupies or is otherwise responsible for any premises in the public place.

Regulation 12 provides for an interested person to make an appeal to the Magistrates’ Court against a direction or make representations about the direction to the Welsh Ministers. The definition of “interested person” is:



- in the case of a premises direction, a person carrying on a business from the premises and, if different, a person who owns or occupies the premises;
- in the case of an event direction, a person involved in organising the event and, if different, a person who owns or occupies the premises at which the event takes, or is proposed to take, place; and
- in the case of a public place direction, a person carrying on a business from premises within the public place and a person who owns, occupies or is responsible for any premises in the public place.

The phrase “is otherwise responsible for the premises” is used in some, but not all, regulations concerning the making of directions. Using that phrase in some, but not all, regulations appears to suggest that there is a distinction made between persons that own and occupy premises, and those that are responsible for premises. If that is the case, a person responsible for premises, but who is not the owner or occupier of those premises may:

- receive prior notice only in relation to a public place direction;
- be given a premises direction, an event direction or a public place direction; and
- only appeal or make representations in relation to a public place direction.

This appears to suggest a difference in treatment between the types of notice in relation to each of these matters, but it is not clear why this distinction is necessary.

6. 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

In the third paragraph of Part 4 of the Explanatory Memorandum, there is a reference to “policy officer”, which appears to be a typographical error that should instead read “police officer”. The same error appears in the Welsh version, which “swyddog polisi” is used.

Implications arising from exiting the European Union

None.

Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

17 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.

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

2020 No. 984 (W. 221)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Functions of Local
Authorities) (Wales) 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.

The Regulations have 4 Parts.

Part 1 contains interpretation provisions. It also provides that the Regulations expire on 8 January 2021 unless they are revoked before then.

Part 2 provides local authorities in Wales with powers to control premises, events and public places in their areas to help control coronavirus within their areas. This includes closing premises and public places and stopping events where necessary.

Part 3 continues a duty already imposed on local authorities, National Park authorities, Natural Resources Wales and the National Trust to close

public footpaths and land accessible by the public in Wales where congregation of people may lead to a high risk of exposure to coronavirus.

Part 4 provides for the enforcement of the restrictions or requirements imposed by the 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.

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

2020 No. 984 (W. 221)

PUBLIC HEALTH, WALES

**The Health Protection (Coronavirus
Restrictions) (Functions of Local
Authorities) (Wales) Regulations
2020**

Made at 4.03 p.m. on 11 September 2020

*Laid before Senedd
Cymru at 7.30 p.m. on 11 September 2020*

Coming into force 14 September 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 restrictions and requirements imposed 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.

PART 1

Introduction

Title, application and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 14 September 2020.

Interpretation

2. In these Regulations—

- (a) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- (b) “enforcement officer” has the meaning given by regulation 15;
- (c) “event direction” has the meaning given by regulation 6;
- (d) “local authority” means the council of a county or county borough in Wales;
- (e) “premises” includes any building or structure and any land;
- (f) “premises direction” has the meaning given by regulation 5;
- (g) “public place” has the meaning given by regulation 7(1);
- (h) “public place direction” has the meaning given by regulation 7.

Expiry

3.—(1) These Regulations expire at the end of the day on 8 January 2021.

(2) This regulation does not affect the validity of anything done pursuant to these Regulations before they expire.

PART 2

Local authority directions in relation to premises, events and public places

CHAPTER 1

Giving and revoking directions

Public health conditions for giving directions

4.—(1) If it considers that the public health conditions are met, a local authority may give—

- (a) a premises direction under regulation 5;
- (b) an event direction under regulation 6;
- (c) a public place direction under regulation 7.

(2) For the purposes of these Regulations, the “public health conditions” are that—

- (a) the direction is a response to a serious and imminent threat to public health,
- (b) the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority’s area, and
- (c) the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.

Premises directions

5.—(1) A local authority may give a premises direction in respect of any premises in its area.

(2) A premises direction may—

- (a) require the premises to be closed;
- (b) impose restrictions or requirements in relation to entering or leaving the premises;
- (c) impose restrictions or requirements in relation to the use of the premises;
- (d) impose restrictions in relation to the number or description of persons permitted on the premises.

(3) But a premises direction may not be given in relation to premises which form part of critical infrastructure.

(4) Before giving a premises direction, a local authority must have regard to the need to ensure that members of the public have access to essential goods and public services.

(5) Where a local authority gives a premises direction, it must take reasonable steps to give prior notice of the direction to—

- (a) a person carrying on a business from the premises to which the direction relates, and
- (b) (if different) any person who owns or occupies the premises.

(6) A person responsible for premises to which a premises direction relates must take the steps necessary to comply with the direction as soon as is reasonably practicable after the direction takes effect.

(7) No person may, without reasonable excuse, act in contravention of a premises direction.

Event directions

6.—(1) A local authority may give an event direction in respect of any event held, or proposed to be held, in its area.

(2) In considering whether the public health conditions are met, a local authority must, in particular, have regard to whether people are gathering, or are likely to gather, at the event in contravention of regulation 14 or 14A of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽¹⁾.

(3) An event direction may—

- (a) require the event to stop or not to be held;
- (b) impose restrictions or requirements in relation to entering or leaving the event;
- (c) impose restrictions or requirements in relation to the number of persons who may attend the event;
- (d) impose any other restrictions or requirements in relation to the holding of the event (including, for example, requirements relating to the attendance of medical or emergency services at the event).

(4) Where a local authority gives an event direction it must take reasonable steps to give prior notice of the direction to—

- (a) a person involved in the organisation of the event, and
- (b) (if different) any person who owns or occupies the premises at which the event takes place or is proposed to take place.

(5) A person involved in organising an event to which an event direction relates must take the steps necessary to comply with the direction as soon as is reasonably practicable after the direction takes effect.

(6) No person may, without reasonable excuse, act in contravention of an event direction.

(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)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/884 (W. 195)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/912 (W. 204)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (S.I. 2020/961 (W. 215)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/978 (W. 219)).

(7) For the purposes of this Part, a person is not involved in organising an event if the person's only involvement is, or would be, attending it.

Public place directions

7.—(1) A local authority may give a public place direction in respect of any public place in the authority's area.

(2) For the purposes of these Regulations, "public place" means an outdoor place to which the public have or are permitted access, whether on payment or otherwise, including—

- (a) land laid out as a public garden or used for the purpose of recreation by members of the public;
- (b) land which is "open country" as defined in section 59(2) of the National Parks and Access to the Countryside Act 1949⁽¹⁾, as read with section 16 of the Countryside Act 1968⁽²⁾;
- (c) any highway to which the public has access.

(3) But a public place does not include—

- (a) "access land" within the meaning given in regulation 14(7)(c);
- (b) a "public path" within the meaning given in regulation 14(7)(b).

(4) A public place direction may impose prohibitions, requirements or restrictions in relation to access to the public place (including, in particular, prohibiting access at specified times).

(5) A public place direction must describe the public place in sufficient detail to enable its boundaries to be determined.

(6) Where a local authority gives a public place direction it must take such steps as are reasonably practicable to—

- (a) prevent or restrict public access to the public place to which the direction relates in accordance with the direction (including erecting and maintaining notices in prominent places informing the public of the direction);
- (b) give prior notice of the direction to persons carrying on a business from premises within the public place;
- (c) ensure that the direction is brought to the attention of any person who owns, occupies or

⁽¹⁾ 1949 c. 97.

⁽²⁾ 1968 c. 41. Section 16 has been amended by section 111 of the Transport Act 1968 (c. 73), Schedule 27 to the Water Act 1989 (c. 15) and S.I. 2012/1659. There are other amendments to section 16 which are not relevant to these Regulations.

is responsible for any premises in the public place.

(7) Any person, other than a local authority, who owns, occupies or is responsible for premises in a public place to which a public place direction relates must take such steps as are reasonably practicable to prevent or restrict public access to the premises in accordance with the direction.

(8) No person may, without reasonable excuse, enter or remain in a public place to which a public place direction relates in contravention of a prohibition, requirement or restriction imposed by the direction.

(9) A local authority may not give a public place direction in respect of a public place which includes property to which section 73 of the Public Health (Control of Disease) Act 1984⁽¹⁾ (Crown property) applies.

(10) But a local authority may give a public place direction in respect of such a place if the authority has entered into an agreement under subsection (2) of section 73 with the appropriate authority (within the meaning given by that section) that—

- (a) section 45C of that Act, and
- (b) these Regulations,

apply to the property (subject to such terms as may be included in the agreement).

Review and revocation

8.—(1) Where a local authority gives a direction under this Part, the authority must review whether the public health conditions continue to be met in relation to the direction—

- (a) at least once in the period of 7 days beginning on the day after the day direction is given, and
- (b) at least once in every subsequent period of 7 days.

(2) If, on a review under paragraph (1), the local authority considers that the public health conditions are no longer met, the local authority must revoke the direction.

(3) Paragraph (2) does not prevent a local authority from revoking a direction at any time if the authority considers that the public health conditions are no longer met in relation to the direction.

(4) A direction is revoked by giving notice in writing to each person to whom the direction was given.

(5) Paragraphs (2) and (3) of regulation 11 apply to a revocation as they apply to a direction.

(1) Section 73 has been amended by Schedule 11 to the Health and Social Care Act 2008 (c. 14).

(6) A direction ceases to have effect at the time notice of revocation is given.

Requirement to have regard to advice or guidance and to consult

9. In determining whether to give or revoke a direction under this Part a local authority must—

- (a) have regard to—
 - (i) any advice given to it the authority's Director of Public Protection;
 - (ii) any guidance issued by the Welsh Ministers about directions under this Part, and
- (b) consult the Welsh Ministers if it is reasonably practicable to do so.

CHAPTER 2

Form and procedure

Form and content of directions

10. A direction given under this Part must—

- (a) be in writing;
- (b) contain a description of the premises, event or public place to which the direction relates (and in the case of a public place direction see regulation 7(5));
- (c) state the date and time from which each prohibition, requirement or restriction imposed by the direction takes effect (which must not be earlier than when the direction is given);
- (d) state the date and time at which each such prohibition, requirement or restriction ceases to have effect (which must be no later than 21 days after it takes effect);
- (e) set out the reasons why the local authority considers the public health conditions to be met in relation to the direction;
- (f) give details of the right of appeal, and the right to make representations, conferred by regulation 12.

Giving a direction

11.—(1) A local authority gives a direction under this Part by giving the direction in writing—

- (a) in the case of a premises direction, to—
 - (i) a person carrying on a business from the premises to which the direction relates, and

- (ii) (if different) a person who owns, occupies or is otherwise responsible for the premises;
- (b) in the case of an event direction, to—
 - (i) a person involved in organising the event to which the direction relates, and
 - (ii) (if different) a person who owns, occupies or is otherwise responsible for the premises at which the event takes place or is proposed to take place;
- (c) in the case of a public place direction, to—
 - (i) a person carrying on a business from premises within the public place to which the direction relates, and
 - (ii) each person who owns, occupies or is otherwise responsible for any premises in the public place.

(2) If it is not reasonably practicable for a local authority to give a direction in accordance with paragraph (1), the direction is to be treated as given in accordance with that paragraph when it is published in such manner as the local authority considers appropriate to bring it to the attention of persons who may be affected by it.

(3) As soon as reasonably practicable after a local authority gives a direction under this Part the local authority must—

- (a) give a copy of the direction to any other person named in the direction,
- (b) send a copy of the direction to—
 - (i) the Welsh Ministers,
 - (ii) every other local authority whose area is adjacent to the authority's area,
 - (iii) where the local authority's area is adjacent to the area of a county or district council in England, that council, and
- (c) publish the direction in such manner as the local authority considers appropriate to bring it to the attention of persons who may be affected by it.

Appeals and representations

12.—(1) In this regulation, “interested person” means—

- (a) in the case of a premises direction—
 - (i) a person carrying on a business from the premises to which the direction relates;
 - (ii) (if different) a person who owns or occupies the premises;
- (b) in the case of an event direction—

- (i) a person involved in organising the event to which the direction relates;
 - (ii) (if different) a person who owns or occupies the premises at which the event takes place or is proposed to take place;
- (c) in the case of a public place direction—
- (i) a person carrying on a business from premises within the public place to which the direction relates;
 - (ii) a person who owns, occupies or is responsible for any premises in the public place.
- (2) An interested person may—
- (a) appeal against the direction to a magistrates' court by way of complaint for an order, and the Magistrates' Courts Act 1980⁽¹⁾ applies to the proceedings;
 - (b) make representations to the Welsh Ministers about the direction.
- (3) Where an interested person makes representations to the Welsh Ministers under this regulation the Welsh Ministers must—
- (a) consider the representations as soon as is reasonably practicable, and
 - (b) decide whether it would be appropriate to exercise the power in regulation 13(1).
- (4) The Welsh Ministers must provide written reasons for the decision in paragraph (3)(b) to—
- (a) the interested person, and
 - (b) the local authority which gave the direction.
- (5) Making representations under paragraph (2)(b) does not affect an interested person's right of appeal under paragraph (2)(a).

CHAPTER 3

Welsh Ministers' power to require revocation

Power of Welsh Ministers to require a local authority to revoke a direction

13.—(1) If the Welsh Ministers consider that the public health conditions are no longer met in relation to a direction given by a local authority under this Part, the Welsh Ministers must require the authority to revoke the direction.

(2) Where the Welsh Ministers require a local authority to revoke a direction under this regulation—

⁽¹⁾ 1980 c. 43.

- (a) the local authority is not required to consider whether the public health conditions continue to be met in relation to the direction, and
- (b) regulation 9 does not apply.

(3) Before requiring a local authority to revoke a direction under this regulation, the Welsh Ministers must consult the Chief Medical Officer for Wales.

PART 3

Duty to close certain public paths and access land

Closure of public paths and access land

14.—(1) Where paragraph (2) applies to a public path or access land in the area of a relevant authority, the relevant authority must—

- (a) close the public path or access land, and
- (b) keep it closed until the time when the authority considers that closure is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection with coronavirus in its area.

(2) This paragraph applies to the public paths and access land in its area a relevant authority considers—

- (a) to be liable to large numbers of people congregating or being in close proximity to each other, or
- (b) the use of which otherwise poses a high risk of exposure to coronavirus.

(3) Where a public path or access land has been closed under—

- (a) regulation 4 of the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020⁽¹⁾,
- (b) regulation 9 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020⁽²⁾,
- (c) regulation 11 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽³⁾,

the path or land is to be treated as if it were closed under paragraph (1) of this regulation.

(1) S.I. 2020/334 (W. 76), revoked by S.I. 2020/353 (W. 80).

(2) S.I. 2020/353 (W. 80), revoked by S.I. 2020/725 (W. 162).

(3) Regulation 11 has been revoked by S.I. 2020/978 (W. 219).

(4) No person may use a public path or access land closed by virtue of paragraph (1) unless authorised by the relevant authority.

(5) The relevant authority must—

- (a) publish a list of public paths or access land closed in its area on a website;
- (b) erect and maintain notices in prominent places informing the public of the closure of a public path or access land.

(6) For the purposes of this regulation references to a public path or access land include parts of a public path or access land.

(7) In this regulation—

- (a) the “relevant authority” means—
 - (i) a local authority,
 - (ii) a National Park authority in Wales,
 - (iii) Natural Resources Wales, or
 - (iv) the National Trust;
- (b) “public path” means a footpath, bridleway, byway, restricted byway or cycle track and—
 - (i) “footpath”, “bridleway” and “cycle track” have the same meaning as in section 329(1) of the Highways Act 1980⁽¹⁾;
 - (ii) “byway” means a “byway open to all traffic” within the meaning given by section 66(1) of the Wildlife and Countryside Act 1981⁽²⁾;
 - (iii) “restricted byway” has the meaning given by section 48(4) of the Countryside and Rights of Way Act 2000⁽³⁾;
- (c) “access land” includes land to which the public has access by virtue of its ownership by the National Trust, but otherwise has the same meaning as in section 1(1) of the Countryside and Rights of Way Act 2000⁽⁴⁾.

(1) Section 329 was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21 of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(2) 1981 c. 69.

(3) 2000 c. 37.

(4) Section 1(1) was amended by section 302(2)(a) of the Marine and Coastal Access Act 2009 (c. 23).

PART 4

Enforcement

Enforcement officers

15.—(1) For the purposes of regulations 16, 17 and 19, an “enforcement officer” means—

- (a) a constable,
- (b) a police community support officer, or
- (c) a person designated by—
 - (i) the Welsh Ministers,
 - (ii) a local authority,
 - (iii) a National Park authority in Wales, or
 - (iv) Natural Resources Wales,

for the purposes of regulations 16 to 19 (but see paragraph (2)).

(2) A person designated by a National Park authority or Natural Resources Wales may exercise an enforcement officer’s functions only in relation to a contravention (or alleged contravention) of the requirement in regulation 14(4).

Enforcement actions

16.—(1) An enforcement officer may give a compliance notice to a person if the officer has reasonable grounds for suspecting that the person—

- (a) is acting in contravention of a premises direction, event direction or public place direction, or
- (b) is failing, or has failed, to take the steps required under regulation 5(6), 6(5) or 7(7).

(2) A compliance notice may specify measures that the person to whom it is given must take as soon as is reasonably practicable so as to—

- (a) prevent that person from continuing to act in contravention of the direction, or
- (b) rectify the failure to take the steps.

(3) Where a constable has reasonable grounds for suspecting that a person is on premises in contravention of a premises direction, the constable may—

- (a) direct the person to leave the premises;
- (b) remove the person from the premises.

(4) Where a constable has reasonable grounds for suspecting that an event is being held in contravention of an event direction, the constable may—

- (a) direct the event to stop;
- (b) direct a person to leave the event;

- (c) remove a person from the event.

(5) Where a constable has reasonable grounds for suspecting that a person is in a public place in contravention of a public place direction, the constable may—

- (a) direct the person to leave the place;
- (b) remove the person from the place.

(6) A constable may—

- (a) when exercising the power in paragraph (3), (4) or (5) direct a person to follow such instructions as the constable considers necessary;
- (b) use reasonable force in the exercise of the power in paragraph (3)(b), (4)(c) or (5)(b).

(7) Where a constable has reasonable grounds to suspect that the person referred to in paragraph (3), (4) or (5) is a child (“C”) accompanied by an individual (“I”) who has responsibility for C—

- (a) the constable may direct I to ensure that C leaves the premises, event or public place, as the case may be, and
- (b) I must, so far as reasonably practicable, ensure that C complies with any direction or instruction given by the constable to C.

(8) If an enforcement officer has reasonable grounds to suspect that a person is contravening (or is about to contravene) regulation 14(4), the officer may remove the person from a public path or access land (within the meaning given by regulation 14(7)) which is closed (or is being closed) by virtue of regulation 14(1), and may use reasonable force to do so.

(9) Where an enforcement officer has reasonable grounds to suspect that the person referred to in paragraph (9) is a child (“C”) accompanied by an individual (“I”) who has responsibility for C—

- (a) the officer may direct I to ensure that C leaves the public place or access land, and
- (b) I must, so far as reasonably practicable, ensure that C complies with any direction or instruction given by the officer to C.

(10) For the purposes of paragraphs (7) and (9), I has responsibility for a child if I—

- (a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child.

(11) An enforcement officer may take other enforcement action to facilitate the exercise of a power conferred on the officer by this regulation or regulation 17.

(12) An enforcement officer may only exercise a power under this regulation or regulation 17 if the

officer considers that it is necessary and proportionate to do so.

(13) References in this regulation to a “constable” are to be read as including a police community support officer.

Power of entry

17.—(1) An enforcement officer may enter premises to take, or facilitate the taking of, enforcement action under regulation 16.

(2) An enforcement officer entering premises in accordance with paragraph (1) may—

- (a) use reasonable force to enter the premises;
- (b) take such other persons, equipment and materials onto the premises as appears to the officer to be appropriate.

(3) An enforcement officer entering premises in accordance with paragraph (1)—

- (a) if asked by a person on the premises, must show evidence of the officer’s identity and outline the purpose for which the power is exercised;
- (b) if the premises are unoccupied or the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as when the officer found them.

Offences and penalties

18.—(1) A person who—

- (a) contravenes regulation 5(7), 6(6) or 7(8),
- (b) without reasonable excuse, fails to take the steps required under regulation 5(6), 6(5), or 7(7), or
- (c) without reasonable excuse, contravenes regulation 14(4),

commits an offence.

(2) A person who obstructs, without reasonable excuse, any person carrying out a function under these Regulations commits an offence.

(3) A person who, without reasonable excuse—

- (a) fails to comply with a compliance notice given by an enforcement officer under regulation 16(1), or
- (b) contravenes a direction given by an enforcement officer under regulation 16(3)(a), (4)(a) or (b), (5)(a) or (6)(a),

commits an offence.

(4) An offence under these Regulations is punishable on summary conviction by a fine.

(5) Section 24 of the Police and Criminal Evidence Act 1984⁽¹⁾ applies in relation to an offence under this regulation as if the reasons in subsection (5) included—

- (a) to maintain public health;
- (b) to maintain public order.

(6) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer (as well as the body corporate) is guilty of the offence and liable to be prosecuted and proceeded against and punished accordingly.

(7) In paragraph (6), “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate.

(8) Proceedings for an offence under these Regulations alleged to have been committed by a partnership may be brought in the name of the partnership instead of in the name of any of the partners.

(9) Proceedings for an offence under these Regulations alleged to have been committed by an unincorporated body other than a partnership may be brought in the name of the body instead of in the name of any of its members and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a body corporate.

(10) Section 33 of the Criminal Justice Act 1925⁽²⁾ and Schedule 3 to the Magistrates’ Courts Act 1980 apply in proceedings for an offence brought against a partnership or an unincorporated association other than a partnership as they apply in relation to a body corporate.

(11) A fine imposed on a partnership on its conviction for an offence under these Regulations is to be paid out of the partnership assets.

(12) A fine imposed on an unincorporated association other than a partnership on its conviction for an offence under these Regulations is to be paid out of the funds of the association.

(1) 1984 c. 60. Section 24 was substituted by section 110(1) of the Serious Organised Crime and Police Act 2005 (c. 15).

(2) 1925 c. 86.

Fixed penalty notices

19.—(1) An enforcement officer may issue a fixed penalty notice to anyone that the officer reasonably believes—

- (a) has committed an offence under these Regulations, and
- (b) is aged 18 or over.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to—

- (a) a local authority, or
- (b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation,

as the notice may specify.

(3) The Welsh Ministers may designate themselves under paragraph (2)(b).

(4) Where a local authority is specified in the notice it must be the authority (or as the case may be, any of the authorities) in whose area the offence is alleged to have been committed.

(5) Where a person is issued with a notice under this regulation in respect of an offence—

- (a) no proceedings may be taken for the offence before the end of the period of 28 days following the date the notice is issued;
- (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(6) A fixed penalty notice must—

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- (b) state the period during which (because of paragraph (5)(a)) proceedings will not be taken for the offence;
- (c) specify the amount of the fixed penalty;
- (d) state the name and address of the person to whom the fixed penalty may be paid;
- (e) specify permissible methods of payment.

(7) The amount specified under paragraph (6)(c) must be £60 (subject to paragraphs (8) and (9)).

(8) A fixed penalty notice may specify that if £30 is paid before the end of the period of 14 days following the date of the notice, that is the amount of the fixed penalty.

(9) If the person to whom a fixed penalty notice is given has already received a fixed penalty notice under

these Regulations or Regulations mentioned in paragraph (10)—

- (a) paragraph (8) does not apply, and
- (b) the amount specified as the fixed penalty is to be—
 - (i) in the case of the second fixed penalty notice received, £120;
 - (ii) in the case of the third fixed penalty notice received, £240;
 - (iii) in the case of the fourth fixed penalty notice received, £480;
 - (iv) in the case of the fifth fixed penalty notice received, £960;
 - (v) in the case of the sixth and any subsequent fixed penalty notice received, £1920.

(10) In calculating how many fixed penalty notices a person has received, fixed penalty notices issued to that person under the following Regulations are to be taken into account—

- (a) the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020;
- (b) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020.

(11) Whatever other method may be specified under paragraph (6)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under paragraph (6)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(12) Where a letter is sent as mentioned in paragraph (11), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(13) In any proceedings, a certificate—

- (a) that purports to be signed by or on behalf of the person with responsibility for the financial affairs of—
 - (i) the local authority, or
 - (ii) the person designated under paragraph (2)(b),specified in the fixed penalty notice to which the proceedings relate, and
- (b) which states that the payment of a fixed penalty was, or was not, received by the date specified in the certificate,

is evidence of the facts stated.

(14) Where a fixed penalty is issued in respect of the alleged offence of contravening the requirement in regulation 14(4), references in this regulation to a

“local authority” are to be read as including references to a National Park authority in Wales.

Prosecutions

20. No proceedings for an offence under these Regulations may be brought other than by the Director of Public Prosecutions or any person designated by the Welsh Ministers.

Mark Drakeford

First Minister, one of the Welsh Ministers

At 4.03 p.m. on 11 September 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020

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

Minister's Declaration

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

Mark Drakeford
First Minister

11 September 2020

1. Description

These Regulations provide local authorities across Wales with additional powers 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 include powers for local authorities to:

- close, individual premises, or impose restrictions or requirements in respect of the use of, access to, or number of people on the premises;
- prohibit certain events (or types of event) from taking place or impose restrictions or requirements in respect of the holding of, access to, or number of people attending the event;
- restrict access to, or close, public outdoor places (or types of outdoor public places)

by issuing directions to relevant people.

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

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

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

European Convention on Human Rights

The proposed provisions would allow local authorities to issue directions which could regulate the use of, or access to, premises or to close them, as well as to stop events from happening, directions may also be issued in order to prevent, or restrict, access to places to which the public have access. These powers would be exercisable, even where those responsible for the premises or events were otherwise complying with the requirements under the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 to take reasonable measures to minimise the risk of exposure to, or spread of, coronavirus, but where other factors meant that the ongoing opening of premises or places or holding of an event could lead to an increased risk of transmission of the virus.

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. 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 Regulations will, or may, engage rights under Article 6 (right to a fair trial); Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (peaceful enjoyment of possessions). The Welsh Ministers consider that to the extent that the requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus across Wales and is proportionate to that aim.

Local authorities may only issue directions where necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area and proportionate to that aim. Any direction must be reviewed by the local authority who issued it at least once every seven days whilst it remains in force, and if no longer necessary or proportionate must be revoked. In addition, any such directions may be appealed to a magistrates' court by an interested party.

3. Legislative background

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

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

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

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

4. Purpose and intended effect of the legislation

These Regulations provide local authorities with powers to control premises, events and public places in their area in order to help control coronavirus within their area. This includes closing premises and public places and stopping events where necessary.

Part 3 continues a duty already imposed on local authorities, a National Park authority, Natural Resources Wales and the National Trust to close public footpaths and land accessible by the public in Wales where congregation of people may lead to a high risk of exposure to coronavirus.

Part 4 provides for the enforcement of the restrictions or requirements imposed by the Regulations. Where it is reasonably believed that a person aged 18 or over has committed an offence under these regulations, an authorised person – a local authority designated officer, or a police officer or PCSO (in respect of obstruction of an officer, or failure to comply with a direction or reasonable instruction given by a policy officer or with a prohibition notice) – may issue a Fixed Penalty Notice (FPN). In addition, persons designated by a National Park authority or Natural Resources Wales may exercise enforcement functions in relation to the closure by the authority or Natural Resources Wales of a footpath or access land.

When a local authority issues a direction, they are required to notify the Welsh Ministers as soon as possible. This must include a copy of the direction, the reason for issuing the direction, the location or area the direction relates to, the organisations and groups of people expected to be directly and indirectly affected by the direction, the stakeholders consulted on the decision on the direction, the date and time on which the restriction comes into effect, and the date and time on which it will end.

The Regulations come into force at the beginning of 14 September 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.

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. Throughout the pandemic, the Welsh Government has been in close contact with local authority enforcement officers who have reported these powers are needed where a serious and imminent threat to health exists and existing powers are insufficient. This could, for example, be where a local authority is aware of a planned event at which the numbers of people

expected to seek to use a space, or the nature of a particular event, would make it unsafe due to coronavirus transmission.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the regulatory framework in place to respond to the ongoing threat arising from coronavirus. I signalled in a press conference today the intention to provide the new powers to local authorities

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.

An integrated impact assessment is being developed and will be published shortly.



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

11 September 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020, which come into force on at the beginning of 14 September 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

Bae Caerdydd • Cardiff Bay
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CF99 1NA

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

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

SL(5)574 – The European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020

Background and Purpose

The European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020 (“the Regulations”) are made under the powers provided to the Welsh Ministers by section 2(2) of the European Communities Act 1972 and section 58B of the Government of Wales Act 2006.

Directive 2005/36/EU transposed into UK law by the European Union (Recognition of Professional Qualifications) Regulations 2015, already imposes on the Welsh Ministers a requirement to complete proportionality tests when regulating professions. The purpose of these Regulations is to transpose into domestic law Directive (EU) 2018/958 which established a detailed framework for conducting such proportionality tests before adopting new or amending provisions relating to the regulation of professions.

These Regulations will apply to a number of professions in Wales where the Senedd has legislative competence, including qualified teachers and headteachers in a school, teachers at a further education institution, and professions regulated by the Regulation and Inspection of Social Care (Wales) Act 2016, including social workers and social care managers in Wales.

These Regulations will come into force on 30 July in line with equivalent regulations that have been made in England. The Regulations will cease to have effect on implementation period completion day, which is 31 December 2020 at 11.00 pm, as defined in the EU (Withdrawal Agreement) Act 2020.

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(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.

There are incorrect references to the legislation regarding the retention of retained saved EU law at the end of the implementation period. References are made to section 5A of the European Union (Withdrawal Agreement) Act 2020, however such a provision does not exist. Section 25(5) of the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”) inserted a new section 5A into the European Union (Withdrawal) Act 2018 (“the 2018 Act”), although section 5A is not yet in force. These incorrect references appear in the first footnote at page 5, on the second page of the Explanatory Notes and on the third page of the Explanatory Memorandum. Subsequent references in the Explanatory Notes and the Explanatory Memorandum to “sections 2, 3 and 4 of the 2020 Act” should refer to the 2018 Act as a result.



Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972 and section 58B of the Government of Wales Act 2006. These Regulations will cease to have effect on implementation period completion day, at 11.00 pm on 31 December 2020.

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 3 August 2020 and reports to the Senedd in line with the reporting point above and also to highlight issues as a result of the UK exiting the EU.



The technical reporting point is accepted. The Explanatory Notes and footnote will be corrected via correction slip, and the Explanatory Memorandum amended and re-laid.

Derbynnir y pwynt adrodd technegol. Caiff y Nodiadau Esboniadol a'r troednodyn eu cywiro gan slip cywiro, a chaiff y Memorandwm Esboniadol ei ddiwygio a'i ail-osod.

Agenda Item 5.2

SL(5)592 – The Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020

Background and Purpose

These Regulations amend certain domestic marketing legislation to update and amend the pest requirements on plant reproductive material intended for marketing. This is to ensure that this material is practically free from Union regulated non-quarantine pests (“RNQPs”) at the place of production and that the presence of such pests does not exceed specified thresholds. These requirements complement and are in addition to those in existing plant health legislation, which introduced this new category of pests.

These Regulations transpose Commission Implementing Directive (EU) 2020/177, which makes amendments to certain marketing directives for seed and other propagating material as regards pests of plants on seeds and other plant reproductive material in relation to RNQPs (“the 2020 Directive”). These Regulations also amend regulations in order to ensure correct implementation of Council Directives 2008/72/EC and 2008/90/EC and correct formatting errors in the tables in Parts 2 and 3 of Schedule 3 to the Seed Potatoes (Wales) Regulations 2016.

Procedure

Negative.

Technical Scrutiny

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

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

1. Correction of formatting

The preamble to, and Explanatory Notes accompanying, these Regulations explain that the tables in Parts 2 and 3 of Schedule 3 to the Seed Potatoes (Wales) Regulations 2016 (“the 2016 Regulations”) are amended to correct formatting issues. Although the changes in the table can generally be linked to a need to correct the formatting and increase clarity, there are two sets of changes which might be interpreted as being more substantive. It is noted that the collective group tolerances (column 4) for “Group VI” in the table contained in Part 2 and “Group V” in the table contained in Part 3 have been amended from “-” to “)”, which appears to change the tolerance from nil to 6%. The same issue arises in relation to the Welsh version of these Regulations.

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

2. English used in the Welsh version

In the Welsh text, in the first table inserted by regulation 5(4)(c), for Group VI, the text entry in the second column, ‘Nil’, is in English.



Merits Scrutiny

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

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

3. Choice of procedure

These Regulations are made in exercise of powers under sections 16(1), (1A), (3), (4) and 36 of the Plant Varieties and Seeds Act 1964 ("the 1964 Act") and section 2(2) of the European Communities Act 1972 ("the 1972 Act"). The 1964 Act provides for regulations to be made under the negative procedure and the 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply.

The Explanatory Memorandum states that:

"The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of these Regulations because they are giving effect to EU provisions. Further, these Regulations amend Regulations that were subject to the negative procedure."

The Committee accepts that the choice of negative procedure is appropriate given these reasons.

4. Timeframe for transposition

Article 11 (Transposition) of the 2020 Directive requires Member States to transpose the 2020 Directive into their law by 31 May 2020. Although there has been a delay in transposing the 2020 Directive, it is acknowledged that the United Kingdom is no longer a Member State of the European Union and that there are exceptional circumstances surrounding the Coronavirus pandemic.

5. Ambulatory amendments

Regulations 5(2) and 6(3) of these Regulations insert amendments which seek to update the definition of "Directive 2014/98/EU". The reason for this amendment is explained in the respective footnotes to those regulations (footnote (2) on page 10 and footnote (1) on page 18) by reference to section 26 of the Legislation (Wales) Act 2019 ("the 2019 Act"). The footnotes which include reference to section 26 of the 2019 Act are inserted alongside the amendments made by these Regulations.

It is noted that the "Guidance for preparing Welsh legislation - Parts 2 and 3 of the Legislation (Wales) Act 2019" states:

"Welsh legislation may also need to amend legislation to which Part 2 of the 2019 Act does not apply (such as an Act of the UK Parliament, UK subordinate legislation, or any Welsh legislation enacted before 2020). In that case:

- *Part 2 of the 2019 Act will apply to the provisions of the amending legislation, but*
- *the 1978 Act [the Interpretation Act 1978] will apply to any material that is inserted into the other legislation."*



As such, it appears that the reference to section 26 of the 2019 Act should instead refer to section 20A of the Interpretation Act 1978, which applies to subordinate legislation by virtue of section 23 of the Interpretation Act 1978.

6. Cross-references in Welsh text

In the Welsh text of these Regulations, the cross-references in regulations 5(5)(b)(i) and (ii), which amend the 2016 Regulations, do not seem to reference the correct paragraphs in the Welsh text of those 2016 Regulations as published on the legislation.gov website.

Implications arising from exiting the European Union

These Regulations are required to assist the UK to meet its obligations under the Withdrawal Agreement to transpose EU law into domestic legislation until the end of the implementation period (31 December 2020). These Regulations will form part of retained EU law after the implementation period.

Government Response

A Welsh Government response is required in relation to both Technical Points (1 and 2) and Merits Points 5 and 6.

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 and also to highlight issues as a result of the UK exiting the EU.



Government Response: The Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020

The Committee is thanked for its report. The following reflects those elements of the report to which the Committee sought a response.

Technical Scrutiny

Point 1 The error at issue is old, when the UK Government corrected the error in England's equivalent Seed Potato Regulations it was identified as a formatting error (we attach links to the said Regulations and related EM for the Committee's ease of reference). Any substantive change arising from the correction of the error realises the intended policy rather than reflects a change of policy - such is its subtlety, the error had simply gone unnoticed.

<http://www.legislation.gov.uk/uksi/2017/288/contents/made;>

<http://www.legislation.gov.uk/uksi/2017/288/memorandum/contents;>

Point 2 The intended effect of the provision remains clear and the error will be corrected the next time the Seed Potatoes (Wales) Regulations 2016 are amended.

Merits Scrutiny

Point 5 The point is well made and pertains to references in footnotes. As the references do not change the effect of the provisions we do not propose to amend the footnotes.

Point 6 The original Queen's Printer Version of the Seed Potatoes (Wales) Regulations 2016 (attached for the Committee's ease of reference) as published on the legislation.co.uk website does not appear to reflect the anomaly identified.



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2016 Rhif 106 (Cy. 52)

2016 No. 106 (W. 52)

HADAU, CYMRU

SEEDS, WALES

**Rheoliadau Tatws Hadyd (Cymru)
2016**

**The Seed Potatoes (Wales)
Regulations 2016**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn dirymu ac yn disodli Rheoliadau Tatws Hadyd (Cymru) 2006 (O.S. 2006/2929 (Cy. 264)), sydd wedi eu diwygio ar sawl achlysur.

Mae'r Rheoliadau yn rheoli cynhyrchu gyda'r bwriad o farchnata, ardystio a marchnata tatws hadyd yng Nghymru, ac eithrio'r rheini a fwriedir ar gyfer eu hallforio y tu allan i'r Undeb Ewropeaidd. Maent yn gweithredu amrywiol offerynnau Ewropeaidd, ac yn benodol Gyfarwyddeb y Cyngor 2002/56/EC ar farchnata tatws hadyd (OJ Rhif L 193, 20.07.2002, t. 60).

Mae rheoliad 5 yn gwahardd marchnata unrhyw datws hadyd onid ydynt wedi cael eu hardystio naill ai fel tatws hadyd cyn-sylfaenol, sylfaenol neu ardystiedig, neu onid ydynt wedi cael eu hawdurdodi i'w marchnata at ddibenion gwyddonol neu at waith dethol neu at ddibenion profi a threialu. Ar gyfer tatws hadyd a gynhyrchir yng Nghymru rhaid i ardystio, gan gynnwys penderfynu ar y categori a'r radd y mae'n rhaid marchnata'r tatws ynddynt, ddigwydd yn unol â gofynion rheoliad 10.

Mae rheoliadau 8 a 9 yn caniatáu i Weinidogion Cymru awdurdodi marchnata symiau bach o datws hadyd at ddibenion gwyddonol neu waith dethol a thatws hadyd at ddibenion profi a threialu.

Mae rheoliad 12 yn darparu mai mewn pecynnau neu gynnwysyddion yn unig y caniateir marchnata tatws hadyd (ac eithrio manwerthiannau symiau bach o datws hadyd sy'n bodloni amodau rheoliad 18). Dim ond os ydynt wedi eu labelu a'u selio (rheoliadau 13 a 14), gyda'r labeli'n dwyn y manylion a bennir yn Atodlen 2, y caniateir marchnata tatws hadyd mewn

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Seed Potatoes (Wales) Regulations 2006 (S.I. 2006/2929 (W. 264)), which have been amended on several occasions.

The Regulations control the production with a view to marketing, the certification and the marketing of seed potatoes in Wales, other than those intended for export outside the European Union. They implement various European instruments, in particular Council Directive 2002/56/EC on the marketing of seed potatoes (OJ No L 193, 20.7.2002, p. 60).

Regulation 5 prohibits the marketing of any seed potatoes unless they have been certified as either pre-basic, basic or certified seed potatoes, or unless they have been authorised for marketing for scientific purposes or selection work or for test and trial purposes. For seed potatoes produced in Wales, certification, including the determination of the category and grade at which the potatoes must be marketed, must take place in accordance with the requirements of regulation 10.

Regulations 8 and 9 allow the Welsh Ministers to authorise the marketing of small quantities of seed potatoes for scientific purposes or selection work and seed potatoes for test and trial purposes.

Regulation 12 provides that seed potatoes (other than retail sales of small quantities of seed potatoes meeting the conditions of regulation 18) may only be marketed in packages or containers. Seed potatoes in packages or containers (other than those authorised to be marketed for scientific purposes or selection work) can only be marketed if labelled and sealed (regulations 13 and 14),

pecynnau neu gynwysyddion (ac eithrio'r rheini yr awdurdodir eu marchnata at ddibenion gwyddonol neu waith dethol). Rhaid i ddogfennau sy'n mynd gyda thatws hadyd a gafodd eu haddasu'n enetig gynnwys cyfeiriad at y ffaith honno (rheoliad 15).

Mae rheoliad 19 yn darparu ar gyfer cymryd samplau fel rhan o'r broses ardystio neu i sicrhau cydymffurfiaeth â darpariaethau'r Rheoliadau.

Mae rheoliad 21 yn rhoi pwerau i Weinidogion Cymru archwilio tatws hadyd a'i gwneud yn ofynnol i datws hadyd a ddogfennau perthnasol gael eu cyflwyno.

Mae rheoliad 22 yn caniatáu i Weinidogion Cymru dynnu'n ôl labeli swyddogol neu ddogfennau swyddogol sy'n ymwneud â thatws hadyd y canfyddir nad ydynt yn cydymffurfio â'r gofynion a osodir gan y Rheoliadau.

Mae mynd yn groes i unrhyw ddarpariaeth yn y Rheoliadau yn drosedd o dan adran 16(7)(b) o Ddeddf Amrywogaethau a Hadau Planhigion 1964 (p. 14) sy'n dwyn atebolrwydd i ddirwy ar euogfarn ddiannod.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal aseiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

the labels bearing the particulars specified in Schedule 2. Documents accompanying seed potatoes that have been genetically modified must include reference to this fact (regulation 15).

Regulation 19 provides for the taking of samples as part of the certification process or to ensure compliance with the provisions of the Regulations.

Regulation 21 provides the Welsh Ministers with powers of examination and to require production of seed potatoes and relevant documents.

Regulation 22 allows the Welsh Ministers to withdraw official labels or official documents relating to seed potatoes which are found not to comply with the requirements imposed by the Regulations.

Contravention of any provision in the Regulations is an offence under section 16(7)(b) of the Plant Varieties and Seeds Act 1964 (c. 14), incurring liability on summary conviction to a fine.

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

2016 Rhif 106 (Cy. 52)

2016 No. 106 (W. 52)

HADAU, CYMRU

SEEDS, WALES

**Rheoliadau Tatws Hadyd (Cymru)
2016**

**The Seed Potatoes (Wales)
Regulations 2016**

Gwnaed 2 Chwefror 2016
*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 4 Chwefror 2016
Yn dod i rym 29 Chwefror 2016

Made 2 February 2016
*Laid before the National Assembly
for Wales* 4 February 2016
Coming into force 29 February 2016

CYNNWYS

CONTENTS

1. Enwi, cymhwyso a chychwyn
2. Dehongli: cyffredinol
3. Dehongli: offerynnau Ewropeaidd
4. Tatws hadyd nad yw'r Rheoliadau hyn yn gymwys iddynt
5. Marchnata tatws hadyd
6. Marchnata amrywogaethau cadwraeth
7. Maint tatws hadyd
8. Marchnata tatws hadyd at ddibenion gwyddonol neu waith dethol
9. Marchnata tatws hadyd at ddibenion profi a threialu
10. Ardystio tatws hadyd
11. Cyfansoddiad lotiau o datws hadyd
12. Pecynnau a chynwysyddion ar gyfer tatws hadyd
13. Labelu pecynnau a chynwysyddion tatws hadyd
14. Selio pecynnau a chynwysyddion
15. Dull adnabod tatws hadyd sydd wedi eu haddasu'n enetig
16. Tatws hadyd o'r tu allan i'r Undeb Ewropeaidd: gwybodaeth
17. Manylion ar wahân
18. Manwerthiannau o datws hadyd
19. Samplu tatws hadyd
20. Cadw cofnodion

1. Title, application and commencement
2. Interpretation: general
3. Interpretation: European instruments
4. Seed potatoes to which these Regulations do not apply
5. Marketing of seed potatoes
6. Marketing of conservation varieties
7. Size of seed potatoes
8. Marketing of seed potatoes for scientific purposes or selection work
9. Marketing of seed potatoes for test and trial purposes
10. Certification of seed potatoes
11. Composition of lots of seed potatoes
12. Packages and containers for seed potatoes
13. Labelling of packages and containers of seed potatoes
14. Sealing of packages and containers
15. Identification of genetically modified seed potatoes
16. Seed potatoes from outside the European Union: information
17. Separate particulars
18. Retail sales of seed potatoes
19. Sampling of seed potatoes
20. Keeping of records

21. Gorfodi: pwerau i archwilio ac i fynnu cyflwyno
22. Gorfodi: pŵer i dynnu yn ôl labeli swyddogol, dogfennau swyddogol a thystysgrifau cnwd sy'n tyfu
23. Cyflwyno hysbysiadau
24. Addasu darpariaethau'r Ddeddf
25. Dirymiadau
26. Diwygiad atodol

21. Enforcement: powers of examination and production
22. Enforcement: power to withdraw official labels, official documents and growing crop certificates
23. Service of notices
24. Modification of provisions of the Act
25. Revocations
26. Supplementary amendment

ATODLEN 1 — Tystysgrifau cnwd sy'n tyfu

RHAN 1 — Cyffredinol

RHAN 2 — Tatws hadyd cyn-sylfaenol

RHAN 3 — Tatws hadyd sylfaenol

RHAN 4 — Tatws hadyd ardystiedig

ATODLEN 2 — Labeli swyddogol a dogfennau swyddogol

RHAN 1 — Labeli swyddogol

RHAN 2 — Dogfennau swyddogol

ATODLEN 3 — Clefydau neu blâu, difrod a diffygion a goddefiannau penodedig

RHAN 1 — Tatws hadyd cyn-sylfaenol o radd PBTC yr Undeb a gynhyrchir yng Nghymru

RHAN 2 — Tatws hadyd cyn-sylfaenol o radd PB yr Undeb a gynhyrchir yng Nghymru

RHAN 3 — Tatws hadyd sylfaenol a thatws hadyd ardystiedig a gynhyrchir yng Nghymru

RHAN 4 — Tatws hadyd sydd i'w profi a'u treialu

ATODLEN 4 — Graddio tatws hadyd

RHAN 1 — Tatws hadyd y mae modd eu marchnata fel tatws hadyd cyn-sylfaenol

SCHEDULE 1 — Growing crop certificates

PART 1 — General

PART 2 — Pre-basic seed potatoes

PART 3 — Basic seed potatoes

PART 4 — Certified seed potatoes

SCHEDULE 2 — Official labels and official documents

PART 1 — Official labels

PART 2 — Official documents

SCHEDULE 3 — Specified diseases or pests, damage and defects and tolerances

PART 1 — Pre-basic seed potatoes of Union grade PBTC produced in Wales

PART 2 — Pre-basic seed potatoes of Union grade PB produced in Wales

PART 3 — Basic seed potatoes and certified seed potatoes produced in Wales

PART 4 — Test and trial seed potatoes

SCHEDULE 4 — Grading of seed potatoes

PART 1 — Seed potatoes capable of being marketed as pre-basic seed potatoes

- RHAN 2 — Tatws hadyd y mae modd eu marchnata fel tatws hadyd sylfaenol
- RHAN 3 — Tatws hadyd y mae modd eu marchnata fel tatws hadyd ardystiedig
- ATODLEN 5 — Awdurdodiad i farchnata tatws hadyd at ddibenion profi a threialu
- ATODLEN 6 — Gwybodaeth o ran tatws hadyd o fwy na 2 gilogram a gynhyrchir mewn gwlad ac eithrio Aelod-wladwriaeth
- ATODLEN 7 — Manylion i'w pennu ar nodyn gwerthiant etc.

- PART 2 — Seed potatoes capable of being marketed as basic seed potatoes
- PART 3 — Seed potatoes capable of being marketed as certified seed potatoes
- SCHEDULE 5 — Authorisation for marketing seed potatoes for test and trial purposes
- SCHEDULE 6 — Information in respect of seed potatoes of more than 2 kilograms produced in a country other than a member State
- SCHEDULE 7 — Particulars to be specified in a sale note etc.

Mae Gweinidogion Cymru, y mae'r pwerau a roddwyd gan adrannau 16(1) i (5) a 36 o Ddeddf Amrywogaethau a Hadau Planhigion 1964(1) bellach wedi eu breinio ynddynt(2), yn gwneud y Rheoliadau a ganlyn wrth arfer y pwerau hynny.

Mae Gweinidogion Cymru wedi ymgynghori yn unol ag adran 16(1) o'r Ddeddf honno.

Enwi, cymhwyso a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Tatws Hadyd (Cymru) 2016.

(2) Mae'r Rheoliadau hyn yn gymwys o ran Cymru a deuant i rym ar 29 Chwefror 2016.

The Welsh Ministers, in whom the powers conferred by sections 16(1) to (5) and 36 of the Plant Varieties and Seeds Act 1964(1) are now vested(2), make the following Regulations in exercise of those powers.

The Welsh Ministers have carried out a consultation in accordance with section 16(1) of that Act.

Title, application and commencement

1.—(1) The title of these Regulations is the Seed Potatoes (Wales) Regulations 2016.

(2) These Regulations apply in relation to Wales and come into force on 29 February 2016.

(1) 1964 p. 14; diwygiwyd adran 16(1), a mewnosodwyd adran 16(1A), gan adran 4 o Ddeddf y Cymunedau Ewropeaidd 1972 (p. 68), a pharagraff 5 o Atodlen 4 iddi a diwygiwyd adran 16(3) gan O.S. 1977/1112. *Gweler* adran 38(1) am ddiffiniad o "the Minister" ("y Gweinidog").

(2) Trosglwyddwyd swyddogaethau'r Gweinidog, i'r graddau yr oeddent yn arferadwy o ran Cymru, i'r Ysgrifennydd Gwladol gan erthygl 2 o Orchymyn Trosglwyddo Swyddogaethau (Cymru) (Rhif 1) 1978 (O.S. 1978/272), ac Atodlen 1 iddo. Trosglwyddwyd y swyddogaethau hynny i Gynulliad Cenedlaethol Cymru wedi hynny gan erthygl 2 o Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672), ac Atodlen 1 iddo. Trosglwyddwyd swyddogaethau Cynulliad Cenedlaethol Cymru i Weinidogion Cymru gan adran 162 o Ddeddf Llywodraeth Cymru 2006 (p. 32), a pharagraff 30 o Atodlen 11 iddi.

(1) 1964 c. 14; section 16(1) was amended, and section 16(1A) was inserted, by section 4 of, and paragraph 5 of Schedule 4 to, the European Communities Act 1972 (c. 68); and section 16(3) was amended by S.I. 1977/1112. See section 38(1) for the definition of "the Minister".

(2) The functions of the Minister, so far as exercisable in relation to Wales, transferred to the Secretary of State by article 2 of, and Schedule 1 to, the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272). Those functions were then transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

Dehongli: cyffredinol

2.—(1) Yn y Rheoliadau hyn—

ystyr “archwiliad swyddogol” (“*official examination*”) yw archwiliad neu arolygiad a gynhelir gan swyddog awdurdodedig, gan gynnwys un a gynhelir drwy sampl;

ystyr “ardystio” (“*certification*”), ac mae “ardystiedig” (“*certified*”) i’w ddehongli yn unol â hynny, yw—

(a) o ran tatws hadyd a gynhyrchir yng Nghymru, ardystio yn unol â rheoliad 10; a

(b) o ran tatws hadyd a gynhyrchir y tu allan i Gymru, ardystio gan yr Awdurdod Ardystio yn unol â’r Gyfarwyddeb;

ystyr “Awdurdod Ardystio” (“*Certification Authority*”) yw’r awdurdod sy’n ymwneud ag ardystio tatws hadyd yn y wlad neu’r diriogaeth lle cynhyrchwyd y tatws hadyd;

ystyr “Catalog Cyffredin” (“*Common Catalogue*”) yw’r catalog cyffredin o amrywogaethau o rywogaethau o blanhigion amaethyddol a gyhoeddir yng Nghyfnodolyn Swyddogol yr Undeb Ewropeaidd;

ystyr “categori” (“*category*”) yw’r categori o datws hadyd cyn-sylfaenol, tatws hadyd sylfaenol neu datws hadyd ardystiedig (neu, mewn perthynas â thatws hadyd a gynhyrchir yn y Swistir, y categorïau sydd ag effaith gyfatebol o dan ddeddfwriaeth Cydffederasiwn y Swistir yn unol â chytundeb masnach y Swistir);

ystyr “dogfen swyddogol” (“*official document*”) yw—

(a) ar gyfer tatws hadyd a gynhyrchir yng Nghymru, dogfen a ddyroddir neu a gymeradwyir gan Weinidogion Cymru sy’n bodloni gofynion Rhan 2 o Atodlen 2;

(b) ar gyfer tatws hadyd a gynhyrchir y tu allan i Gymru, dogfen a ddyroddir neu a gymeradwyir gan yr Awdurdod Ardystio yn y wlad neu’r diriogaeth lle cafodd y tatws hadyd eu cynhyrchu sy’n bodloni gofynion Erthygl 13(1)(b) o’r Gyfarwyddeb;

ystyr “y Ddeddf” (“*the Act*”) yw Deddf Amrywogaethau a Hadau Planhigion 1964;

mae “gradd” (“*grade*”) yn cynnwys gradd yr Undeb;

ystyr “gradd yr Undeb” (“*Union grade*”) yw—

(a) o ran tatws hadyd a gynhyrchir yng Nghymru, gradd yr Undeb a benderfynir yn unol ag Atodlen 4 wrth eu hardystio, sef

Interpretation: general

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Plant Varieties and Seeds Act 1964;

“authorised officer” (“*swyddog awdurdodedig*”) means an officer of the Welsh Ministers or a person authorised by the Welsh Ministers for any purpose in connection with these Regulations;

“basic seed potatoes” (“*tatws hadyd sylfaenol*”) means—

(a) in relation to seed potatoes produced in Wales, seed potatoes intended mainly for the production of certified seed potatoes and which have been certified as basic seed potatoes in accordance with regulation 10;

(b) in relation to seed potatoes produced outside Wales, seed potatoes brought into Wales in a package or container bearing an official label in accordance with Article 13(1)(a) of the Directive stating that the potatoes were certified as basic seed potatoes and graded at a Union grade;

“category” (“*category*”) means the category of pre-basic seed potatoes, basic seed potatoes, or certified seed potatoes (or, in relation to seed potatoes produced in Switzerland, the categories having equivalent effect under the legislation of the Swiss Confederation in accordance with the Swiss trade agreement);

“certification” (“*ardystio*”), and “certified” (“*ardystiedig*”) is to be construed accordingly, means—

(a) in relation to seed potatoes produced in Wales, certification in accordance with regulation 10; and

(b) in relation to seed potatoes produced outside Wales, certification by the Certification Authority in accordance with the Directive;

“Certification Authority” (“*Awdurdod Ardystio*”) means the authority concerned with the certification of seed potatoes in the country or territory where the seed potatoes were produced;

“certified seed potatoes” (“*tatws hadyd ardystiedig*”) means—

(a) in relation to seed potatoes produced in Wales, seed potatoes intended mainly for the production of potatoes other than seed potatoes and which have been certified (as certified seed potatoes) in accordance with regulation 10;

- (i) yn achos tatws hadyd cyn-sylfaenol, gradd PBTC yr Undeb neu gradd PB yr Undeb;
 - (ii) yn achos tatws hadyd sylfaenol, gradd S yr Undeb, gradd SE yr Undeb neu radd E yr Undeb;
 - (iii) yn achos tatws hadyd ardystiedig, gradd A yr Undeb neu radd B yr Undeb;
- (b) o ran tatws hadyd a gynhyrchir y tu allan i Gymru—
- (i) yn achos tatws hadyd cyn-sylfaenol, naill ai gradd PBTC yr Undeb neu radd PB yr Undeb, y nodir yr amodau gofynnol ar eu cyfer yn Erthyglau 2 a 3 o Gyfarwyddeb 2014/21/EU a'r Atodiad iddi;
 - (ii) yn achos tatws hadyd sylfaenol, naill ai gradd S yr Undeb, gradd SE yr Undeb neu radd E yr Undeb, y nodir yr amodau gofynnol ar eu cyfer yn Erthygl 1 o Gyfarwyddeb 2014/20/EU ac Atodiad I iddi; neu
 - (iii) yn achos tatws hadyd ardystiedig, naill ai gradd A yr Undeb neu radd B yr Undeb, y nodir yr amodau gofynnol ar eu cyfer yn Erthygl 2 o Gyfarwyddeb 2014/20/EU ac Atodiad II iddi;

ystyr “label swyddogol” (“*official label*”) yw—

- (a) ar gyfer tatws hadyd a gynhyrchir yng Nghymru, label a ddyroddir neu a gymeradwyir gan Weinidogion Cymru nas defnyddiwyd o'r blaen ac sy'n bodloni gofynion Rhan 1 o Atodlen 2;
- (b) ar gyfer tatws hadyd a gynhyrchir y tu allan i Gymru, label a ddyroddir neu a gymeradwyir gan yr Awdurdod Ardystio yn y wlad neu'r diriogaeth lle cynhyrchwyd y tatws hadyd sy'n bodloni gofynion, fel y bo'n briodol i'r tatws hadyd y mae'r label yn ymwneud â hwy, Erthygl 13(1)(a) neu 18(f) o'r Gyfarwyddeb neu Erthygl 9 o'r Penderfyniad;

ystyr “lot” (“*lot*”) yw llwyth, neu ran y gellir ei hadnabod o lwyth, a gofnodwyd ac a gofrestrwyd fel eitem ar wahân mewn anfoneb, nodyn danfon neu ddogfen arall a ddarperir yn unol â rheoliad 17;

ystyr “*marchnata*” (“*marketing*”, “*market*”, “*marketed*”) yw—

- (a) gwerthu, dal gafael ar gyda golwg ar werthu neu gynnig ar werth, neu

- (b) in relation to seed potatoes produced outside Wales, seed potatoes brought into Wales in a package or container bearing an official label in accordance with Article 13(1)(a) of the Directive stating that the potatoes were certified as certified seed potatoes and graded at a Union grade;

“Common Catalogue” (“*Catalog Cyffredin*”) means the common catalogue of varieties of species of agricultural plants published in the Official Journal of the European Union;

“genetically modified” (“*wedi ei addasu'n enetig*”) has the same meaning as in the Deliberate Release Directive;

“grade” (“*gradd*”) includes the Union grade;

“growing crop certificate” (“*tystysgrif cnwd sy'n tyfi*”) means a growing crop certificate issued by the Welsh Ministers in accordance with Schedule 1;

“lot” (“*lot*”) means a consignment or an identifiable part of a consignment which is recorded and listed as a separate item in an invoice, delivery note or other document provided in accordance with regulation 17;

“marketing” (“*marchnata*”) means—

- (a) selling, holding with a view to sale or offering for sale, or
- (b) any disposal, supply or transfer for the purpose of commercial exploitation of seed potatoes to third parties,

whether or not for consideration, and for these purposes “commercial exploitation” (“*defnydd masnachol*”) is not to be taken to include the supply of seed potatoes to official testing and inspection bodies, or the supply of seed potatoes to any person for the purpose of processing or packaging them provided that person does not acquire title to the seed potatoes supplied, and “market” (“*marchnata*”) and “marketed” (“*marchnata*”) are to be construed accordingly;

“National List” (“*Rhestr Genedlaethol*”) means a list of varieties of potato species prepared and published—

- (a) in accordance with regulation 3 of the National Lists Regulations; or
- (b) by a member State other than the United Kingdom pursuant to Article 3 of Council Directive 2002/53/EC on the common catalogue of varieties of agricultural plant species(1);

(1) OJ No L 193, 20.7.2002, p. 1, as last amended by Regulation (EC) No 1829/2003 (OJ No L 268, 18.10.2003, p. 1).

(b) unrhyw waredu, cyflenwi neu drosglwyddo at ddibenion defnydd masnachol o datws hadyd i drydydd partïon,

pa un ai am gydnabyddiaeth ai peidio, ac at y dibenion hyn nid yw “defnydd masnachol” (“*commercial exploitation*”) i’w ystyried fel petai’n cynnwys cyflenwi tatws hadyd i gyrff profi ac arolygu swyddogol, na chyflenwi tatws hadyd i unrhyw berson at ddibenion eu prosesu na’u pecynnu ar yr amod nad yw’r person hwnnw yn ennill hawl i’r tatws hadyd a gyflenwir;

ystyr “pecyn neu gynhwysydd” (“*package or container*”) yw—

(a) unrhyw becyn na chafodd ei ddefnyddio o’r blaen at unrhyw ddiben ac y mae modd ei gau a’i selio; neu

(b) unrhyw gynhwysydd na chafodd ei ddefnyddio o’r blaen at unrhyw ddiben, neu unrhyw gynhwysydd sydd, ers iddo gael ei ddefnyddio o’r blaen, wedi cael ei lanhau a’i ddiheintio ar yr amod bod y defnydd o unrhyw gynhwysydd o ran tatws hadyd a gynhyrchir yng Nghymru yn ddarostyngedig i gymeradwyaeth Gweinidogion Cymru;

ystyr “y Rheoliadau Rhestrau Cenedlaethol” (“*the National Lists Regulations*”) yw Rheoliadau Hadau (Rhestrau Cenedlaethol o Amrywogaethau) 2001(1);

ystyr “Rhestr Genedlaethol” (“*National List*”) yw rhestr o amrywogaethau o rywogaethau tatws sydd wedi ei pharatoi a’i chyhoeddi—

(a) yn unol â rheoliad 3 o’r Rheoliadau Rhestrau Cenedlaethol; neu

(b) gan Aelod-wladwriaeth ac eithrio’r Deyrnas Unedig yn unol ag Erthygl 3 o Gyfarwyddeb y Cyngor 2002/53/EC ar y catalog cyffredin o amrywogaethau o rywogaethau planhigion amaethyddol(2);

ystyr “swyddog awdurdodedig” (“*authorised officer*”) yw swyddog i Weinidogion Cymru neu berson a awdurdodwyd gan Weinidogion Cymru at unrhyw ddiben mewn cysylltiad â’r Rheoliadau hyn;

ystyr “taten” (“*potato*”) yw unrhyw gloronen neu ran o gloronen neu unrhyw blanhigyn neu ran o blanhigyn *Solanum tuberosum* L, neu unrhyw rywogaeth arall o *Solanum* sy’n ffurfio cloron neu unrhyw gymysgryw ohoni;

“the National Lists Regulations” (“y Rheoliadau Rhestrau Cenedlaethol”) means the Seeds (National Lists of Varieties) Regulations 2001(2);

“official document” (“*dogfen swyddogol*”) means—

(a) for seed potatoes produced in Wales, a document issued or approved by the Welsh Ministers which meets the requirements of Part 2 of Schedule 2;

(b) for seed potatoes produced outside Wales, a document issued or approved by the Certification Authority in the country or territory where the seed potatoes were produced which meets the requirements of Article 13(1)(b) of the Directive;

“official examination” (“*archwiliad swyddogol*”) means an examination or inspection conducted by an authorised officer, including one conducted by way of sample;

“official label” (“*label swyddogol*”) means—

(a) for seed potatoes produced in Wales, a label issued or approved by the Welsh Ministers, which has not been previously used and which meets the requirements of Part 1 of Schedule 2;

(b) for seed potatoes produced outside Wales, a label issued or approved by the Certification Authority in the country or territory where the seed potatoes were produced, which meets, as appropriate to the seed potatoes to which the label relates, the requirements of Article 13(1)(a) or 18(f) of the Directive or Article 9 of the Decision;

“package or container” (“*pecyn neu gynhwysydd*”) means—

(a) any package which has not been previously used for any purpose and is capable of being closed and sealed; or

(b) any container which has not been previously used for any purpose or which, since having been previously used, has been cleaned and disinfected, provided that the use of any container in respect of seed potatoes produced in Wales is subject to the approval of the Welsh Ministers;

“potato” (“*taten*”) means any tuber or part of a tuber or any plant or part of a plant of *Solanum tuberosum* L or other tuber-forming species or hybrids of *Solanum*;

(1) O.S. 2001/3510; yr offerynnau diwygio perthnasol yw O.S. 2004/2949, 2009/1273, 2010/1195 a 2011/464.

(2) OJ Rhif L 193, 20.7.2002, t. 1, fel y’i diwygiwyd ddiwethaf gan Reoliad (EC) Rhif 1829/2003 (OJ Rhif L 268, 18.10.2003, t. 1).

(2) S.I. 2001/3510; relevant amending instruments are S.I. 2004/2949, 2009/1273, 2010/1195 and 2011/464.

ystyr “tatws hadyd” (“*seed potatoes*”) yw—

- (a) tatws sy'n dwyn y disgrifiad hwnnw neu unrhyw ddisgrifiad sy'n dynodi eu haddasrwydd ar gyfer eu plannu a'u lluosogi ac y mae modd eu defnyddio i'w plannu a'u lluosogi; neu
- (b) unrhyw datws y bwriedir eu defnyddio i'w plannu a'u lluosogi;

ystyr “tatws hadyd a gynhyrchir y tu allan i Gymru” (“*seed potatoes produced outside Wales*”) yw—

- (a) tatws hadyd a gynhyrchir yn unrhyw ran o Ynysoedd Prydain ac eithrio Cymru;
- (b) tatws hadyd a gynhyrchir mewn unrhyw Aelod-wladwriaeth ac eithrio'r Deyrnas Unedig; neu
- (c) tatws hadyd a gynhyrchir yn y Swistir;

ystyr “tatws hadyd ardystiedig” (“*certified seed potatoes*”) yw—

- (a) o ran tatws hadyd a gynhyrchir yng Nghymru, tatws hadyd a fwriedir yn bennaf ar gyfer cynhyrchu tatws ac eithrio tatws hadyd ac a ardystiwyd fel tatws hadyd ardystiedig yn unol â rheoliad 10;
- (b) o ran tatws hadyd a gynhyrchir y tu allan i Gymru, tatws hadyd y daethpwyd â hwy i mewn i Gymru mewn pecyn neu gynhwysydd sy'n dwyn label swyddogol yn unol ag Erthygl 13(1)(a) o'r Gyfarwyddeb yn datgan bod y tatws wedi eu hardystio'n datws hadyd ardystiedig ac wedi eu graddio ar un o raddau'r Undeb;

ystyr “tatws hadyd cyn-sylfaenol” (“*pre-basic seed potatoes*”) yw—

- (a) o ran tatws hadyd a gynhyrchir yng Nghymru, tatws hadyd a fwriedir yn bennaf ar gyfer cynhyrchu tatws hadyd sylfaenol ac a ardystiwyd fel tatws hadyd cyn-sylfaenol yn unol â rheoliad 10;
- (b) o ran tatws hadyd a gynhyrchir y tu allan i Gymru, tatws hadyd y daethpwyd â hwy i mewn i Gymru mewn pecyn neu gynhwysydd sy'n dwyn label swyddogol yn unol ag Erthygl 18(f) o'r Gyfarwyddeb yn datgan bod y tatws wedi eu hardystio'n datws hadyd cyn-sylfaenol ac wedi eu graddio ar un o raddau'r Undeb;

ystyr “tatws hadyd o amrywogaeth gadwraeth” (“*seed potatoes of conservation variety*”) yw unrhyw amrywogaeth o datws hadyd a dderbynnir gan unrhyw Aelod-wladwriaeth i'w gatalog cenedlaethol o amrywogaethau o rywogaethau planhigion amaethyddol yn unol ag Erthygl 3 o Gyfarwyddeb 2008/62/EC;

ystyr “tatws hadyd sydd i'w profi a'u treialu” (“*test and trial seed potatoes*”) yw—

“pre-basic seed potatoes” (“*tatws hadyd cyn-sylfaenol*”) means—

- (a) in relation to seed potatoes produced in Wales, seed potatoes intended mainly for the production of basic seed potatoes and which have been certified as pre-basic seed potatoes in accordance with regulation 10;
- (b) in relation to seed potatoes produced outside Wales, seed potatoes brought into Wales in a package or container bearing an official label in accordance with Article 18(f) of the Directive stating that the potatoes were certified as pre-basic seed potatoes and graded at a Union grade;

“seed potatoes” (“*tatws hadyd*”) means—

- (a) potatoes which bear that description or any description indicating their suitability for planting and propagation and which are capable of being used for planting and propagation; or
- (b) any potatoes that are intended to be used for planting and propagation;

“seed potatoes of a conservation variety” (“*tatws hadyd o amrywogaeth gadwraeth*”) means any variety of seed potatoes accepted by any member State into its national catalogue of varieties of agricultural plant species in accordance with Article 3 of Directive 2008/62/EC;

“seed potatoes produced outside Wales” (“*tatws hadyd a gynhyrchir y tu allan i Gymru*”) means—

- (a) seed potatoes produced in any part of the British Islands other than Wales;
- (b) seed potatoes produced in any member State other than the United Kingdom; or
- (c) seed potatoes produced in Switzerland;

“test and trial seed potatoes” (“*tatws hadyd sydd i'w profi a'u treialu*”) means—

- (a) in relation to seed potatoes produced in Wales, seed potatoes which have been authorised by the Welsh Ministers in accordance with regulation 9;
- (b) in relation to seed potatoes produced outside Wales, seed potatoes brought into Wales in a package or container which bears an official label in accordance with Article 9 of the Decision.

“Union grade” (“*gradd gymwys yr Undeb*”) means—

- (a) in relation to seed potatoes produced in Wales, the Union grade determined in accordance with Schedule 4 during certification, this being—
 - (i) in the case of pre-basic seed potatoes, Union grade PBTC or Union grade PB;
 - (ii) in the case of basic seed potatoes, Union grade S, Union grade SE or Union grade E;
 - (iii) in the case of certified seed potatoes, Union grade A or Union grade B;

- (a) o ran tatws hadyd a gynhyrchir yng Nghymru, tatws hadyd yr awdurdododd Gweinidogion Cymru eu marchnata at ddibenion profi a threalu yn unol â rheoliad 9;
- (b) o ran tatws hadyd a gynhyrchir y tu allan i Gymru, tatws hadyd y daethpwyd â hwy i mewn i Gymru mewn pecyn neu gynhwysydd sy'n dwyn label swyddogol yn unol ag Erthygl 9 o'r Penderfyniad;

ystyr "tatws hadyd sylfaenol" ("*basic seed potatoes*") yw—

- (a) o ran tatws hadyd a gynhyrchir yng Nghymru, tatws hadyd a fwriedir yn bennaf ar gyfer cynhyrchu tatws hadyd ardystiedig ac a ardystiwyd fel tatws hadyd sylfaenol yn unol â rheoliad 10;
- (b) o ran tatws hadyd a gynhyrchir y tu allan i Gymru, tatws hadyd y daethpwyd â hwy i mewn i Gymru mewn pecyn neu gynhwysydd sy'n dwyn label swyddogol yn unol ag Erthygl 13(1)(a) o'r Gyfarwyddeb yn datgan bod y tatws wedi eu hardystio'n datws hadyd sylfaenol ac wedi eu graddio ar un o raddau'r Undeb;

ystyr "tystysgrif cnwd sy'n tyfu" ("*growing crop certificate*") yw tystysgrif cnwd sy'n tyfu a ddyroddwyd gan Weinidogion Cymru yn unol ag Atodlen 1;

mae i "wedi ei addasu'n enetig" yr un ystyr ag sydd i "genetically modified" yn y Gyfarwyddeb Gollyngiadau Bwriadol.

(2) O ran tatws hadyd a gynhyrchir yn y Swistir, mae unrhyw gyfeiriad yn y Rheoliadau hyn at y Gyfarwyddeb neu'r Penderfyniad, neu unrhyw ddarpariaeth yn y Gyfarwyddeb neu'r Penderfyniad, i'w ddehongli fel cyfeiriad at y ffaith bod deddfwriaeth Cydffederasiwn y Swistir yn cael effaith gyfatebol yn unol â chytundeb masnach y Swistir.

(3) Mae unrhyw gyfeiriad yn y Rheoliadau hyn at oddefiant o ran tatws hadyd sy'n ffurfio sampl i gael ei ddehongli—

- (a) o ran goddefiant i unrhyw glefyd neu bla, difrod a diffyg a bennir yn Atodlen 3, fel cyfeiriad at gyfran pwysau'r tatws hadyd yn y sampl yr effeithir arnynt gan y clefyd neu bla, y difrod a diffyg, neu gan unrhyw gyfuniad o'r clefyd neu bla, y difrod a diffyg hwnnw, mewn perthynas â phwysau cyfan yr holl sampl, wedi ei fynegi fel canran;
- (b) o ran goddefiant i faw neu sylwedd estronol arall a bennir yn Atodlen 3, fel cyfeiriad at gyfran pwysau mater o'r fath mewn perthynas â phwysau cyfan yr holl sampl, wedi ei fynegi fel canran;

- (b) in relation to seed potatoes produced outside Wales—

- (i) in the case of pre-basic seed potatoes, Union grade PBTC or Union grade PB, the minimum conditions for which are set out in Articles 2 and 3 of, and the Annex to, Directive 2014/21/EU;
- (ii) in the case of basic seed potatoes, Union grade S, Union grade SE or Union grade E, the minimum conditions for which are set out in Article 1 of, and Annex I to, Directive 2014/20/EU; or
- (iii) in the case of certified seed potatoes, Union grade A or Union grade B, the minimum conditions for which are set out in Article 2 of, and Annex II to, Directive 2014/20/EU;

(2) In relation to seed potatoes produced in Switzerland, any reference in these Regulations to the Directive or the Decision or any provision of the Directive or the Decision is to be construed as a reference to the legislation of the Swiss Confederation having equivalent effect in accordance with the Swiss trade agreement.

(3) Any reference in these Regulations to a tolerance in relation to seed potatoes comprised in a sample is to be construed—

- (a) in relation to a tolerance for any disease or pest, damage and defect specified in Schedule 3, as a reference to the proportion of the weight of seed potatoes in the sample affected by the disease or pest, damage and defect, or any combination of such disease or pest, damage and defect, in relation to the total weight of the sample, expressed as a percentage;
- (b) in relation to a tolerance for dirt or other extraneous matter specified in Schedule 3, as a reference to the proportion of the weight of such matter in relation to the total weight of the sample, expressed as a percentage;

(c) o ran goddefiant i wyriad neu glefyd a bennir yn y tablau yn Atodlen 4, fel cyfeiriad at nifer y planhigion o datws hadyd yr effeithir arnynt gan y gwyrriad neu'r clefyd mewn perthynas â chyfanswm nifer y planhigion yn y sampl, wedi ei fynegi fel canran.

(4) Yn y rheoliad hwn, ystyr “cytundeb masnach y Swistir” (“*Swiss trade agreement*”) yw'r Cytundeb rhwng y Gymuned Ewropeaidd a Chyddfederasiwn y Swistir ar fasnach mewn cynhyrchion amaethyddol a gymeradwywyd gan Benderfyniad y Cyngor a'r Comisiwn 2002/309/EC ac a ddiwygiwyd gan Benderfyniad y Comisiwn 2010/724/EU(1).

Dehongli: offerynnau Ewropeaidd

3. Yn y Rheoliadau hyn—

ystyr “Cyfarwyddeb 2008/62/EC” (“*Directive 2008/62/EC*”) yw Cyfarwyddeb y Comisiwn 2008/62/EC sy'n darparu ar gyfer rhanddirymiaid penodol er mwyn derbyn amrywogaethau brodorol amaethyddol ac amrywogaethau amaethyddol sydd wedi eu haddasu'n naturiol i'r amodau lleol a rhanbarthol ac sydd o dan fygythiad drwy erydiad genetig ac ar gyfer marchnata had a thatws hadyd perthynol o'r amrywogaethau brodorol ac amrywogaethau hynny(2);

ystyr “Cyfarwyddeb 2014/20/EU” (“*Directive 2014/20/EU*”) yw Cyfarwyddeb Gweithredu'r Comisiwn 2014/20/EU sy'n penderfynu graddau tatws hadyd sylfaenol ac ardystiedig yr Undeb, a'r amodau a'r dynodiadau sy'n gymwys i raddau o'r fath(3);

ystyr “Cyfarwyddeb 2014/21/EU” (“*Directive 2014/21/EU*”) yw Cyfarwyddeb Gweithredu'r Comisiwn 2014/21/EU sy'n penderfynu amodau gofynnol a graddau yr Undeb ar gyfer tatws hadyd cyn-sylfaenol(4);

ystyr “y Gyfarwyddeb” (“*the Directive*”) yw Cyfarwyddeb y Cyngor 2002/56/EC ar farchnata tatws hadyd(5);

(c) in relation to a tolerance for a deviation or disease specified in the tables in Schedule 4, as a reference to the number of plants of seed potatoes affected by the deviation or disease in relation to the total number of plants in the sample, expressed as a percentage.

(4) In this regulation, “Swiss trade agreement” (“*cytundeb masnach y Swistir*”) means the Agreement between the European Community and the Swiss Confederation on trade in agricultural products approved by Council and Commission Decision 2002/309/EC and amended by Commission Decision 2010/724/EU(1).

Interpretation: European instruments

3. In these Regulations—

“the Decision” (“*y Penderfyniad*”) means Commission Decision 2004/842/EC concerning implementing rules whereby Member States may authorise the placing on the market of seed belonging to varieties for which an application for entry in the national catalogue of varieties of agricultural plant species or vegetable species has been submitted(2);

“the Deliberate Release Directive” (“*y Gyfarwyddeb Gollyngiadau Bwriadol*”) means Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms(3);

“the Directive” (“*y Gyfarwyddeb*”) means Council Directive 2002/56/EC on the marketing of seed potatoes(4);

“Directive 2008/62/EC” (“*Cyfarwyddeb 2008/62/EC*”) means Commission Directive 2008/62/EC providing for certain derogations for acceptance of agricultural landraces and varieties

(1) OJ Rhif L 114, 30.4.2002, t. 1, fel y'i diwygiwyd gan Benderfyniad y Comisiwn 2010/724/EU (OJ Rhif L 312, 27.11.2010, t. 31). Cafodd y Cytundeb hwn, ynghyd â chwe Chytundeb arall gyda Chyddfederasiwn y Swistir, ei gymeradwyo gan y Cyngor a'r Comisiwn drwy Benderfyniad y Cyngor a'r Comisiwn 2002/309/EC, Euratom (OJ Rhif L 114, 30.4.2002, t. 1).

(2) OJ Rhif L 162, 21.6.2008, t. 13.

(3) OJ Rhif L 38, 7.2.2014, t. 32.

(4) OJ Rhif L 38, 7.2.2014, t. 39.

(5) OJ Rhif L 193, 20.7.2002, t. 60, fel y'i diwygiwyd ddiwethaf gan Benderfyniad Gweithredu'r Comisiwn 2014/367/EU (OJ Rhif L 178, 18.6.2014, t. 26).

(1) OJ No L 114, 30.4.2002, p. 1, as amended by Commission Decision 2010/724/EU (OJ No L 312, 27.11.2010, p. 31). This Agreement, together with six other Agreements with the Swiss Confederation, was approved by the Council and the Commission by way of Council and Commission Decision 2002/309/EC, Euratom (OJ No L 114, 30.4.2002, p. 1).

(2) OJ No L 362, 9.12.2004, p. 21.

(3) OJ No L 106, 17.4.2001, p. 1, as last amended by Directive (EU) 2015/412 (OJ No L 68, 13.3.2015, p. 1).

(4) OJ No L 193, 20.7.2002, p. 60, as last amended by Commission Implementing Decision 2014/367/EU (OJ No L 178, 18.6.2014, p. 26).

ystyr “y Gyfarwyddeb Gollyngiadau Bwriadol” (“*the Deliberate Release Directive*”) yw Cyfarwyddeb 2001/18/EC Senedd Ewrop a’r Cyngor ar ryddhau’n fwriadol i’r amgylchedd organeddau wedi eu haddasu’n enetig(1);

ystyr “y Penderfyniad” (“*the Decision*”) yw Penderfyniad y Comisiwn 2004/842/EC ynghylch gweithredu rheolau lle y caiff Aelod-wladwriaethau awdurdodi rhoi ar y farchnad hadau sy’n perthyn i amrywogaethau y mae cais i’w cynnwys yn y catalog cenedlaethol o amrywogaethau o rywogaethau planhigion amaethyddol neu o rywogaethau llysieuol wedi cael ei gyflwyno(2);

ystyr “y Rheoliad Bwyd a Bwyd Anifeiliaid” (“*the Food and Feed Regulation*”) yw Rheoliad (EC) Rhif 1829/2003 Senedd Ewrop a’r Cyngor ar fwyd a bwyd anifeiliaid wedi eu haddasu’n enetig(3).

Tatws hadyd nad yw’r Rheoliadau hyn yn gymwys iddynt

4. Nid yw’r Rheoliadau hyn yn gymwys i datws hadyd a fwriedir ar gyfer eu hallforio i unrhyw wlad y tu allan i’r Undeb Ewropeaidd.

Marchnata tatws hadyd

5.—(1) Ni chaiff unrhyw berson farchnata unrhyw datws hadyd ac eithrio—

- (a) tatws hadyd cyn-sylfaenol;
- (b) tatws hadyd sylfaenol;
- (c) tatws hadyd ardystiedig;
- (d) tatws hadyd gwyddonol a rhai i’w dethol; neu
- (e) tatws hadyd sydd i’w profi a’u treialu.

(2) Ni chaiff unrhyw berson farchnata unrhyw datws hadyd a gafodd eu trin â chynnyrch a gynhyrchir yn bennaf fel triniaeth i lesteirio eginiaid.

(3) Yn y rheoliad hwn, ystyr “tatws hadyd gwyddonol a rhai i’w dethol” (“*scientific and selection seed potatoes*”) yw—

- (a) o ran tatws hadyd a gynhyrchir yng Nghymru, tatws hadyd yr awdurdododd Gweinidogion Cymru eu marchnata yn unol â rheoliad 8;
- (b) o ran tatws hadyd a gynhyrchir y tu allan i Gymru, tatws hadyd yr awdurdododd yr

which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties(1);

“Directive 2001/18/EU” (“*Cyfarwyddeb 2001/18/EU*”) means Commission Implementing Directive 2004/842/EU determining Union grades of basic and certified seed potatoes, and the conditions and designations applicable to such grades(2);

“Directive 2004/21/EU” (“*Cyfarwyddeb 2004/21/EU*”) means Commission Implementing Directive 2004/21/EU determining minimum conditions and Union grades for pre-basic seed potatoes(3);

“the Food and Feed Regulation” (“*y Rheoliad Bwyd a Bwyd Anifeiliaid*”) means Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed(4).

Seed potatoes to which these Regulations do not apply

4. These Regulations do not apply to seed potatoes intended for export to any country outside the European Union.

Marketing of seed potatoes

5.—(1) No person may market any seed potatoes other than—

- (a) pre-basic seed potatoes;
- (b) basic seed potatoes;
- (c) certified seed potatoes;
- (d) scientific and selection seed potatoes; or
- (e) test and trial seed potatoes.

(2) No person may market any seed potatoes treated with a product which is produced primarily as an application for inhibiting germination.

(3) In this regulation, “scientific and selection seed potatoes” (“*tatws hadyd gwyddonol a rhai i’w dethol*”) means—

- (a) in relation to seed potatoes produced in Wales, seed potatoes which have been authorised by the Welsh Ministers for marketing in accordance with regulation 8;
- (b) in relation to seed potatoes produced outside Wales, seed potatoes which have been

(1) OJ Rhif L 106, 17.4.2001, t. 1, fel y’i diwygiwyd ddiwethaf gan Gyfarwyddeb (EU) 2015/412 (OJ Rhif L 68, 13.3.2015, t. 1).
(2) OJ Rhif L 362, 9.12.2004, t. 21.
(3) OJ Rhif L 268, 18.10.2003, t. 1, fel y’i diwygiwyd ddiwethaf gan Reoliad (EC) Rhif 298/2008 (OJ Rhif L 97, 9.4.2008, t. 64).

(1) OJ No L 162, 21.6.2008, p. 13.
(2) OJ No L 38, 7.2.2014, p. 32.
(3) OJ No L 38, 7.2.2014, p. 39.
(4) OJ No L 268, 18.10.2003, p. 1, as last amended by Regulation (EC) No 298/2008 (OJ No L 97, 9.4.2008, p. 64).

Awdurdod Ardystio yn y wlad neu'r diriogaeth lle cynhyrchwyd y tatws eu marchnata yn unol ag Erthygl 6(1)(a) o'r Gyfarwyddeb.

Marchnata amrywogaethau gadwraeth

6.—(1) Ni chaiff unrhyw berson farchnata tatws hadyd o amrywogaeth gadwraeth oni bai bod—

- (a) yr amrywogaeth wedi ei rhestru yn y Rhestr Genedlaethol o amrywogaethau rhywogaethau tatws a baratowyd ac a gyhoeddwyd yn unol â rheoliad 3 o'r Rheoliadau Rhestrau Cenedlaethol; a
- (b) y tatws hadyd hynny wedi eu cynhyrchu yn y Deyrnas Unedig.

(2) Rhaid i berson sy'n bwriadu cynhyrchu tatws hadyd o amrywogaeth gadwraeth ddarparu i Weinidogion Cymru, cyn gwneud hynny, ar y ffurf honno ac yn y modd hwnnw sy'n ofynnol gan Weinidogion Cymru, fanylion ysgrifenedig am faint a lleoliad yr ardal sydd i'w defnyddio i gynhyrchu'r had hwnnw.

(3) At ddibenion Erthyglau 14 a 15(2) o Gyfarwyddeb 2008/62/EC, caiff Gweinidogion Cymru bennu mwyafswm y tatws hadyd o amrywogaeth gadwraeth y caniateir ei farchnata mewn unrhyw dymor cynhyrchu penodol a chânt bennu mwyafsymiau gwahanol ar gyfer personau gwahanol neu ddsbarthau gwahanol o bersonau.

(4) Ni chaiff swm y tatws hadyd o amrywogaeth gadwraeth sy'n cael ei farchnata gan berson fod yn fwy nag unrhyw fwyafswm a bennir o dan baragraff (3) mewn perthynas â'r person hwnnw.

(5) Rhaid i unrhyw berson sy'n marchnata tatws hadyd o amrywogaeth gadwraeth ddarparu i Weinidogion Cymru, os cânt gais ysgrifenedig i wneud hynny, fanylion ysgrifenedig am swm ac amrywogaeth y tatws hadyd a osodir ar y farchnad yn ystod pob tymor cynhyrchu.

Maint tatws hadyd

7.—(1) Ni chaiff unrhyw berson farchnata unrhyw datws hadyd ac eithrio tatws hadyd cyn-sylfaenol o radd PBTC onid yw lleiafswm maint y cloron yn eu rhwystro rhag mynd drwy rwyll sgwâr 25 o filimetrau x 25 o filimetrau.

(2) Ni chaiff unrhyw berson farchnata unrhyw datws hadyd mewn lot pan fo mwyafswm yr amrywiad rhwng maint cloron yn golygu bod y gwahaniaeth rhwng y maintioli lleiaf a ganiateir a'r maintioli mwyaf a ganiateir yn fwy na 25 o filimetrau.

authorised by the Certification Authority in the country or territory where the potatoes were produced for marketing in accordance with Article 6(1)(a) of the Directive.

Marketing of conservation varieties

6.—(1) No person may market seed potatoes of a conservation variety unless—

- (a) the variety is listed in the National List of varieties of potato species prepared and published in accordance with regulation 3 of the National Lists Regulations; and
- (b) those seed potatoes have been produced in the United Kingdom.

(2) A person proposing to produce seed potatoes of a conservation variety must, before doing so, supply the Welsh Ministers, in such manner and form as the Welsh Ministers require, with details in writing of the size and location of the area to be used to produce that seed.

(3) For the purposes of Articles 14 and 15(2) of Directive 2008/62/EC, the Welsh Ministers may specify the maximum amount of seed potatoes of a conservation variety that may be marketed in any given production season, and may specify different maximum amounts for different persons or classes of persons.

(4) The amount of seed potatoes of a conservation variety marketed by a person must not exceed any maximum amount specified under paragraph (3) in relation to that person.

(5) Any person marketing seed potatoes of a conservation variety must supply the Welsh Ministers, if requested to do so in writing, with written details of the amount and variety of the seed potatoes placed on the market during each production season.

Size of seed potatoes

7.—(1) No person may market any seed potatoes other than pre-basic seed potatoes of grade PBTC unless the tubers have a minimum size such that they do not pass through a square mesh of 25 millimetres x 25 millimetres.

(2) No person may market any seed potatoes in a lot in which the maximum variation in size between tubers is such that the difference between the lower size limit and the upper size limit exceeds 25 millimetres.

(3) Mae gofynion paragraff (2) i gael eu trin fel petaent wedi eu bodloni ar yr amod nad yw mwy na 3% o bwysau cyfan y cloron yn y lot yn cynnwys—

- (a) cloron sy'n llai na'r maintioli lleiaf a ganiateir; neu
- (b) cloron sy'n fwy na'r maintioli mwyaf a ganiateir.

(4) Pan fo'n ofynnol datgan maintioli tatws hadyd yn unol â'r Rheoliadau hyn, rhaid datgan y canlynol—

- (a) mesuriadau sgwariau'r rhwyll nad yw'r cloron yn mynd drwyddi, pan mai'r un yw'r maintioli lleiaf a ganiateir â'r maintioli mwyaf a ganiateir;
- (b) y maintioli lleiaf a ganiateir a'r maintioli mwyaf a ganiateir, pan fo'r rhain yn wahanol i'w gilydd.

(5) At ddibenion paragraff (4), rhaid datgan mesuriadau o fwy na 35 o filimetrau i'r 5 milimetwr agosaf.

(6) At ddibenion y rheoliad hwn—

- (a) ystyr “y maintioli lleiaf a ganiateir” (“*the lower size limit*”) yw mesuriadau sgwâr mwyaf y rhwyll nad yw'r gloronen leiaf yn mynd drwyddi;
- (b) ystyr “y maintioli mwyaf a ganiateir” (“*the upper size limit*”) yw mesuriadau sgwâr mwyaf y rhwyll nad yw'r gloronen fwyaf yn mynd drwyddi.

Marchnata tatws hadyd at ddibenion gwyddonol neu waith dethol

8.—(1) Caiff Gweinidogion Cymru awdurdodi marchnata symiau bach o datws hadyd at ddibenion gwyddonol neu waith dethol yn unol â'r rheoliad hwn.

(2) Ni chaiff Gweinidogion Cymru awdurdodi marchnata tatws hadyd sy'n cynnwys unrhyw ddeunydd sydd wedi ei addasu'n enetig oni bai bod awdurdodiad mewn grym o dan y Rheoliad Bwyd a Bwyd Anifeiliaid neu o dan Ran C o'r Gyfarwyddeb Gollyngiadau Bwriadol.

(3) Rhaid i gais am awdurdodiad i farchnata tatws hadyd yn unol â pharagraff (1) gael ei wneud yn ysgrifenedig i Weinidogion Cymru a rhaid i unrhyw wybodaeth sy'n ofynnol gan Weinidogion Cymru fynd gydag ef.

Marchnata tatws hadyd at ddibenion profi a threialu

9.—(1) Caiff Gweinidogion Cymru awdurdodi marchnata tatws hadyd ar gyfer profion neu dreialon a

(3) The requirements of paragraph (2) are to be treated as being met provided that no more than 3% of the total weight of tubers in the lot consist of—

- (a) tubers which are smaller than the lower size limit; or
- (b) tubers which are larger than the upper size limit.

(4) Where the size of seed potatoes is required to be stated in accordance with these Regulations, the following must be stated—

- (a) where the lower size limit and the upper size limit are the same, the dimensions of the square mesh through which the tubers do not pass;
- (b) where they are not the same, the lower size limit and the upper size limit

(5) For the purposes of paragraph (4), dimensions of more than 35 millimetres must be stated to the nearest 5 millimetres.

(6) For the purposes of this regulation—

- (a) “the lower size limit” (“*y maintioli lleiaf a ganiateir*”) means the dimensions of the largest square mesh through which the smallest tuber does not pass;
- (b) “the upper size limit” (“*y maintioli mwyaf a ganiateir*”) means the dimensions of the largest square mesh through which the largest tuber does not pass.

Marketing of seed potatoes for scientific purposes or selection work

8.—(1) The Welsh Ministers may authorise marketing of small quantities of seed potatoes for scientific purposes or selection work in accordance with this regulation.

(2) The Welsh Ministers may not authorise marketing of seed potatoes which contain any genetically modified material unless an authorisation is in force under the Food and Feed Regulation or Part C of the Deliberate Release Directive.

(3) An application for authorisation to market seed potatoes in accordance with paragraph (1) must be made in writing to the Welsh Ministers and must be accompanied by such information as the Welsh Ministers may require.

Marketing of seed potatoes for test and trial purposes

9.—(1) The Welsh Ministers may authorise marketing of seed potatoes for tests or trials carried out at

gynhelir ar fentrau amaethyddol er mwyn casglu gwybodaeth ar drin neu ddefnyddio amrywogaeth o rywogaeth o datws yn unol â'r rheoliad hwn ac Atodlen 5.

(2) Ni chaiff Gweinidogion Cymru awdurdodi marchnata—

- (a) swm o datws hadyd sy'n fwy nag a ganiateir gan Erthygl 7 o'r Penderfyniad;
- (b) tatws hadyd sy'n cynnwys unrhyw ddeunydd sydd wedi ei addasu'n enetig oni bai bod y deunydd hwnnw wedi ei awdurdodi o dan y Rheoliad Bwyd a Bwyd Anifeiliaid neu o dan Ran C o'r Gyfarwyddeb Gollyngiadau Bwriadol.

(3) Rhaid i gais am awdurdodiad neu i adnewyddu awdurdodiad i farchnata tatws hadyd yn unol â pharagraff (1) gael ei wneud yn ysgrifenedig i Weiniogion Cymru a rhaid i unrhyw wybodaeth sy'n ofynnol gan Weiniogion Cymru fynd gydag ef.

(4) Mae awdurdodiad a roddir yn unol â pharagraff (1), neu adnewyddu awdurdodiad o'r fath, am gyfnod o flwyddyn neu am unrhyw gyfnod byrrach y caiff Gweinidogion Cymru ei bennu.

(5) Wrth awdurdodi marchnata yn unol â pharagraff (1), caiff Gweinidogion Cymru osod unrhyw amodau sy'n angenrheidiol neu'n ddymunol yn nhyb Gweinidogion Cymru o ystyried natur y profion neu'r treialon a natur y tatws hadyd y mae'r cais yn ymwneud â hwy, gan gynnwys amod yn ymwneud â chadw cofnodion o ran marchnata'r tatws hadyd.

(6) Mae awdurdodiad a roddir yn unol â pharagraff (1) yn peidio â bod yn effeithiol—

- (a) pan fo'r cais y cyfeirir ato ym mharagraff 3(a) o Atodlen 5 yn cael ei dynnu'n ôl neu ei wrthod yn unol â'r Rheoliadau Rhestrau Cenedlaethol; neu
- (b) pan fo'r amrywogaeth o rywogaeth o datws y mae'r awdurdodiad yn ymwneud ag ef yn cael ei gofnodi mewn Rhestr Genedlaethol neu yn y Catalog Cyffredin.

(7) Caiff Gweinidogion Cymru dynnu'n ôl unrhyw awdurdodiad a roddir yn unol â pharagraff (1) pan dorrir unrhyw amod y cyfeirir ato ym mharagraff (5).

(8) Caiff Gweinidogion Cymru ei gwneud yn ofynnol i'r person a gafodd awdurdodiad yn unol â pharagraff (1) ddarparu gwybodaeth ynglŷn ag—

- (a) canlyniadau'r profion neu'r treialon y mae'r awdurdodiad yn ymwneud â hwy;
- (b) symiau'r tatws hadyd a farchnatawyd yn ystod y cyfnod a awdurdodwyd ac enw'r Aelod-wladwriaeth lle bwriedir marchnata'r tatws hadyd.

agricultural enterprises to gather information on the cultivation or use of a variety of potato species in accordance with this regulation and Schedule 5.

(2) The Welsh Ministers may not authorise marketing—

- (a) of an amount of seed potatoes in excess of that permitted by Article 7 of the Decision;
- (b) of seed potatoes which contain any genetically modified material unless that material is authorised under the Food and Feed Regulation or Part C of the Deliberate Release Directive.

(3) An application for authorisation or renewal of authorisation to market seed potatoes in accordance with paragraph (1) must be made in writing to the Welsh Ministers and must be accompanied by such information as the Welsh Ministers may require.

(4) Authorisation given in accordance with paragraph (1), or the renewal of such authorisation, is for a period of one year or such shorter period as the Welsh Ministers may specify.

(5) In authorising marketing in accordance with paragraph (1), the Welsh Ministers may impose such conditions as the Welsh Ministers think necessary or desirable having regard to the nature of the tests or trials and the nature of the seed potatoes to which the application relates, including a condition relating to the keeping of records in respect of the marketing of the seed potatoes.

(6) Authorisation given in accordance with paragraph (1) ceases to have effect where—

- (a) the application referred to in paragraph 3(a) of Schedule 5 is withdrawn or rejected in accordance with the National Lists Regulations; or
- (b) the variety of potato species to which the authorisation relates is entered in a National List or the Common Catalogue.

(7) The Welsh Ministers may withdraw authorisation given in accordance with paragraph (1) where there is a breach of any condition referred to in paragraph (5).

(8) The Welsh Ministers may require the person to whom authorisation has been given in accordance with paragraph (1) to provide information about—

- (a) the results of the tests or trials to which the authorisation relates;
- (b) the quantities of seed potatoes marketed during the authorised period and the name of the member State in which the seed potatoes are intended to be marketed.

Ardystio tatws hadyd

10.—(1) Rhaid i ardystio tatws hadyd a gynhyrchir yng Nghymru fod yn unol â'r rheoliad hwn.

(2) Os bodlonir gofynion paragraff (3), rhaid i swyddog awdurdodedig ardystio bod tatws hadyd a gynhyrchir yng Nghymru—

- (a) yn datws hadyd cyn-sylfaenol;
- (b) yn datws hadyd sylfaenol; neu
- (c) yn datws hadyd ardystiedig.

(3) Y gofynion yw—

- (a) bod tystysgrif cnwd sy'n tyfu wedi cael ei dyroddi o ran y tatws hadyd; a
- (b) o'u harchwilio'n swyddogol bod canfyddiad wedi ei wneud nad yw'r tatws hadyd dros ben unrhyw un o'r goddefiannau ar gyfer clefydau neu blâu, difrod neu ddiffygion a bennir yn narpariaethau perthnasol Atodlen 3.

(4) Rhaid i gais am ardystio tatws hadyd a gynhyrchir yng Nghymru gael ei wneud yn ysgrifenedig i Weinidogion Cymru a rhaid i unrhyw wybodaeth sy'n ofynnol gan Weinidogion Cymru fynd gydag ef.

(5) At ddbenion paragraff (2), mae label swyddogol a ddyroddwyd yn unol â'r Rheoliadau hyn o ran tatws hadyd cyn-sylfaenol, tatws hadyd sylfaenol neu datws hadyd ardystiedig yn dystiolaeth ddigonol bod swyddog awdurdodedig wedi ardystio bod y tatws hadyd y mae'r label swyddogol yn ymwneud â hwy yn datws hadyd cyn-sylfaenol, yn datws hadyd sylfaenol neu'n datws hadyd ardystiedig, yn ôl y digwydd.

Cyfansoddiad lotiau o datws hadyd

11.—(1) Ni chaiff unrhyw berson farchnata tatws hadyd cyn-sylfaenol, tatws hadyd sylfaenol na thatws hadyd ardystiedig ac eithrio mewn lot a'i chynnwys yn gyfan gwbl yn datws hadyd—

- (a) o un categori;
- (b) o un amrywogaeth; ac
- (c) o un radd.

(2) Ni chaiff unrhyw berson farchnata tatws hadyd sydd i'w profi a'u treialu ac eithrio mewn lot a'i chynnwys yn gyfan gwbl yn datws hadyd o un amrywogaeth.

(3) At ddbenion y rheoliad hwn mae lot o datws hadyd i'w thrin fel petai ei chynnwys yn gyfan gwbl o un amrywogaeth ar yr amod—

- (a) mewn perthynas â thatws hadyd a gynhyrchir yng Nghymru, nad yw nifer y tatws hadyd yn y lot nad ydynt o'r wir amrywogaeth neu sydd o amrywogaeth wahanol mewn perthynas â chyfanswm y tatws hadyd yn y lot—

Certification of seed potatoes

10.—(1) Certification of seed potatoes produced in Wales must be in accordance with this regulation.

(2) If the requirements of paragraph (3) are satisfied, an authorised officer must certify seed potatoes produced in Wales as being—

- (a) pre-basic seed potatoes;
- (b) basic seed potatoes; or
- (c) certified seed potatoes.

(3) The requirements are that—

- (a) a growing crop certificate has been issued in relation to the seed potatoes; and
- (b) on official examination the seed potatoes have been found not to exceed any of the tolerances for diseases or pests, damage or defects specified in the relevant provisions of Schedule 3.

(4) An application for certification of seed potatoes produced in Wales must be made in writing to the Welsh Ministers and must be accompanied by such information as the Welsh Ministers may require.

(5) For the purposes of paragraph (2), an official label issued in accordance with these Regulations in relation to pre-basic seed potatoes, basic seed potatoes or certified seed potatoes is sufficient evidence that an authorised officer has certified the seed potatoes to which the official label relates as being pre-basic seed potatoes, basic seed potatoes or certified seed potatoes, as the case may be.

Composition of lots of seed potatoes

11.—(1) No person may market pre-basic seed potatoes, basic seed potatoes or certified seed potatoes otherwise than in a lot consisting wholly of seed potatoes of—

- (a) one category;
- (b) one variety; and
- (c) one grade.

(2) No person may market test and trial seed potatoes otherwise than in a lot consisting wholly of seed potatoes of one variety.

(3) For the purposes of this regulation a lot of seed potatoes is to be treated as if it consists wholly of one variety provided that—

- (a) in relation to seed potatoes produced in Wales, the number of seed potatoes in the lot which are not true to variety or are of a different variety in relation to the total number of seed potatoes in the lot—

- (i) yn achos tatws hadyd cyn-sylfaenol yn fwy na 0.01%;
container—
- (ii) yn achos tatws hadyd sylfaenol yn fwy na 0.1%;
- (iii) yn achos tatws hadyd ardystiedig neu datws hadyd sydd i'w profi a'u treialu yn fwy na 0.2%;
- (b) o ran tatws hadyd a gynhyrchir y tu allan i Gymru, bod y lot yn ddigon cydryw yn unol â'r safonau a osodir gan yr Awdurdod Ardystio yn unol â'r Gyfarwyddeb o ran marchnata'r tatws hynny.

- (i) in the case of pre-basic seed potatoes, is no more than 0.01%;
- (ii) in the case of basic seed potatoes, is no more than 0.1%;
- (iii) in the case of certified seed potatoes or test and trial seed potatoes, is no more than 0.2%;
- (b) in relation to seed potatoes produced outside Wales, the lot is sufficiently homogeneous in accordance with the standards imposed by the Certification Authority pursuant to the Directive in respect of the marketing of those potatoes.

Pecynnau a chynwysyddion ar gyfer tatws hadyd

12. Yn ddarostyngedig i reoliad 18, ni chaiff unrhyw berson farchnata unrhyw datws hadyd ac eithrio mewn pecyn neu gynhwysydd.

Labelu pecynnau a chynwysyddion tatws hadyd

13.—(1) Yn ddarostyngedig i reoliad 18, ni chaiff unrhyw berson farchnata, ac eithrio mewn pecyn neu gynhwysydd wedi ei labelu'n briodol—

- (a) tatws hadyd cyn-sylfaenol;
- (b) tatws hadyd sylfaenol;
- (c) tatws hadyd ardystiedig; neu
- (d) tatws hadyd sydd i'w profi a'u treialu.

(2) At ddibenion y rheoliad hwn, ystyr “pecyn neu gynhwysydd wedi ei labelu'n briodol” (“*properly labelled package or container*”) yw pecyn neu gynhwysydd—

- (a) sydd â label swyddogol ynghlwm i'r tu allan iddo; a
- (b) yn ddarostyngedig i baragraff (3), sy'n cynnwys dogfen swyddogol.

(3) Nid yw paragraff (2)(b) yn gymwys—

- (a) pan fo'r manylion a bennir ym mharagraff 16 o Atodlen 2 wedi eu hargraffu'n annileadwy ar y pecyn neu'r cynhwysydd; neu
- (b) pan fo'r label swyddogol o ddeunydd gludiog neu o ddeunydd sy'n gwrthsefyll traul.

(4) Rhaid i gais i Weinidogion Cymru am label swyddogol neu ddogfen swyddogol gael ei wneud yn ysgrifenedig a rhaid i unrhyw wybodaeth sy'n ofynnol gan Weinidogion Cymru fynd gydag ef.

(5) Ar ôl iddynt eu bodloni eu hunain o'r canlynol yn unig y caiff Gweinidogion Cymru ddyroddi label swyddogol neu ddogfen swyddogol—

- (a) bod y tatws hadyd yn datws hadyd cyn-sylfaenol, yn datws hadyd sylfaenol, yn datws

Packages and containers for seed potatoes

12. Subject to regulation 18, no person may market any seed potatoes otherwise than in a package or container.

Labelling of packages and containers of seed potatoes

13.—(1) Subject to regulation 18, no person may market, other than in a properly labelled package or

- (a) pre-basic seed potatoes;
- (b) basic seed potatoes;
- (c) certified seed potatoes; or
- (d) test and trial seed potatoes.

(2) For the purposes of this regulation, a “properly labelled package or container” (“*pecyn neu gynhwysydd wedi ei labelu'n briodol*”) means a package or container that—

- (a) has affixed to the outside an official label; and
- (b) subject to paragraph (3), contains an official document.

(3) Paragraph (2)(b) does not apply where—

- (a) the particulars specified in paragraph 16 of Schedule 2 are indelibly printed on the package or container; or
- (b) the official label is of an adhesive or wear and tear resistant material.

(4) An application to the Welsh Ministers for an official label or official document must be made in writing and must be accompanied by such information as the Welsh Ministers may require.

(5) The Welsh Ministers may only issue an official label or official document if satisfied that—

- (a) the seed potatoes are pre-basic seed potatoes, basic seed potatoes, certified seed potatoes or

hadyd ardystiedig neu'n datws hadyd sydd i'w profi a'u treialu;

- (b) bod y tatws hadyd yn cydymffurfio â'r gofynion maint lleiaf a bennir yn rheoliad 7 ac nad yw'r amrywiad mwyaf mewn maint rhwng cloron yn fwy na'r hyn a bennir yn rheoliad 7;
- (c) bod y tatws hadyd wedi eu cynnwys mewn pecyn neu gynhwysydd;
- (d) nad yw'r tatws hadyd wedi cael eu trin â chynnyrch a gynhyrchir yn bennaf fel triniaeth i lesteirio eginiaid;
- (e) y cafodd y tatws hadyd eu cynaeafu, eu storio, eu cludo a'u trafod mewn modd sy'n lleihau hyd yr eithaf y risg o halogiad drwy unrhyw un o'r clefydau neu'r plâu a bennir yn Atodlen 3;
- (f) yn ôl sampl a gymerir yn unol â rheoliad 19, nad yw'r tatws hadyd yn mynd dros ben unrhyw un o'r goddefiannau ar gyfer clefydau neu blâu, difrod neu ddiffygion a bennir yn y Rhan briodol o Atodlen 3; ac
- (g) na fu unrhyw fethiant arall i gydymffurfio â'r Rheoliadau hyn o ran unrhyw un neu ragor o'r tatws hadyd.

(6) Os cafodd pecyn neu gynhwysydd ei ail selio gan swyddog awdurdodedig yn unol â rheoliad 14(3) rhaid i'r label swyddogol ddatgan—

- (a) bod y pecyn neu'r cynhwysydd wedi cael ei ail selio felly;
- (b) dyddiad yr ail selio; ac
- (c) enw'r swyddog awdurdodedig fu'n gyfrifol am yr ail selio.

(7) Pan fo unrhyw datws hadyd cyn-sylfaenol, tatws hadyd sylfaenol, tatws hadyd ardystiedig neu datws hadyd sydd i'w profi a'u treialu wedi cael eu trin ag unrhyw gynnyrch cemegol, rhaid i fath a swyddogaeth neu enw priodol y cynnyrch hwnnw—

- (a) fod wedi ei ddatgan ar label sydd ynghlwm wrth y pecyn neu'r cynhwysydd; a
- (b) naill ai—
 - (i) fod wedi ei ddatgan ar ddogfen sydd yn y pecyn neu'r cynhwysydd; neu
 - (ii) fod wedi ei argraffu yn annileadwy ar y pecyn neu'r cynhwysydd.

(8) At ddibenion adran 16(7)(a) o'r Ddeddf, nid ystyrir bod gwybodaeth sy'n ymwneud ag amrywogaeth o datws hadyd a geir mewn datganiad statudol yn anwir mewn manylyn perthnasol yn unig am ei fod yn anwir—

- (a) yn achos tatws hadyd cyn-sylfaenol, o ran dim mwy na 0.01% o'r tatws hadyd;

test and trial seed potatoes;

- (b) the seed potatoes comply with the minimum size requirements specified in regulation 7 and that the maximum variation in size between tubers does not exceed that specified in regulation 7;
- (c) the seed potatoes are contained in a package or container;
- (d) the seed potatoes have not been treated with a product which is produced primarily as an application for inhibiting germination;
- (e) the seed potatoes have been harvested, stored, transported and handled so as to minimise the risk of contamination by any of the diseases or pests specified in Schedule 3;
- (f) on a sample taken in accordance with regulation 19, the seed potatoes do not exceed any of the tolerances for diseases or pests, damage or defects specified in the appropriate Part of Schedule 3; and
- (g) there has been no other failure to comply with these Regulations in respect of any of the seed potatoes.

(6) If a package or container has been re-sealed by an authorised officer in accordance with regulation 14(3) the official label must state—

- (a) that the package or container has been so re-sealed;
- (b) the date of re-sealing; and
- (c) the name of the authorised officer responsible for re-sealing.

(7) Where any pre-basic seed potatoes, basic seed potatoes, certified seed potatoes or test and trial seed potatoes have been treated with any chemical product, the type and function or the proprietary name of that product must be—

- (a) stated on a label affixed to the package or container; and
- (b) either—
 - (i) stated on a document contained in the package or container; or
 - (ii) indelibly printed on the package or container.

(8) For the purposes of section 16(7)(a) of the Act, information relating to a variety of seed potatoes contained in a statutory statement is not held to be false in a material particular by reason only that it is false—

- (a) in the case of pre-basic seed potatoes, in respect of no more than 0.01% of the seed potatoes;

- (b) yn achos tatws hadyd sylfaenol, o ran dim mwy na 0.1% o'r tatws hadyd;
- (c) yn achos tatws hadyd ardystiedig a thatws hadyd sydd i'w profi a'u treialu, o ran dim mwy na 0.2% o'r tatws hadyd.

(9) Ni chaiff unrhyw berson, mewn cysylltiad â marchnata unrhyw datws hadyd, neu mewn cysylltiad â'u paratoi ar gyfer eu marchnata, fynd ati'n fwriadol i atgynhyrchu, i symud ymaith, i altro, i ddifwyno, i guddio neu i gamddefnyddio mewn unrhyw fodd unrhyw label swyddogol neu ddogfen swyddogol, neu unrhyw label sydd ynghlwm neu ddogfen a gyflenwir yn unol â pharagraff (2), ac eithrio yn unol â gofynion y Ddeddf, y Rheoliadau hyn neu Orchmynion a wneir o dan Ddeddf Iechyd Planhigion 1967(1).

Selio pecynnau a chynwysyddion

14.—(1) Yn ddarostyngedig i reoliad 18, ni chaiff unrhyw berson farchnata, ac eithrio mewn pecyn neu gynhwysydd wedi ei selio'n briodol—

- (a) tatws hadyd cyn-sylfaenol;
- (b) tatws hadyd sylfaenol;
- (c) tatws hadyd ardystiedig; neu
- (d) tatws hadyd sydd i'w profi a'u treialu.

(2) At ddibenion y rheoliad hwn, ystyr “pecyn neu gynhwysydd wedi ei selio'n briodol” (“*properly sealed package or container*”)—

- (a) ar gyfer tatws hadyd a gynhyrchir yng Nghymru, yw pecyn neu gynhwysydd caeedig sydd wedi cael ei selio â dyfais selio nas torrwyd, gan swyddog awdurdodedig neu o dan ei oruchwyliaeth;
- (b) ar gyfer tatws hadyd a gynhyrchir y tu allan i Gymru, yw pecyn neu gynhwysydd caeedig sydd wedi cael ei selio yn unol ag Erthygl 11(1) o'r Gyfarwyddeb.

(3) Pan fo dyfais selio ar becyn neu gynhwysydd wedi ei thorri, rhaid peidio ag ail selio'r pecyn neu'r cynhwysydd â dyfais selio ac eithrio gan swyddog awdurdodedig neu o dan ei oruchwyliaeth.

(4) At ddibenion y rheoliad hwn ystyr “dyfais selio” (“*sealing device*”) yw dyfais a gymhwyswyd i'r pecyn neu'r cynhwysydd yn y fath fodd fel y bydd yn cael ei thorri pan agorir y pecyn neu'r cynhwysydd.

Dull adnabod tatws hadyd sydd wedi eu haddasu'n enetig

15. Ni chaiff unrhyw berson farchnata tatws hadyd sydd wedi eu haddasu'n enetig oni bai—

- (b) in the case of basic seed potatoes, in respect of no more than 0.1% of the seed potatoes;
- (c) in the case of certified seed potatoes and test and trial seed potatoes, in respect of no more than 0.2% of the seed potatoes.

(9) No person may, in connection with the marketing or the preparation for the marketing of any seed potatoes, wilfully reproduce, remove, alter, deface, conceal or misuse in any way any official label or official document, or any label affixed or document supplied in accordance with paragraph (2), except in accordance with the requirements of the Act, these Regulations or Orders made under the Plant Health Act 1967(1).

Sealing of packages and containers

14.—(1) Subject to regulation 18, no person may market, other than in a properly sealed package or container—

- (a) pre-basic seed potatoes;
- (b) basic seed potatoes;
- (c) certified seed potatoes; or
- (d) test and trial seed potatoes.

(2) For the purposes of this regulation, a “properly sealed package or container” (“*pecyn neu gynhwysydd wedi ei selio'n briodol*”) means—

- (a) for seed potatoes produced in Wales, a closed package or container that has been sealed with an unbroken sealing device by or under the supervision of an authorised officer;
- (b) for seed potatoes produced outside Wales, a closed package or container that has been sealed in accordance with Article 11(1) of the Directive.

(3) Where a sealing device on a package or container is broken, the package or container must not be re-sealed with a sealing device otherwise than by or under the supervision of an authorised officer.

(4) For the purposes of this regulation, a “sealing device” (“*dyfais selio*”) means a device applied in such a manner to a package or container that when the package or container is opened the device will be broken.

Identification of genetically modified seed potatoes

15. No person may market genetically modified seed potatoes unless—

(1) 1967 p. 8.

(1) 1967 c. 8.

- (a) y dangosir yn glir mewn unrhyw wybodaeth farchnata, gan gynnwys unrhyw gatalog gwerthu neu sylwadau marchnata eraill a ddarperir gan y person sy'n marchnata'r tatws hadyd, bod y tatws hadyd wedi eu haddasu'n enetig; a
- (b) bod unrhyw label swyddogol neu ddogfen swyddogol, neu label neu ddogfen arall sydd ynghlwm wrth y tatws hadyd, yn mynd gyda hwy neu'n ymwneud â hwy, yn dangos yn glir eu bod wedi eu haddasu'n enetig.

Tatws hadyd o'r tu allan i'r Undeb Ewropeaidd: gwybodaeth

16. Rhaid i unrhyw berson sy'n marchnata mwy na 2 gilogram o datws hadyd a fewnforiwyd i Gymru o wlad y tu allan i'r Undeb Ewropeaidd roi i Weinidogion Cymru, yn ysgrifenedig ac o fewn mis i farchnata'r tatws hadyd am y tro cyntaf, y manylion a bennir yn Atodlen 6.

Manylion ar wahân

17. Yn ddarostyngedig i reoliad 18, rhaid i berson sy'n gwerthu tatws hadyd cyn-sylfaenol, tatws hadyd sylfaenol, tatws hadyd ardystiedig neu datws hadyd sydd i'w profi a'u treialu ddyroddi i'r prynwr, yn ddim hwyrach na 14 o ddiwrnodau ar ôl y gwerthiant, neu os nad yw'r tatws hadyd yn cael eu danfon ar adeg y gwerthiant, heb fod yn hwyrach na 14 o ddiwrnodau ar ôl eu danfon, nodyn gwerthiant, nodyn danfon, anfoneb neu ddogfen gyffelyb sy'n pennu, o ran y tatws hadyd, y manylion a bennir yn Atodlen 7.

Manwerthiannau o datws hadyd

18. Nid yw rheoliadau 12, 13, 14 a 17 yn gymwys i fanwerthiannau o lai na 50 cilogram o datws hadyd—

- (a) mewn amgylchiadau pan ddangosir yn amlwg ar adeg y gwerthiant ar label sydd ynghlwm wrth becyn sy'n cynnwys y tatws hadyd, neu ar ddogfen neu hysbysiad a osodir gerllaw'r tatws hadyd, ddatganiad o'r manylion a bennir yn Atodlen 7; neu
- (b) mewn cynwysyddion nas defnyddiwyd o'r blaen at unrhyw ddiben, sydd â'r manylion a bennir yn Atodlen 7 wedi eu hargraffu neu wedi eu marcio yn ddealladwy ac yn annileadwy mewn modd arall ar bob un ohonynt, neu y ceir ynghlwm wrth neu o fewn pob un ohonynt label a farciwyd â'r manylion hynny.

- (a) it is clearly indicated in any marketing information, including any sales catalogue or other marketing representations provided by the person marketing the seed potatoes, that the seed potatoes have been genetically modified; and
- (b) any official label or official document, or other label or document, affixed to, accompanying or relating to the seed potatoes clearly indicates that they have been genetically modified.

Seed potatoes from outside the European Union: information

16. Any person marketing more than 2 kilograms of seed potatoes that have been imported into Wales from a country outside the European Union must supply the Welsh Ministers, in writing and within one month of the first marketing of the seed potatoes, with the particulars specified in Schedule 6.

Separate particulars

17. Subject to regulation 18 a person who sells pre-basic seed potatoes, basic seed potatoes, certified seed potatoes or test and trial seed potatoes must issue to the buyer not later than 14 days after the sale or, if the seed potatoes are not delivered at the time of sale, not later than 14 days after delivery, a sale note, delivery note, invoice or similar document specifying in relation to the seed potatoes the particulars specified in Schedule 7.

Retail sales of seed potatoes

18. Regulations 12, 13, 14 and 17 do not apply to a sale by retail of less than 50 kilograms of seed potatoes—

- (a) in circumstances where at the time of sale there is displayed conspicuously on a label affixed to a package containing the seed potatoes or on a document or notice placed in close proximity to the seed potatoes a statement of the particulars specified in Schedule 7; or
- (b) in containers that have not been previously used for any purpose, upon each of which has been printed or otherwise legibly and indelibly marked the particulars specified in Schedule 7, or attached to or inserted in each of which is a label marked with those particulars.

Samplu tatws hadyd

19.—(1) Rhaid i sampl o datws hadyd a gymerir at unrhyw ddiben mewn cysylltiad â'r Rheoliadau hyn gael ei chymryd yn unol â'r rheoliad hwn.

(2) Rhaid i sampl gael ei chymryd gan swyddog awdurdodedig a chaiff fod o'r swmp neu'r nifer a bod o'r rhan honno neu'r rhannau hynny o'r cnwd sy'n tyfu neu sydd wedi ei gynaeafu ag sy'n briodol ym marn y swyddog awdurdodedig.

(3) Mae paragraff (4) yn gymwys pan fo sampl yn ofynnol ac eithrio at ddiben mewn cysylltiad ag ardystio tatws hadyd a gynhyrchir yng Nghymru, a bod crynswth y tatws hadyd yn datws hadyd—

- (a) sy'n ffurfio mwy nag un llwyth, neu
- (b) sy'n gysylltiedig â mwy nag un dystysgrif cnwd sy'n tyfu,

(4) Rhaid rhannu'r tatws hadyd fel bod pob llwyth neu, yn ôl y digwydd, swmp y tatws sy'n gysylltiedig â phob dystysgrif cnwd sy'n tyfu yn ffurfio lot ar wahân a rhaid, os yw'r swyddog awdurdodedig yn ystyried bod hynny'n angenrheidiol, samplu pob lot ar wahân.

Cadw cofnodion

20.—(1) Rhaid i berson sy'n cynhyrchu tatws hadyd a fwriedir ar gyfer eu marchnata gadw cofnodion am gyfnod heb fod yn llai na dwy flynedd o bryniant y tatws hadyd y cynhyrchwyd y tatws hadyd hynny ohonynt ac o fanylion y cynydau a dyfwyd.

(2) Rhaid i berson sy'n marchnata tatws hadyd gadw cofnod, am gyfnod heb fod yn llai na dwy flynedd, o'r marchnata ar datws hadyd o'r fath.

Gorfodi: pwerau i archwilio ac i fynnu cyflwyno

21.—(1) Caiff swyddog awdurdodedig gynnal archwiliad a chymryd samplau o datws hadyd ac arolygu a chymryd copïau o ddogfen berthnasol at ddiben sicrhau cydymffurfiaeth ag unrhyw ddarpariaeth yn y Rheoliadau hyn.

(2) At ddibenion y rheoliad hwn, rhaid i berson ganiatáu, ar unrhyw amser rhesymol, i swyddog awdurdodedig—

- (a) archwilio a chymryd samplau o datws hadyd sydd ym meddiant y person hwnnw neu o dan ei reolaeth; a
- (b) arolygu a chymryd copïau o unrhyw ddogfen berthnasol sydd ym meddiant y person hwnnw neu o dan ei reolaeth.

(3) At ddibenion y rheoliad hwn, caiff swyddog awdurdodedig drwy hysbysiad ysgrifenedig a gyflwynir i berson ei gwneud yn ofynnol i'r person hwnnw—

Sampling of seed potatoes

19.—(1) A sample of seed potatoes taken for any purpose in connection with these Regulations must be taken in accordance with this regulation.

(2) A sample must be taken by an authorised officer and may be of such quantity or number and from such part or parts of the growing or harvested crop as the authorised officer considers appropriate.

(3) Paragraph (4) applies where a sample is required other than for a purpose in connection with certification of seed potatoes produced in Wales, and the bulk consists of seed potatoes—

- (a) comprising more than one consignment, or
- (b) associated with more than one growing crop certificate,

(4) The seed potatoes must be divided so that each consignment or, as the case may be, the quantity of potatoes associated with each growing crop certificate, constitutes a separate lot and each lot must, if the authorised officer considers it necessary, be separately sampled.

Keeping of records

20.—(1) A person who produces seed potatoes which are intended for marketing must retain for a period of not less than two years records of purchase of the seed potatoes from which those seed potatoes were produced and particulars of the crops grown.

(2) A person who markets seed potatoes must retain for a period of not less than two years a record of the marketing of such seed potatoes.

Enforcement: powers of examination and production

21.—(1) An authorised officer may conduct an examination and take samples of seed potatoes and inspect and take copies of a relevant document for the purpose of ensuring compliance with any provision of these Regulations.

(2) For the purposes of this regulation, a person must permit, at any reasonable time, an authorised officer to—

- (a) examine and take samples of seed potatoes in that person's possession or control; and
- (b) inspect and take copies of any relevant document in that person's possession or control.

(3) For the purposes of this regulation, an authorised officer may by written notice served on a person require that person to—

- (a) cyflwyno unrhyw datws hadyd neu unrhyw ddogfen berthnasol neu sicrhau eu bod ar gael i'w harchwilio;
- (b) darparu gwybodaeth y mae'r person hwnnw'n ymwybodol ohoni neu'n ei chredu mewn cysylltiad â chynhyrchu, ardystio neu farchnata'r tatws hadyd.

(4) Rhaid i berson y cyflwynwyd hysbysiad iddo yn unol â pharagraff (3) gydymffurfio â gofynion yr hysbysiad hwnnw o fewn saith niwrnod i'w gyflwyno neu o fewn unrhyw gyfnod hwy y caniateir ei bennu yn yr hysbysiad.

(5) At ddibenion y rheoliad hwn, ystyr “dogfen berthnasol” (“*relevant document*”) yw unrhyw dystysgrif cnwd sy'n tyfu, label swyddogol, dogfen swyddogol, dogfen neu label arall, neu gofnod neu anfoneb arall sy'n ymwneud â phlannu, cynhyrchu, ardystio neu farchnata tatws hadyd.

Gorfodi: pŵer i dynnu yn ôl labeli swyddogol, dogfennau swyddogol a thystysgrifau cnwd sy'n tyfu

22.—(1) Caiff Gweinidogion Cymru dynnu'n ôl label swyddogol neu ddogfen swyddogol pan fônt wedi eu bodloni—

- (a) bod y tatws hadyd y mae'r label swyddogol neu'r ddogfen swyddogol yn ymwneud â hwy—
 - (i) heb gael eu cynaeafu, eu storio, eu cludo neu eu trafod mewn modd sy'n lleihau hyd yr eithaf y risg o halogiad gan unrhyw un neu ragor o'r clefydau neu'r plâu a bennir yn Atodlen 3;
 - (ii) yn ôl sampl a gymerir yn unol â rheoliad 19, yn mynd dros ben unrhyw un o'r goddefiannau ar gyfer clefydau neu blâu, difrod neu ddiffygion a bennir yn y Rhan briodol o Atodlen 3; neu
 - (iii) mewn modd arall yn methu â chydymffurfio â'r Rheoliadau hyn; neu
- (b) bod y label swyddogol neu'r ddogfen swyddogol yn cynnwys unrhyw fanylyn sy'n anwir mewn mater perthnasol.

(2) Caiff Gweinidogion Cymru dynnu'n ôl dystysgrif cnwd sy'n tyfu pan fônt wedi eu bodloni—

- (a) nad oes, neu nad oes bellach, gydymffurfiaeth â gofynion Atodlen 1; neu
- (b) bod y dystysgrif cnwd sy'n tyfu yn cynnwys unrhyw fanylyn sy'n anwir mewn mater perthnasol.

(3) Pan dynnir yn ôl label swyddogol neu ddogfen swyddogol yn unol â pharagraff (1)(a)(ii), caiff y tatws

- (a) produce or make available for examination any seed potatoes or relevant document;
- (b) provide information within that person's knowledge or belief relating to the production, certification or marketing of the seed potatoes.

(4) A person on whom a notice is served in accordance with paragraph (3) must comply with the requirements of that notice within seven days of such service or such longer time as may be specified in the notice.

(5) For the purposes of this regulation, “relevant document” (“*dogfen berthnasol*”) means any growing crop certificate, official label, official document, other document or label, record or invoice relating to the planting, production, certification or marketing of seed potatoes.

Enforcement: power to withdraw official labels, official documents and growing crop certificates

22.—(1) The Welsh Ministers may withdraw an official label or official document where they are satisfied—

- (a) that the seed potatoes to which the official label or official document relates—
 - (i) have not been harvested, stored, transported or handled so as to minimise the risk of contamination by any of the diseases or pests specified in Schedule 3;
 - (ii) on a sample taken in accordance with regulation 19, exceed any of the tolerances for diseases or pests, damage or defects specified in the appropriate Part of Schedule 3; or
 - (iii) otherwise fail to comply with these Regulations; or
- (b) that the official label or official document contains any particular which is false in a material respect.

(2) The Welsh Ministers may withdraw a growing crop certificate where they are satisfied that—

- (a) the requirements of Schedule 1 are not, or are no longer, complied with; or
- (b) the growing crop certificate contains any particular which is false in a material respect.

(3) Where an official label or official document is withdrawn in accordance with paragraph (1)(a)(ii), the

hadyd y cymerwyd y sampl ohonynt fod yn destun archwiliad swyddogol er mwyn penderfynu a oes unrhyw rai ohonynt nad ydynt yn mynd dros ben y goddefiannau a bennir yn Atodlen 3.

(4) Pan gynhelir archwiliad swyddogol yn unol â pharagraff (3), caiff Gweinidogion Cymru ddyroddi label swyddogol neu ddogfen swyddogol mewn perthynas â'r tatws hadyd hynny y canfyddir nad ydynt yn mynd dros ben y goddefiannau a bennir yn Atodlen 3.

(5) Pan dynnir yn ôl label swyddogol, dogfen swyddogol neu dystysgrif cnwd sy'n tyfu yn unol â'r rheoliad hwn, caiff swyddog awdurdodedig—

- (a) symud ymaith a chadw'r label swyddogol, y ddogfen swyddogol neu'r dystysgrif cnwd sy'n tyfu; neu
- (b) ei gwneud yn ofynnol i unrhyw berson y mae'r label swyddogol, y ddogfen swyddogol neu'r dystysgrif cnwd sy'n tyfu yn ei feddiant neu o dan ei reolaeth ei ddanfôn i'r swyddog awdurdodedig o fewn unrhyw gyfnod y caiff y swyddog awdurdodedig ei bennu.

(6) Rhaid i berson sydd â label swyddogol, dogfen swyddogol neu dystysgrif cnwd sy'n tyfu a gafodd ei dynnu'n ôl neu ei thynnu'n ôl yn unol â'r rheoliad hwn yn ei feddiant neu o dan ei reolaeth—

- (a) caniatáu i swyddog awdurdodedig symud ymaith y label swyddogol, y ddogfen swyddogol neu'r dystysgrif cnwd sy'n tyfu yn unol â pharagraff (5)(a);
- (b) cydymffurfio ag unrhyw beth a wnaed yn ofynnol yn unol â pharagraff (5)(b).

Cyflwyno hysbysiadau

23.—(1) At ddibenion rheoliad 21(3), mae hysbysiad i'w drin fel pe bai wedi ei gyflwyno i unrhyw berson os caiff ei ddanfôn at y person hwnnw yn bersonol neu os caiff ei adael iddo yn ei gartref neu yn ei fan gwaith hysbys diwethaf neu ei anfon drwy'r post mewn llythyr wedi ei gyfeirio ato yno.

(2) Caiff hysbysiad—

- (a) yn achos corff corfforaethol (ac eithrio partneriaeth atebolrwydd cyfyngedig), ei gyflwyno i ysgrifennydd neu glerc y corff hwnnw yng nghyfeiriad swyddfa gofrestredig neu brif swyddfa'r corff hwnnw;
- (b) yn achos partneriaeth gan gynnwys partneriaeth Albanaidd (ac eithrio partneriaeth atebolrwydd cyfyngedig), ei gyflwyno i bartner neu berson sy'n llywio neu'n rheoli busnes y bartneriaeth yng nghyfeiriad prif swyddfa'r bartneriaeth;

seed potatoes from which the sample was taken may be the subject of an official examination in order to determine whether any of them do not exceed the tolerances specified in Schedule 3.

(4) Where an official examination is conducted in accordance with paragraph (3), the Welsh Ministers may issue an official label or official document in relation to such seed potatoes as are found not to exceed the tolerances in Schedule 3.

(5) Where an official label, official document or growing crop certificate is withdrawn in accordance with this regulation, an authorised officer may—

- (a) remove and retain the official label, official document or growing crop certificate; or
- (b) require any person in possession or charge of the official label, official document or growing crop certificate to deliver it to the authorised officer within such time as the authorised officer may specify.

(6) A person in possession or charge of an official label, official document or growing crop certificate that has been withdrawn in accordance with this regulation must—

- (a) permit an authorised officer to remove the official label, official document or growing crop certificate in accordance with paragraph (5)(a);
- (b) comply with any requirement made in accordance with paragraph (5)(b).

Service of notices

23.—(1) For the purposes of regulation 21(3), a notice is to be treated to have been served on any person if it is delivered to that person personally or left for them at their last known place of abode or business or sent through the post in a letter addressed to them there.

(2) A notice may—

- (a) in the case of a body corporate (other than a limited liability partnership), be served on the secretary or clerk of that body at the address of the registered or principal office of that body;
- (b) in the case of a partnership including a Scottish partnership (other than a limited liability partnership), be served on a partner or person having the control or management of the partnership business at the address of the principal office of the partnership;

(c) yn achos partneriaeth atebolrwydd cyfyngedig, ei gyflwyno i aelod o'r bartneriaeth yng nghyfeiriad swyddfa gofrestredig neu brif swyddfa'r bartneriaeth honno.

(3) At ddibenion paragraff (2), prif swyddfa cwmni sy'n gofrestredig y tu allan i'r Deyrnas Unedig neu bartneriaeth sy'n cyflawni busnes y tu allan i'r Deyrnas Unedig yw ei brif swyddfa yn y Deyrnas Unedig.

Addasu darpariaethau'r Ddeddf

24.—(1) Mewn cysylltiad â darpariaethau'r Rheoliadau hyn, addesir neu eithrir gweithrediad y darpariaethau a ganlyn o'r Ddeddf yn unol â darpariaethau'r rheoliad hwn.

(2) Addesir adran 25 fel petai, at ddibenion yr adran, unrhyw gyfeiriad at “premises” yn gyfeiriad at “mangre” (“*premises*”) fel y'i diffinnir ym mharagraff (6) ac unrhyw gyfeiriad at is-adran sy'n cynnwys cyfeiriad at “premises” yn gyfeiriad at yr is-adran honno wedi ei haddasu felly.

(3) Addesir adran 25(1) fel petai'r cyfeiriad at is-adran (4) o'r adran honno yn gyfeiriad at yr is-adran honno fel y'i haddaswyd gan ddarpariaeth paragraff (4).

(4) Yn adran 25(4) hepgorer y geiriau o “potatoes” (yn y lle cyntaf y mae'n ymddangos) i'r diwedd.

(5) Yn adran 26, hepgorer is-adrannau (2) a (4) i (9).

(6) Ym mharagraff (2), mae “mangre” (“*premises*”) yn cynnwys unrhyw dir neu adeilad, ac eithrio tŷ annedd preifat, ac unrhyw adeiledd sefydlog neu symudol, cerbyd, llestr, awyren, hofranfad neu gynhwysydd llwyth.

Dirymiadau

25. Mae'r Rheoliadau a ganlyn wedi eu dirymu—

- (a) Rheoliadau Tatws Hadyd (Cymru) 2006(1);
- (b) Rheoliadau Tatws Hadyd (Cymru) (Diwygio) 2008(2);
- (c) Rheoliadau Tatws Hadyd (Cymru) (Diwygio) 2009(3);
- (d) Rheoliadau Tatws Hadyd (Cymru) (Diwygio) 2010(4).

(c) in the case of a limited liability partnership, be served on a member of the partnership at the address of the registered or principal office of that partnership.

(3) For the purposes of paragraph (2), the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

Modification of provisions of the Act

24.—(1) In connection with the provisions of these Regulations, the operation of the following provisions of the Act is modified or excluded in accordance with the provisions of this regulation.

(2) Section 25 is modified as if for the purposes of the section any reference to “premises” were a reference to premises as defined in paragraph (6) and any reference to a subsection containing a reference to premises were a reference to that subsection as so modified.

(3) Section 25(1) is modified as if the reference to subsection (4) of that section were a reference to that subsection as modified by the provision of paragraph (4).

(4) In section 25(4) the words from “potatoes” (where it first occurs) to the end are omitted.

(5) In section 26, subsections (2) and (4) to (9) are omitted.

(6) In paragraph (2), “premises” (“*mangre*”) includes any land or building, other than a private dwelling house, and any fixed or moveable structure, vehicle, vessel, aircraft, hovercraft or freight container.

Revocations

25. The following Regulations are revoked—

- (a) the Seed Potatoes (Wales) Regulations 2006(1);
- (b) the Seed Potatoes (Wales) (Amendment) Regulations 2008(2);
- (c) the Seed Potatoes (Wales) (Amendment) Regulations 2009(3);
- (d) the Seed Potatoes (Wales) (Amendment) Regulations 2010(4).

(1) O.S. 2006/2929 (Cy. 264) a ddiwygiwyd gan O.S. 2008/1063 (Cy. 112), 2009/2980 (Cy. 259) a 2010/1796 (Cy. 172).

(2) O.S. 2008/1063 (Cy. 112).

(3) O.S. 2009/2980 (Cy. 259).

(4) O.S. 2010/1796 (Cy. 172).

(1) S.I. 2006/2929 (W. 264) amended by S.I. 2008/1063 (W. 112), 2009/2980 (W. 259) and 2010/1796 (W. 172).

(2) S.I. 2008/1063 (W. 112).

(3) S.I. 2009/2980 (W. 259).

(4) S.I. 2010/1796 (W. 172).

Diwygiad atodol

26. Yn rheoliad 2(1) o'r Rheoliadau Rhestrau Cenedlaethol, yn y diffiniad o "the Seeds Marketing Regulations", yn is-baragraff (b)(vi), yn lle "Seed Potatoes (Wales) Regulations 2006" rhodder "Seed Potatoes (Wales) Regulations 2015".

Y Dirprwy Weinidog Ffermio a Bwyd, o dan awdurdod y Gweinidog Cyfoeth Naturiol, un o Weinidogion Cymru
2 Chwefror 2016

Supplementary amendment

26. In regulation 2(1) of the National Lists Regulations, in the definition of "the Seeds Marketing Regulations", in sub-paragraph (b)(vi), for "Seed Potatoes (Wales) Regulations 2006", substitute "Seed Potatoes (Wales) Regulations 2016".

Rebecca Evans

Deputy Minister for Farming and Food, under the authority of the Minister for Natural Resources, one of the Welsh Ministers
2 February 2016

ATODLEN 1 Rheoliad 2(1)

Tystysgrifau cnwd sy'n tyfu

RHAN 1

Cyffredinol

1. Pan gaiff gais i ardstyio unrhyw datws hadyd, rhaid i swyddog awdurdodedig—

- (a) dyrannu i'r person sy'n gwneud y cais rif sydd i'w alw'n "rhif adnabod y cynhyrchydd" (pan na fo un eisoes yn bod ar gyfer y person hwnnw);
- (b) ar ôl archwiliad swyddogol, penderfynu yn unol â'r Atodlen hon ac Atodlen 4 ym mha categorïau a graddau y mae modd marchnata'r tatws hadyd; ac
- (c) yn ddarostyngedig i baragraffau 3 i 11, dyroddi tystysgrif cnwd sy'n tyfu yn unol â pharagraff 2.

2.—(1) Rhaid i dystysgrif cnwd sy'n tyfu ddatgan—

- (a) enw a chyfeiriad y ceisydd;
- (b) y categorïau a'r graddau y penderfynodd y swyddog awdurdodedig fod modd marchnata'r tatws hadyd ynddynt yn unol â pharagraff 1(b);
- (c) enw'r uned amaethyddol y tyfwyd y cnwd arno;
- (d) rhif adnabod y cynhyrchydd;
- (e) y dyddiad pan gafodd y cnwd sy'n tyfu ei arolygu;
- (f) amrywogaeth y tatws hadyd;
- (g) ardal y tatws hadyd; ac
- (h) lleoliad y cae lle tyfwyd y tatws hadyd.

(2) Yn is-baragraff (1), mae i "uned amaethyddol" yr ystyr a roddir i'r ymadrodd "agricultural unit" yn adran 109(2) o Ddeddf Amaeth 1947(1).

3. Ni chaniateir dyroddi tystysgrif cnwd sy'n tyfu ond pan fo swyddog awdurdodedig wedi ei fodloni, o ran y tatws hadyd a archwiliwyd gan y swyddog hwnnw—

- (a) bod y tatws hadyd o amrywogaeth o rywogaeth o datws sydd wedi ei gofnodi mewn Rhestr Genedlaethol neu yn y Catalog Cyffredin;

SCHEDULE 1 Regulation 2(1)

Growing crop certificates

PART 1

General

1. On receipt of an application for certification of any seed potatoes, an authorised officer must—

- (a) allocate to the person making the application a number to be known as the "producer's identification number" (where one does not already exist for that person);
- (b) following an official examination, determine in accordance with this Schedule and Schedule 4 the categories and grades at which the seed potatoes are capable of being marketed; and
- (c) subject to paragraphs 3 to 11, issue a growing crop certificate in accordance with paragraph 2.

2.—(1) A growing crop certificate must state—

- (a) the name and address of the applicant;
- (b) the categories and grades at which the authorised officer has determined the seed potatoes are capable of being marketed in accordance with paragraph 1(b);
- (c) the name of the agricultural unit on which the crop was grown;
- (d) the producer's identification number;
- (e) the date on which the growing crop was inspected;
- (f) the variety of the seed potatoes;
- (g) the area of the seed potatoes; and
- (h) the location of the field on which the seed potatoes were grown.

(2) In sub-paragraph (1), "agricultural unit" ("*uned amaethyddol*") has the meaning assigned to that expression in section 109(2) of the Agriculture Act 1947(1).

3. A growing crop certificate may only be issued where an authorised officer is satisfied, in relation to the seed potatoes examined by that officer, that—

- (a) the seed potatoes are of a variety of potato species entered in a National List or the Common Catalogue;

(1) 1947 p. 48.

(1) 1947 c. 48.

- (b) bod y tatws hadyd mewn unrhyw un cnwd o un amrywogaeth;
- (c) bod y tatws hadyd wedi eu cymryd o gnwd sy'n iach o'r clefydau neu'r plâu a ganlyn—
- (i) Clefyd y Ddafaden (*Synchytrium endobioticum* (Schilb) Perc);
- (ii) Llyngyr Tatws (rhywogaeth *Globodera* sy'n heintio tatws);
- (iii) Pydredd Cylch (*Clavibacter michiganensis* (Smith) Davis et al ssp *Sepedonicus* (Spieck & Kotth) Davis et al);
- (iv) Pydredd Coch (*Ralstonia solanacearum* (Smith) Yabuuchi et al);
- (v) Firoid y Gloronen Bigfain;
- (vi) Chwilen Golorado (*Leptinotarsa decemlineata* (Say)); ac
- (vii) Llyngyr y Gloronen (*Ditylenchus destructor* (Thorne));
- (d) nad yw'r tir y mae'r tatws hadyd yn tyfu arno neu lle y tyfwyd hwy yn dir a ddynodwyd o dan Atodlen 14 i Orchymyn Iechyd Planhigion (Cymru) 2006(1) fel tir a halogwyd gan Glefyd y Ddafaden (*Synchytrium endobioticum* (Schilb) Perc) neu o fewn parth diogelwch a ddynodwyd o dan y Gorchymyn hwnnw;
- (e) nad yw neu na fu bylchu'n eithafol yn unman yn y cnwd o'r tatws hadyd sy'n tyfu;
- (f) na chafodd y cnwd sy'n tyfu ei chwynnu'n ormodol; ac
- (g) y cymerwyd pob cam rhesymol mewn hwsmonaeth yn effeithiol er mwyn atal clefydau a phlâu rhag digwydd, datblygu nac ymledu.
- (b) the seed potatoes in any one crop are of a single variety;
- (c) the seed potatoes are taken from a crop which is free from the following diseases or pests—
- (i) Wart Disease (*Synchytrium endobioticum* (Schilb) Perc);
- (ii) Potato Cyst Nematode (*Globodera* species infesting potatoes);
- (iii) Ring Rot (*Clavibacter michiganensis* (Smith) Davis et al ssp *Sepedonicus* (Spieck & Kotth) Davis et al);
- (iv) Brown Rot (*Ralstonia solanacearum* (Smith) Yabuuchi et al);
- (v) Potato Spindle Tuber Viroid;
- (vi) Colorado Beetle (*Leptinotarsa decemlineata* (Say)); and
- (vii) Potato Tuber Eelworm (*Ditylenchus destructor* (Thorne));
- (d) the land on which the seed potatoes are growing or were grown is not land which is demarcated under Schedule 14 to the Plant Health (Wales) Order 2006(1) as contaminated with Wart Disease (*Synchytrium endobioticum* (Schilb) Perc) or is within a safety zone demarcated under that Order;
- (e) blanking in any of the growing crop of the seed potatoes is not or was not excessive;
- (f) the growing crop has not been over-rogued; and
- (g) all reasonable husbandry practices for the prevention of the occurrence, development or spread of diseases and pests have been effectively carried out.

RHAN 2

Tatws hadyd cyn-sylfaenol

4.—(1) Ni chaniateir dyroddi tystysgrif cnwd sy'n tyfu sy'n cynnwys datganiad bod modd marchnata tatws hadyd fel tatws hadyd cyn-sylfaenol o unrhyw radd oni bai bod y swyddog awdurdodedig wedi ei fodloni bod y tir y mae'r tatws hadyd yn tyfu arno neu y tyfwyd hwy arno—

PART 2

Pre-basic seed potatoes

4.—(1) No growing crop certificate may be issued containing a statement that seed potatoes are capable of being marketed as pre-basic seed potatoes of any grade unless the authorised officer is satisfied that the land on which the seed potatoes are growing or were grown—

(1) O.S. 2006/1643 (Cy. 158), a ddiwygiwyd gan O.S. 2010/1795 (Cy. 171); mae offerynnau diwygio eraill ond nid oes yr un ohonynt yn berthnasol.

(1) S.I. 2006/1643 (W. 158), amended by S.I. 2010/1795 (W. 171); there are other amending instruments but none is relevant.

- (a) yn dir y canfyddwyd, o ganlyniad i brawf pridd a gynhaliwyd gan Weinidogion Cymru cyn plannu'r cnwd, nad yw wedi ei halogi â'r Llyngyr Tatws (rhywogaeth *Globodera* sy'n heintio tatws);
- (b) yn dir nad yw wedi ei ddynodi o dan Atodlen 15 i Orchymyn Iechyd Planhigion (Cymru) 2006 fel tir sydd wedi ei heintio â phoblogaeth Ewropeaidd o'r Llyngyr Tatws; ac
- (c) yn dir nad yw wedi ei ddefnyddio ar gyfer tyfu tatws ar unrhyw adeg yn ystod y saith mlynedd yn union cyn plannu'r cnwd.

(2) Ond nid yw is-baragraff (1)(a) yn gymwys yn achos tatws hadyd a dyfir mewn cyfrwng di-bridd.

5. Ni chaniateir dyroddi tystysgrif cnwd sy'n tyfu sy'n cynnwys datganiad bod modd marchnata tatws hadyd fel tatws hadyd cyn-sylfaenol gradd PBTC yr Undeb oni bai bod y swyddog awdurdodedig wedi ei fodloni nad yw'r cnwd olynol nesaf a gynhyrchir allan o'r tatws hadyd yn debygol o gynnwys—

- (a) planhigion o amrywogaeth wahanol; neu
- (b) planhigion sydd wedi eu heffeithio gan firws cymedrol neu ddifrifol.

6. Ni chaniateir dyroddi tystysgrif cnwd sy'n tyfu sy'n cynnwys datganiad bod modd marchnata tatws hadyd fel tatws hadyd cyn-sylfaenol gradd PB yr Undeb oni bai bod y swyddog awdurdodedig wedi ei fodloni nad yw'r cnwd olynol nesaf a gynhyrchir allan o'r tatws hadyd yn debygol o gynnwys—

- (a) mwy na 0.01% yn ôl rhif y planhigion sy'n tyfu sy'n amrywio o'u hamrywogaeth a'u math neu sy'n amrywogaeth wahanol; neu
- (b) mwy na 0.5% yn ôl rhif y planhigion sy'n tyfu sy'n arddangos symptomau o heintiau firws pan fo'r symptomau hynny i'w priodoli i haint yn y cnwd tarddiol.

RHAN 3

Tatws hadyd sylfaenol

7.—(1) Ni chaniateir dyroddi tystysgrif cnwd sy'n tyfu sy'n cynnwys datganiad bod modd marchnata tatws hadyd fel tatws hadyd sylfaenol o unrhyw radd oni bai bod y swyddog awdurdodedig wedi ei fodloni bod y tir y mae'r tatws hadyd yn tyfu arno neu y tyfwyd hwy arno—

- (a) yn dir y canfyddwyd, o ganlyniad i brawf pridd a gynhaliwyd gan Weinidogion Cymru cyn plannu'r cnwd, nad yw wedi ei halogi â'r Llyngyr Tatws (rhywogaeth *Globodera* sy'n heintio tatws);

- (a) is land which, as a result of a soil test carried out by the Welsh Ministers prior to the planting of the crop, has been found not to be contaminated with Potato Cyst Nematode (*Globodera* species infesting potatoes);
- (b) is not demarcated under Schedule 15 to the Plant Health (Wales) Order 2006 as infested with a European population of Potato Cyst Nematode; and
- (c) has not been used for growing potatoes at any time during the seven years immediately preceding the planting of the crop.

(2) But sub-paragraph (1)(a) does not apply in the case of seed potatoes grown in a soil-free medium.

5. No growing crop certificate may be issued containing a statement that seed potatoes are capable of being marketed as pre-basic seed potatoes of Union grade PBTC unless the authorised officer is satisfied that the immediately succeeding crop produced from the seed potatoes is not likely to contain—

- (a) plants of a different variety; or
- (b) plants affected by mild or severe virus.

6. No growing crop certificate may be issued containing a statement that seed potatoes are capable of being marketed as pre-basic seed potatoes of Union grade PB unless the authorised officer is satisfied that the immediately succeeding crop produced from the seed potatoes is not likely to contain—

- (a) more than 0.01% by number of growing plants which deviate from variety and type or are a different variety; or
- (b) more than 0.5% by number of growing plants which show symptoms of virus diseases where those symptoms are attributable to infection in the mother crop.

PART 3

Basic seed potatoes

7.—(1) No growing crop certificate may be issued containing a statement that seed potatoes are capable of being marketed as basic seed potatoes of any grade unless the authorised officer is satisfied that the land on which the seed potatoes are growing or were grown—

- (a) is land which, as a result of a soil test carried out by the Welsh Ministers prior to the planting of the crop, has been found not to be contaminated with Potato Cyst Nematode (*Globodera* species infesting potatoes);

- (b) yn dir nad yw wedi ei ddynodi o dan Atodlen 15 i Orchymyn Iechyd Planhigion (Cymru) 2006 fel tir sydd wedi ei heintio â phoblogaeth Ewropeaidd o'r Llyngyr Tatws; ac
- (c) yn dir nad yw wedi ei ddefnyddio ar gyfer tyfu tatws ar unrhyw adeg yn ystod y pum mlynedd yn union cyn plannu'r cnwd.

(2) Ond nid yw is-baragraff (1)(a) yn gymwys yn achos tatws hadyd a dyfir mewn cyfrwng di-bridd.

8. Ni chaniateir dyroddi tystysgrif cnwd sy'n tyfu sy'n cynnwys datganiad bod modd marchnata tatws hadyd fel tatws hadyd sylfaenol o unrhyw radd oni bai bod y swyddog awdurdodedig wedi ei fodloni na fydd y cnwd olynol nesaf a gynhyrchir allan o'r tatws hadyd yn debygol o gynnwys—

- (a) mwy na 0.25% yn ôl rhif y planhigion sy'n tyfu nad ydynt yn epilio yn driw i'w hamrywogaeth neu sy'n amrywogaeth wahanol; ac
- (b) yn achos—
 - (i) gradd S, dim mwy nag 1%,
 - (ii) gradd SE, dim mwy na 2%, a
 - (iii) gradd E, dim mwy na 4%,
 yn ôl rhif y planhigion sy'n tyfu sy'n dangos symptomau o heintiau firws sy'n gyffredin yn Ewrop pan fo'r symptomau hynny i'w priodoli i haint yn y cnwd tarddiol.

RHAN 4

Tatws hadyd ardystiedig

9.—(1) Ni chaniateir dyroddi tystysgrif cnwd sy'n tyfu sy'n cynnwys datganiad bod modd marchnata tatws hadyd fel tatws hadyd ardystiedig oni bai bod y swyddog awdurdodedig wedi ei fodloni bod y tir y mae'r tatws hadyd yn tyfu arno neu y tyfwyd hwy arno—

- (a) yn dir y canfyddwyd, o ganlyniad i brawf pridd a gynhaliwyd gan Weinidogion Cymru cyn plannu'r cnwd, nad yw wedi ei halogi â'r Llyngyr Tatws (rhywogaeth *Globodera* sy'n heintio tatws);
- (b) yn dir nad yw wedi ei ddynodi o dan Atodlen 15 i Orchymyn Iechyd Planhigion (Cymru) 2006 fel tir sydd wedi ei heintio â phoblogaeth Ewropeaidd o'r Llyngyr Tatws; ac
- (c) yn dir nad yw wedi ei ddefnyddio ar gyfer tyfu tatws ar unrhyw adeg yn ystod y pedair blynedd yn union cyn plannu'r cnwd.

- (b) is not demarcated under Schedule 15 to the Plant Health (Wales) Order 2006 as infested with a European population of Potato Cyst Nematode; and
- (c) has not been used for growing potatoes at any time during the five years immediately preceding the planting of the crop.

(2) But sub-paragraph (1)(a) does not apply in the case of seed potatoes grown in a soil-free medium.

8. No growing crop certificate may be issued containing a statement that seed potatoes are capable of being marketed as basic seed potatoes of any grade unless the authorised officer is satisfied that the immediately succeeding crop produced from the seed potatoes is not likely to contain—

- (a) more than 0.25% by number of growing plants which do not breed true to variety or are a different variety; and
- (b) in the case of—
 - (i) Union grade S, not more than 1%,
 - (ii) Union grade SE, not more than 2%, and
 - (iii) Union grade E, not more than 4%,
 by number of growing plants which show symptoms of virus diseases prevalent in Europe where those symptoms are attributable to infection in the mother crop.

PART 4

Certified seed potatoes

9.—(1) No growing crop certificate may be issued containing a statement that seed potatoes are capable of being marketed as certified seed potatoes unless the authorised officer is satisfied that the land on which the seed potatoes are growing or were grown—

- (a) is land which, as a result of a soil test carried out by the Welsh Ministers prior to the planting of the crop, has been found not to be contaminated with Potato Cyst Nematode (*Globodera* species infesting potatoes);
- (b) is not demarcated under Schedule 15 to the Plant Health (Wales) Order 2006 as infested with a European population of Potato Cyst Nematode; and
- (c) has not been used for growing potatoes at any time during the four years immediately preceding the planting of the crop.

(2) Ond nid yw is-baragraff (1)(a) yn gymwys yn achos tatws hadyd a dyfir mewn cyfrwng di-bridd.

10. Ni chaniateir dyroddi tystysgrif cnwd sy'n tyfu sy'n cynnwys datganiad bod modd marchnata tatws hadyd fel tatws hadyd ardystiedig oni bai bod y swyddog awdurdodedig wedi'i fodloni bod y cnwd olynol nesaf a gynhyrchir allan o'r tatws hadyd yn debygol o gynnwys—

(a) yn achos—

(i) gradd A yr Undeb, dim mwy na 0.5%, a

(ii) gradd B yr Undeb, dim mwy na 0.5%,

yn ôl rhif y planhigion sy'n tyfu nad ydynt yn epilio yn driw i'w hamrywogaeth neu sy'n amrywogaeth wahanol; a

(b) yn achos—

(i) gradd A yr Undeb, dim mwy nag 8%, a

(ii) gradd B yr Undeb, dim mwy na 10%,

yn ôl rhif y planhigion sy'n tyfu sy'n dangos symptomau o heintiau firws difrifol sy'n gyffredin yn Ewrop pan fo'r symptomau hynny i'w priodoli i haint yn y cnwd tarddiol.

(2) But sub-paragraph (1)(a) does not apply in the case of seed potatoes grown in a soil-free medium.

10. No growing crop certificate may be issued containing a statement that seed potatoes are capable of being marketed as certified seed potatoes unless the authorised officer is satisfied that the immediately succeeding crop produced from the seed potatoes is likely to contain—

(a) in the case of—

(i) Union grade A, not more than 0.5%, and

(ii) Union grade B, not more than 0.5%,

by number of growing plants which do not breed true to variety or are a different variety; and

(b) in the case of—

(i) Union grade A, not more than 8%, and

(ii) Union grade B, not more than 10%,

by number of growing plants which show symptoms of severe virus diseases prevalent in Europe where those symptoms are attributable to infection in the mother crop.

ATODLEN 2 Rheoliad 2(1)

Labeli swyddogol a dogfennau swyddogol

RHAN 1

Labeli swyddogol

1. Rhaid i label swyddogol a ddefnyddir mewn perthynas â thatws hadyd cyn-sylfaenol fod wedi ei liwio'n wyn gyda llinell goreslinol fioled.

2. Rhaid i label swyddogol a ddefnyddir mewn perthynas â thatws hadyd sylfaenol fod wedi ei liwio'n wyn.

3. Rhaid i label swyddogol a ddefnyddir mewn perthynas â thatws hadyd ardystiedig fod wedi ei liwio'n las.

4. Rhaid i label swyddogol a ddefnyddir mewn perthynas â thatws hadyd sydd i'w profi a'u treialu fod wedi ei liwio'n oren.

5. Rhaid i label swyddogol fesur dim llai na 110 o filimetrau x 67 o filimetrau.

6. Rhaid i label swyddogol ar gyfer tatws hadyd cyn-sylfaenol, mewn perthynas â'r tatws hadyd y mae'n ymwneud â hwy, ddatgan y manylion a ganlyn—

SCHEDULE 2 Regulation 2(1)

Official labels and official documents

PART 1

Official labels

1. An official label used in relation to pre-basic seed potatoes must be coloured white with a diagonal violet line.

2. An official label used in relation to basic seed potatoes must be coloured white.

3. An official label used in relation to certified seed potatoes must be coloured blue.

4. An official label used in relation to test and trial seed potatoes must be coloured orange.

5. An official label must measure not less than 110 millimetres x 67 millimetres.

6. An official label for pre-basic seed potatoes must, in relation to the seed potatoes to which it relates, state the following particulars—

- (a) yr Awdurdod Ardystio a'r Aelod-wladwriaeth neu eu byrfoddau neilltuol;
- (b) rhif adnabod y cynhyrchydd neu rif cyfeirnod y lot;
- (c) mis a blwyddyn ei selio;
- (d) y rhywogaeth, wedi ei ddangos o leiaf yn yr wyddor Rufeinig, o dan ei enw botanegol, y caniateir ei roi mewn ffurf dalfyredig a heb enwau'r awduron, neu o dan ei enw cyffredin, neu'r ddau;
- (e) yr amrywogaeth, wedi ei ddangos o leiaf yn yr wyddor Rufeinig;
- (f) y radd; ac
- (g) y disgrifiad "pre-basic seed potatoes".

7. Rhaid i label swyddogol ar gyfer tatws hadyd sylfaenol neu datws hadyd ardystiedig—

- (a) cynnwys y datganiad "EU Rules and Standards"; a
- (b) mewn perthynas â'r tatws hadyd y mae'n ymwneud â hwy, ddatgan y manylion a ganlyn—
 - (i) yr Awdurdod Ardystio a'r Aelod-wladwriaeth neu eu byrfoddau neilltuol;
 - (ii) rhif adnabod y cynhyrchydd neu rif cyfeirnod y lot;
 - (iii) mis a blwyddyn ei selio;
 - (iv) yr amrywogaeth, wedi ei ddangos o leiaf yn yr wyddor Rufeinig;
 - (v) y wlad lle'u cynhyrchwyd;
 - (vi) y categori;
 - (vii) y radd;
 - (viii) y maint; ac
 - (ix) y pwysau net.

8. Rhaid i label swyddogol ar gyfer tatws hadyd sydd i'w profi a'u treialu—

- (a) cynnwys y datganiadau "variety not yet officially listed" ac "for tests and trials only"; a
- (b) mewn perthynas â'r tatws hadyd y mae'n ymwneud â hwy, ddatgan y manylion a ganlyn—
 - (i) yr Awdurdod Ardystio a'r Aelod-wladwriaeth neu eu byrfoddau neilltuol;
 - (ii) rhif adnabod y cynhyrchydd neu rif cyfeirnod y lot;
 - (iii) mis a blwyddyn ei selio;
 - (iv) y rhywogaeth;

- (a) the Certification Authority and member State or their distinguishing abbreviations;
- (b) the producer's identification number or a lot reference number;
- (c) the month and year of sealing;
- (d) the species, indicated at least in Roman characters, under its botanical name, which may be given in abridged form and without the authors' names, or under its common name, or both;
- (e) the variety, indicated at least in Roman characters;
- (f) the grade; and
- (g) the description "pre-basic seed potatoes".

7. An official label for basic seed potatoes or certified seed potatoes must—

- (a) contain the statement "EU Rules and Standards"; and
- (b) in relation to the seed potatoes to which it relates, state the following particulars—
 - (i) the Certification Authority and member State or their distinguishing abbreviations;
 - (ii) the producer's identification number or a lot reference number;
 - (iii) the month and year of sealing;
 - (iv) the variety, indicated at least in Roman characters;
 - (v) the country of production;
 - (vi) the category;
 - (vii) the grade;
 - (viii) the size; and
 - (ix) the net weight.

8. An official label for test and trial seed potatoes must—

- (a) contain the statements "variety not yet officially listed" and "for tests and trials only"; and
- (b) in relation to the seed potatoes to which it relates, state the following particulars—
 - (i) the Certification Authority and member State or their distinguishing abbreviations;
 - (ii) the producer's identification number or a lot reference number;
 - (iii) the month and year of sealing;
 - (iv) the species;

- (v) dynodiad yr amrywogaeth y mae'r tatws hadyd i gael eu marchnata oddi tano (y caniateir iddo fod yn gyfeirnod y bridwiwr, y dynodiad arfaethedig neu'r dynodiad a gymeradwywyd);
- (vi) y rhif cyfeirnod mewn cysylltiad â'r cais a gyflwynwyd yn unol â rheoliad 4(1)(a) o'r Rheoliadau Rhestrau Cenedlaethol ar gyfer derbyn yr amrywogaeth o dan sylw ar Restr Genedlaethol;
- (vii) y maint; ac
- (viii) y pwysau net.

9. Yn achos tatws hadyd o amrywogaeth cadwraeth, yn ogystal â gofynion paragraffau 1 i 8, rhaid i label swyddogol gynnwys yr wybodaeth ychwanegol sy'n ofynnol gan Erthygl 18 o Gyfarwyddeb 2008/62/EC.

10. Heb iddo leihau effaith paragraffau 1 i 8, caiff label swyddogol gynnwys unrhyw ddatganiadau pellach—

- (a) sy'n ymwneud â'r cenhedliad maes y mae'r tatws hadyd yn perthyn iddo;
- (b) sy'n ofynnol neu y caniateir eu cynnwys mewn label swyddogol yn unol ag unrhyw ddarpariaeth yn y Rheoliadau hyn neu yng Ngorchymyn Iechyd Planhigion (Cymru) 2006; neu
- (c) sy'n briodol ym marn Gweinidogion Cymru.

11. Os nad yw'r label swyddogol yn dangos y cenhedliad maes, bernir bod tatws hadyd yn perthyn—

- (a) yn achos tatws hadyd cyn-sylfaenol, i'r pedwerydd cenhedliad;
- (b) yn achos tatws hadyd sylfaenol—
 - (i) gradd S yr Undeb, i'r pumed cenhedliad;
 - (ii) gradd SE yr Undeb, i'r chweched cenhedliad;
 - (iii) gradd E yr Undeb, i'r seithfed cenhedliad;
- (c) yn achos tatws hadyd ardstyedig, gradd A yr Undeb neu radd B yr Undeb, i'r nawfed cenhedliad.

RHAN 2

Dogfennau swyddogol

12. Rhaid i ddogfen swyddogol a ddefnyddir mewn perthynas â thatws hadyd cyn-sylfaenol fod wedi ei lliwio'n wyn gyda llinell groeslinol fioled.

- (v) the denomination of the variety under which the seed potatoes are to be marketed (which may be the breeder's reference, the proposed denomination or the approved denomination);
- (vi) the reference number in respect of the application submitted in accordance with regulation 4(1)(a) of the National Lists Regulations for acceptance of the variety concerned on to a National List;
- (vii) the size; and
- (viii) the net weight.

9. In the case of seed potatoes of a conservation variety, in addition to the requirements of paragraphs 1 to 8, an official label must contain the further information required by Article 18 of Directive 2008/62/EC.

10. Without prejudice to paragraphs 1 to 8, an official label may contain such further statements—

- (a) concerning the field generation to which the seed potatoes belong;
- (b) as required or permitted to be included in an official label in accordance with any provision of these Regulations or the Plant Health (Wales) Order 2006; or
- (c) as the Welsh Ministers consider appropriate.

11. Where the field generation is not indicated on the official label, seed potatoes are deemed to belong to—

- (a) in the case of pre-basic seed potatoes, the fourth generation;
- (b) in the case of basic seed potatoes—
 - (i) of Union grade S, the fifth generation;
 - (ii) of Union grade SE, the sixth generation;
 - (iii) of Union grade E, the seventh generation;
- (c) in the case of certified seed potatoes of Union grade A or Union grade B, the ninth generation.

PART 2

Official documents

12. An official document used in relation to pre-basic seed potatoes must be coloured white with a diagonal violet line.

13. Rhaid i ddogfen swyddogol a ddefnyddir mewn perthynas â thatws hadyd sydd i'w profi a'u treialu fod wedi ei lliwio'n oren.

14. Rhaid i ddogfen swyddogol a ddefnyddir mewn perthynas â thatws hadyd sylfaenol fod yn wyn yn bennaf.

15. Rhaid i ddogfen swyddogol a ddefnyddir mewn perthynas â thatws hadyd ardystiedig fod yn las yn bennaf.

16. Rhaid i ddogfen swyddogol, mewn perthynas â'r tatws hadyd y mae'n ymwneud â hwy, ddatgan—

- (a) rhif adnabod y cynhyrchydd neu rif cyfeirnod y lot;
- (b) mis a blwyddyn ei seilio; ac
- (c) y wlad lle'u cynhyrchwyd.

13. An official document used in relation to test and trial seed potatoes must be coloured orange.

14. An official document used in relation to basic seed potatoes must be predominantly white.

15. An official document used in relation to certified seed potatoes must be predominantly blue.

16. An official document must, in relation to the seed potatoes to which it relates, state—

- (a) the producer's identification number or a lot reference number;
- (b) the month and year of sealing; and
- (c) the country of production

RHAN 3

Gofynion Iaith

17. Rhaid i label swyddogol neu ddogfen swyddogol fod yn Saesneg a chânt hefyd fod yn Gymraeg.

18. Yn ogystal â'r testun Saesneg sy'n rhaid ei gynnwys yn sgil paragraff 6(g), rhaid i unrhyw destun Cymraeg sy'n cyfateb ag ef gynnwys y disgrifiad "*tatws hadyd cyn-sylfaenol*".

19. Yn ogystal â'r testun Saesneg sy'n rhaid ei gynnwys yn sgil paragraff 7(a), rhaid i unrhyw destun Cymraeg sy'n cyfateb ag ef gynnwys y datganiad "*Rheolau a Safonau'r UE*".

20. Yn ogystal â'r testun Saesneg sy'n rhaid ei gynnwys yn sgil paragraff 8(a), rhaid i unrhyw destun Cymraeg sy'n cyfateb ag ef gynnwys y datganiad "*amrywogaeth nas rhestrwyd yn swyddogol eto*" ac "*ar gyfer profi a threialu'n unig*".

PART 3

Language requirements

17. An official label or official document must be in English and may also be in Welsh.

18. In addition to the English text that must be included by virtue of paragraph 6(g), any equivalent Welsh text must include the description "*tatws hadyd cyn-sylfaenol*".

19. In addition to the English text that must be included by virtue of paragraph 7(a), any equivalent Welsh text must contain the statement "*Rheolau a Safonau'r UE*";

20. In addition to the English text that must be included by virtue of paragraph 8(a), any equivalent Welsh text must contain the statement "*amrywogaeth nas rhestrwyd yn swyddogol eto*" and "*ar gyfer profi a threialu'n unig*".

Clefydau neu blâu, difrod a diffygion a goddefiannau penodedig

RHAN 1

Tatws hadyd cyn-sylfaenol o radd PBTC yr Undeb a gynhyrchir yng Nghymru

<i>Colofn 1</i>	<i>Colofn 2</i>
<i>Clefydau neu blâu, difrod a diffygion penodedig</i>	<i>Goddefiannau unigol</i>
Grŵp 1	
Clefyd y Ddafaden (<i>Synchytrium endobioticum</i> (Schilb) Perc)	Dim
Llyngyr y Gloronen (<i>Ditylenchus destructor</i> Thorne)	Dim
Llyngyr Tatws (rhywogaeth <i>Globodera</i> sy'n heintio tatws)	Dim
Pydredd Cylch (<i>Clavibacter michiganensis</i> (Smith) Davis et al ssp <i>sepedonicus</i> (Spieck & Koth) Davis et al)	Dim
Pydredd Coch (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Dim
Firoid y Gloronen Bigfain	Dim
Chwilen Golorado (<i>Leptinotarsa decemlineata</i> (Say))	Dim
Grŵp II	
Y Clwy Tatws (<i>Phytophthora infestans</i> (Mont) de Bary)	Dim
Pydredd Du'r Coesyn (<i>Erwinia carotovora</i> (Jones) Bergey et al spp) <i>atroseptica</i> (Hellmers & Dowson) Dye neu <i>Erwinia chrysanthemi</i> Burkholder et al neu'r ddau	Dim
Pydreddau Meddal gan gynnwys: Pydredd yr Archoll Diferol (<i>Pythium ultimum</i> Trow)	Dim
Y Pydredd Pinc (<i>Phytophthora erythroseptica</i> Pethybridge) a Phydredd y Manbant	Dim
Y Pydredd Sych (rhywogaeth <i>Fusarium</i>)	Dim
Y Madredd (rhywogaeth <i>Phoma</i>)	Dim
Cloron a ddifrodwyd gan rew	Dim
Grŵp III	
Brychni'r Croen (<i>Polyscytalum pustulans</i> (Owen & Wakefield) M B Ellis)	Dim
Grŵp IV	
Y Cen Du (<i>Rhizoctonia solani</i> Kuhn)	Dim
Y Crach Cyffredin (rhywogaeth <i>Streptomyces</i>)	Dim
Grŵp V	

Y Crach Llychlyd (<i>Spongospora subterranea</i> (Wallr) Legerh)	Dim
Grŵp VI	
Brychau allanol, gan gynnwys cloron wedi eu niweidio neu gloron ac eithrio cloron afiach â'u siâp heb fod yn nodweddiadol o'r amrywogaeth	Dim
Madredd arwynebol a achosir gan firws tatws Y	Dim
Cloron wedi crebachu oherwydd dadhydradu gormodol neu ddadhydradu a achoswyd gan gen arian (<i>Helminthosporium solani</i>)	Dim
Grŵp VII	
Baw neu sylwedd estronol arall	1.0%

RHAN 2

Tatws hadyd cyn-sylfaenol o radd PB yr Undeb a gynhyrchir yng Nghymru

Colofn 1	Colofn 2	Colofn 3	Colofn 4
<i>Clefydau neu blâu, difrod a diffygion penodedig</i>	<i>Goddef-iannau unigol</i>	<i>Goddef-iannau grŵp</i>	<i>Goddef-iannau grŵp cyfunol</i>
Grŵp I			
Clefyd y Ddafaden (<i>Synchytrium endobioticum</i> (Schilb) Perc)	Dim	–	–
Llyngyr y Gloronen (<i>Ditylenchus destructor</i> (Thorne))	Dim	–	–
Llyngyr Tatws (rhywogaeth <i>Globodera</i> sy'n heintio tatws)	Dim	–	–
Pydredd Cylch (<i>Clavibacter michiganensis</i> (Smith) Davis et al ssp <i>sepedonicus</i> (Spieck & Kotth) Davis et al)	Dim	–	–
Pydredd Coch (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Dim	–	–
Firoid y Gloronen Bigfain	Dim	–	–
Chwilen Golorado (<i>Leptinotarsa decemlineata</i> (Say))	Dim	–	–
Grŵp II			
Y Clwy Tatws (<i>Phytophthora infestans</i> (Mont) de Bary)	0.2%))
Pydredd Du'r Coesyn (<i>Erwinia carotovora</i> (Jones) Bergey et al spp <i>atroseptica</i> (Hellmers & Dowson))	0.2%))
Dye neu <i>Erwinia chrysanthemi</i> Burkholder et al neu'r ddau			
Pydreddau Meddal gan gynnwys: Pydredd yr Archoll Diferol (<i>Pythium ultimum</i> Trow)	0.2%))
Y Pydredd Pinc (<i>Phytophthora erythroseptica</i> Pethybridge) a Phydredd y Manbant	0.2%	) 0.2%)
Y Pydredd Sych (rhywogaeth <i>Fusarium</i>)	0.2%))
Y Madredd (rhywogaeth <i>Phoma</i>)	0.2%))

Cloron a ddifrodwyd gan rew	0.2%))
Grŵp III Brychni'r Croen (<i>Polyscytalum pustulans</i> (Owen & Wakefield)) M B Ellis	0.2%	)	) 6.0%
Grŵp IV Y Cen Du (<i>Rhizoctonia solani</i> Kuhn) Cyn belled ag y bernir bod tatws hadyd sydd ag o leiaf ddau ysmotyn du yn y pen blaguro sy'n gyfan gwbl heb eu heffeithio ac sydd â llai nag un rhan o ddeg o'u harwynebedd wedi ei effeithio heb gael eu heffeithio gan y clefyd	1.0%	) 5.0%)
Y Crach Cyffredin (rhywogaeth <i>Streptomyces</i>) Cyn belled ag y bernir bod tatws hadyd sydd ag o leiaf ddau ysmotyn du yn y pen blaguro sy'n gyfan gwbl heb eu heffeithio ac sydd â llai nag un rhan o dair o'u harwynebedd wedi ei effeithio heb gael eu heffeithio gan y clefyd	5.0%))
Grŵp V Y Crach Llychlyd (<i>Spongospora subterranea</i> (Wallr) Legerh) Cyn belled ag y bernir bod tatws hadyd sydd ag o leiaf ddau ysmotyn du yn y pen blaguro sy'n gyfan gwbl heb eu heffeithio ac sydd â llai nag un rhan o ddeg o'u harwynebedd wedi ei effeithio heb gael eu heffeithio gan y clefyd	1.0%))
Grŵp VI Brychau allanol gan gynnwys cloron wedi eu niweidio neu gloron ac eithrio cloron wedi eu heintio â'u siâp heb fod yn nodweddiadol o'r rhywogaeth	3.0%)	–
Madredd arwynebol a achosir gan firws tatws Y Cloron wedi crebachu oherwydd dadhydradu gormodol neu ddadhydradu a achoswyd gan gen arian (<i>Helminthosporium solani</i>)	Dim 0.5%	) 3.0%)	– –
Grŵp VII Baw neu sylwedd estronol arall	1.0%	–	–

RHAN 3

Tatws hadyd sylfaenol a thatws hadyd ardystiedig a gynhyrchir yng Nghymru

Colofn 1 <i>Clefydau neu blâu, difrod a diffygion penodedig</i>	Colofn 2 <i>Goddef-iannau unigol</i>	Colofn 3 <i>Goddef-iannau grŵp</i>	Colofn 4 <i>Goddef-iannau grŵp cyfunol</i>
Grŵp I Clefyd y Ddafaden (<i>Synchytrium endobioticum</i> (Schilb) Perc)	Dim	–	–
Llyngyr y Gloronen (<i>Ditylenchus destructor</i> Thorne)	Dim	–	–
Llyngyr Tatws (rhywogaeth <i>Globodera</i> sy'n heintio tatws)	Dim	–	–
Pydredd Cylch (<i>Clavibacter michiganensis</i> (Smith) Davis et al ssp <i>sepedonicus</i> (Spieck & Kotth) Davis)	Dim	–	–

et al)			
Pydredd Coch (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Dim	–	–
Firoid y Gloronen Bigfain	Dim	–	–
Chwilen Golorado (<i>Leptinotarsa decemlineata</i> (Say))	Dim	–	–
Grŵp II			
Y Clwy Tatws (<i>Phytophthora infestans</i> (Mont) de Bary)	0.5%))
Pydredd Du'r Coesyn (<i>Erwinia carotovora</i> (Jones) Bergey et al spp) <i>atroseptica</i> (Hellmers & Dowson)	0.5%))
Dye neu <i>Erwinia chrysanthemi</i> Burkholder et al neu'r ddau			
Pydreddau Meddal gan gynnwys Pydredd yr Archoll Diferol (<i>Pythium ultimum</i> Trow)	0.5%	) 0.5%)
Y Pydredd Pinc (<i>Phytophthora erythroseptica</i> Pethybridge) a Phydredd y Manbant	0.5%))
Y Pydredd Sych (rhywogaeth <i>Fusarium</i>)	0.5%))
Y Madredd (rhywogaeth <i>Phoma</i>)	0.5%))
Cloron a ddifrodwyd gan rew	0.5%))
Unrhyw un o'r diffygion Grŵp II hyn sy'n ymddangos fel symptom pydredd gwlyb	0.2%))
Grŵp III			
Brychni'r Croen (<i>Polyscytalum pustulans</i> (Owen & Wakefield) M B Ellis)	0.5% ac eithrio gradd E yr Undeb, gradd A yr Undeb a gradd B yr Undeb; 2.0% ar gyfer gradd E yr Undeb, gradd A yr Undeb a gradd B yr Undeb yn unig))
Y Crach Llychlyd (<i>Spongospora subterranea</i> (Wallr) Legerh)	3.0%	) 5.0%	) 6.0% ar gyfer tatws hadyd sylfaenol ac 8.0% ar gyfer tatws hadyd ardystiedig
Cyn belled ag y bernir bod tatws hadyd sydd ag o leiaf ddau ysmotyn du yn y pen blaguro sy'n gyfan gwbl heb eu heffeithio ac sydd â llai nag un rhan o ddeg o'u harwynebedd wedi ei effeithio heb gael eu heffeithio gan y clefyd (ac eithrio pan fo'r crach llychlyd yn ei ffurf ganseraidd)			
Grŵp IV			
Y Cen Du (<i>Rhizoctonia solani</i> Kuhn)	5.0%))
Cyn belled ag y bernir bod tatws hadyd sydd ag o leiaf ddau ysmotyn du yn y pen blaguro sy'n gyfan gwbl heb eu heffeithio ac sydd â llai nag un rhan o ddeg o'u harwynebedd wedi ei effeithio heb gael eu heffeithio gan y clefyd			
Y Crach Cyffredin (rhywogaeth <i>Streptomyces</i>)	5.0%))

Cyn belled ag y bernir bod tatws hadyd sydd ag o leiaf ddau ysmotyn du yn y pen blaguro sy'n gyfan gwbl heb eu heffeithio ac sydd â llai nag un rhan o dair o'u harwynebedd wedi ei effeithio heb gael eu heffeithio gan y clefyd			
Grŵp V			
Brychau allanol gan gynnwys cloron wedi eu niweidio neu gloron ac eithrio cloron afiach â'u siâp heb fod yn nodweddiadol o'r rhywogaeth	3.0%)	–
Cloron wedi crebachu oherwydd dadhydradu gormodol neu ddadhydradu a achoswyd gan gen arian (<i>Helminthosporium solani</i>)	1.0%	) 3.0%	–
Madredd arwynebol a achosir gan fathau o firws tatws Y	0.1%)	–
Grŵp VI			
Baw neu sylwedd estronol arall	1.0%	–	–

RHAN 4

Tatws hadyd sydd i'w profi a'u treialu

<i>Clefydau neu plâu, difrod a diffygion penodedig</i>	<i>Goddef- iannau unigol</i>	<i>Goddef- iannau cyfunol</i>
Llyngyr y Gloronen (<i>Ditylenchus destructor</i> (Thorne))	Dim	–
Llyngyr Tatws (rhywogaeth <i>Globodera</i> sy'n heintio tatws)	Dim	–
Pydredd Cylch (<i>Clavibacter michiganensis</i> (Smith) Davis et al ssp. <i>sepedonicus</i> (Spieck & Kotth) Davis et al)	Dim	–
Pydredd Coch (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Dim	–
Firoid y Gloronen Bigfain	Dim	–
Chwilen Golorado (<i>Leptinotarsa decemlineata</i> (Say))	Dim	–
Clefyd y Ddafaden (<i>Synchytrium endobioticum</i> (Schilb) Perc)	Dim	–
Llyngyr Tatws (rhywogaeth <i>Globodera</i> sy'n heintio tatws)	Dim	–
Pydredd Cylch (<i>Clavibacter michiganensis</i> (Smith) Davis et al ssp. <i>sepedonicus</i> (Spieck & Kotth) Davis et al)	Dim	–
Pydredd Coch (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Dim	–
Baw neu sylwedd estronol arall	2.0%	–
Pydredd sych a phydredd gwlyb, ac eithrio os achosir hwy gan <i>Synchytrium endobioticum</i> , <i>Clavibacter michiganensis</i> (Smith) Davis et al ssp. <i>Sepedonicus</i> (Spieck & Kotth) Davis et al) neu <i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	1.0%)
Brychau allanol gan gynnwys cloron wedi eu niweidio neu gloron ac eithrio cloron afiach â'u siâp heb fod yn nodweddiadol o'r rhywogaeth	3.0%	) 6.0%
Y Crach Cyffredin: cloron yr effeithiwyd arnynt dros fwy na thraean o'u harwynebedd	5.0%)
<p>(1) Mae'r clefydau, plâu, difrod a'r diffygion sydd i'w hagraegu ar gyfer goddefiant grŵp, goddefiant grŵp cyfunol neu oddefiant cyfunol perthnasol yn cael eu dynodi gan “)”.</p> <p>(2) Mae'r clefydau, plâu, difrod a'r diffygion na ddylid eu hagraegu ar gyfer goddefiant grŵp, goddefiant grŵp cyfunol neu oddefiant cyfunol perthnasol yn cael eu dynodi gan “-”.</p> <p>(3) Mae llinellau llorweddol o fewn colofn yn dynodi rychwant goddefiant grŵp, goddefiant grŵp cyfunol neu oddefiant cyfunol perthnasol.</p>		

Graddio tatws hadyd

RHAN 1

Tatws hadyd y mae modd eu marchnata fel tatws hadyd cyn-sylfaenol

Wrth wneud penderfyniad at ddibenion paragraff 1(b) o Atodlen 1, pan fo swyddog awdurdodedig yn penderfynu bod modd marchnata tatws hadyd fel tatws hadyd cyn-sylfaenol, caiff y swyddog hwnnw eu graddio fel tatws hadyd o unrhyw un o raddau'r Undeb a bennir yng ngholofn 1 o Dabl 1 pan fo'r swyddog hwnnw wedi ei fodloni yn sgil arolygiad bod y gofynion a bennir yng ngholofn 2 o ran y radd honno wedi eu bodloni ac nad aed dros y goddefiannau a bennir yng ngholofn 3 mewn cysylltiad â'r tatws hadyd hynny.

Tabl 1

Colofn 1	Colofn 2	Colofn 3
Gradd Undeb PBTC	yr Gofynion	Goddefiannau
	(1) Rhaid i'r tatws hadyd—	Dim
	(a) bod yn deillio o stoc cenedlrol neu gloron a brofwyd—	
	(i) sy'n rhydd o <i>Pectobacterium</i> spp., <i>Dickeya</i> spp., firysau tatws A, M, S, X, Y, crychni'r dail, firws tatws top mop, firws trwst tybaco a marwoldeb gwythiennol tybaco neu unrhyw firws arall o bwys; a	
	(ii) a gyflenwyd gan ffynhonnell sy'n dderbyniol gan Weinidogion Cymru, ac a dyfwyd ar uned lle nad oes deunydd o rywogaeth <i>Solanaceae</i> na deunydd arall, ac eithrio deunydd sy'n deillio o stoc cenedlrol neu o gloron sydd wedi eu profi sy'n dod o ffynhonnell sy'n dderbyniol gan Weinidogion Cymru, wedi cael ei dyfu;	
	(b) bod wedi eu cadw rhag—	
	(i) firysau tatws A, M, S, X, Y, crychni'r dail, firws tatws top mop, firws trwst tybaco a marwoldeb gwythiennol tybaco neu unrhyw firws arall o bwys;	
	(ii) ysgub y gwrrachod a phydredd du'r coesyn;	
	(iii) gwyriadau mewn amrywogaeth a math; a	
	(iv) sgrwff yn y pridd;	
	(c) wedi eu cynhyrchu (yn achos planhigion a chloron) drwy ficro-luosogi mewn	

cyfleuster gwarchoddedig ac mewn cyfrwng tyfu sy'n rhydd rhag plâu; a

(d) (yn achos cloron) nad ydynt wedi eu lluosu y tu hwnt i'r cenhedliad cyntaf.

PB

(1) Rhaid i'r tatws hadyd fod yn deillio —

(a) o stoc cenhedloll neu gloron a brofwyd—

(i) a gyflenwyd gan ffynhonnell sy'n dderbyniol gan Weinidogion Cymru, ac a dyfwyd ar uned lle nad oes deunydd o rywogaeth *Solanaceae* na deunydd arall, ac eithrio deunydd sy'n deillio o stoc cenhedloll neu o gloron sydd wedi eu profi sy'n dod o ffynhonnell sy'n dderbyniol gan Weinidogion Cymru, wedi cael ei dyfu; ac

(i) Pydredd du'r coesyn – dim

(ii) sy'n rhydd o *Pectobacterium* spp., *Dickeya* spp., firysau tatws A, M, S, X, Y, crychni'r dail, firws tatws top mop, firws trwst tybaco a marwoldeb gwythiennol tybaco neu unrhyw firws arall o bwys; neu

(ii) yn amrywio o'u math neu o amrywogaeth wahanol, gan gynnwys sgrwff yn y pridd 0.01%

(b) o stoc a gafodd ei raddio fel gradd PB yr Undeb o genhedliad maes blaenorol yn y flwyddyn cyn plannu'r cnwd; neu

(iii) Firysau tatws Y, A a chrychni'r dail - dim

(c) unrhyw datws hadyd eraill yr hysbysodd Gweinidogion Cymru mewn ysgrifen eu bod yn dderbyniol gan Weinidogion Cymru Cymru.

(iv) Firysau amryliw eraill 0.1%

(2) Rhaid i'r tatws hadyd fod wedi eu cadw rhag—

(i) firysau tatws A, M, S, X, Y, crychni'r dail, firws tatws top mop, firws trwst tybaco a marwoldeb gwythiennol tybaco neu unrhyw firws arall o bwys;

(ii) ysgub y gwyrachod a phydredd du'r coesyn;

(iii) gwyriadau mewn amrywogaeth a math;

(iv) sgrwff yn y pridd;

(v) planhigion o amrywogaeth wahanol.

(3) Pedwar yw uchafswm y cenedliadau maes.

RHAN 2

Tatws hadyd y mae modd eu marchnata fel tatws hadyd sylfaenol

Wrth wneud penderfyniad at ddibenion paragraff 1(b) o Atodlen 1, pan fo swyddog awdurdodedig yn penderfynu bod modd marchnata tatws hadyd fel tatws hadyd sylfaenol, caiff y swyddog hwnnw eu graddio fel tatws hadyd o unrhyw un o raddau'r Undeb a bennir yng ngholofn 1 o Dabl 2 pan fo'r swyddog hwnnw wedi ei fodloni yn sgil arolygiad bod y gofynion a bennir yng ngholofn

2 o ran y radd honno wedi eu bodloni ac nad aed dros y goddefiannau a bennir yng ngholofn 3 mewn cysylltiad â'r tatws hadyd hynny.

Tabl 2

<i>Colofn 1</i>	<i>Colofn 2</i>	<i>Colofn 3</i>
<i>Gradd Undeb</i>	<i>yr Gofynion</i>	<i>Goddefiannau</i>
S	<p>(1) Rhaid i'r tatws hadyd fod wedi deillio—</p> <p>(a) o stoc o datws hadyd cyn-sylfaenol neu stoc a raddiwyd yn radd S yr Undeb o bedwar neu lai cenhedliad maes yn y flwyddyn cyn plannu'r cnwd; neu</p> <p>(b) o unrhyw datws hadyd eraill yr hysbysodd Gweinidogion Cymru mewn ysgrifen eu bod yn dderbyniol gan Weinidogion Cymru.</p> <p>(2) Pump yw uchafswm y cenedliadau maes, gan gynnwys cenedliadau blaenorol o radd gyn-sylfaenol.</p>	<p>(i) Gwyrriadau mewn amrywogaeth a math neu amrywogaeth gwahanol gan gynnwys sgrwff yn y pridd - 0.1%</p> <p>(ii) Firysau tatws Y, A a chrychni'r dail naill ai'n unigol neu ar y cyd - 0.02%</p> <p>(iii) Cyfanswm firysau gan gynnwys firysau amryliw eraill a firysau tatws Y, A a chrychni'r dail - 0.2%</p> <p>(iv) Pydredd du'r coesyn - 0.1%</p>
SE	<p>(1) Rhaid i'r tatws hadyd fod wedi deillio—</p> <p>(a) o stoc o datws hadyd cyn-sylfaenol neu stoc a raddiwyd yn radd S yr Undeb neu'n radd SE yr Undeb o bump neu lai cenhedliad maes yn y flwyddyn cyn plannu'r cnwd; neu</p> <p>(b) o unrhyw datws hadyd eraill yr hysbysodd Gweinidogion Cymru mewn ysgrifen eu bod yn dderbyniol gan Weinidogion Cymru.</p> <p>(2) Chwech yw uchafswm y cenedliadau maes, gan gynnwys cenedliadau blaenorol o ddsbarth cyn-sylfaenol neu ddsbarth sylfaenol.</p>	<p>(i) Amrywiad mewn amrywogaeth a math neu amrywogaeth wahanol, gan gynnwys sgrwff yn y pridd - 0.1%</p> <p>(ii) Firysau tatws Y, A a chrychni'r dail naill ai'n unigol neu ar y cyd - 0.1%</p> <p>(iii) Cyfanswm firysau gan gynnwys firysau amryliw eraill a firysau tatws Y, A a chrychni'r dail - 0.5%</p> <p>(iv) Pydredd du'r coesyn - 0.5%</p>
E	<p>(1) Rhaid i'r tatws hadyd fod wedi deillio—</p> <p>(a) o stoc o datws hadyd cyn-sylfaenol neu stoc a raddiwyd yn radd S yr Undeb, gradd SE yr Undeb neu radd E yr Undeb yn y flwyddyn cyn plannu'r cnwd; neu</p> <p>(b) o stoc o datws hadyd cyn-sylfaenol neu o</p>	<p>(i) Amrywiadau mewn amrywogaeth a math neu amrywogaeth wahanol, gan gynnwys sgrwff yn y pridd - 0.1%</p> <p>(ii) Firysau tatws Y, A a</p>

stoc a raddiwyd yn radd S yr Undeb, gradd SE yr Undeb neu radd E yr Undeb o chwe chenhedliad maes neu lai yn y flwyddyn cyn plannu'r cnwd; neu
(c) o unrhyw datws hadyd eraill yr hysbysodd Gweinidogion Cymru mewn ysgrifen eu bod yn dderbyniol gan Weinidogion Cymru.

chrychni'r dail naill ai'n unigol neu ar y cyd -) 0.4%

(2) Saith yw uchafswm y cenedliadau maes, gan gynnwys cenedliadau blaenorol o radd gyn-sylfaenol neu radd sylfaenol.

(iii) Cyfanswm firysau gan gynnwys firysau amryliw eraill a firysau tatws Y, A a chrychni'r dail - 0.8%
(iv) Pydredd du'r coesyn - 1.0%

RHAN 3

Tatws hadyd y mae modd eu marchnata fel tatws hadyd ardystiedig

Wrth wneud penderfyniad at ddibenion paragraff 1(b) o Atodlen 1, pan fo swyddog awdurdodedig yn penderfynu bod modd marchnata tatws hadyd fel tatws hadyd ardystiedig, caiff y swyddog hwnnw eu graddio fel tatws hadyd o unrhyw un o'r graddau a bennir yng ngholofn 1 o Dabl 3 pan fo'r swyddog hwnnw wedi ei fodloni yn sgil arolygiad bod y gofynion a bennir yng ngholofn 2 o ran y radd honno wedi eu bodloni ac nad aed dros y goddefiannau a bennir yng ngholofn 3 mewn cysylltiad â'r tatws hadyd hynny.

Tabl 3

<i>Colofn 1</i>	<i>Colofn 2</i>	<i>Colofn 3</i>
<i>Gradd Undeb</i>	<i>yr Gofynion</i>	<i>Goddefiannau</i>
A	Rhaid i'r tatws hadyd fod wedi eu cynhyrchu— (a) yn uniongyrchol o datws hadyd cyn-sylfaenol, tatws hadyd sylfaenol neu datws hadyd ardystiedig a raddiwyd yn radd A yr Undeb cenhedliad maes wyth; neu (b) o gnwd a dyfwyd gydag awdurdod Gweinidogion Cymru neu mewn amgylchiadau y rhoddodd Gweinidogion Cymru hysbysiad ysgrifenedig eu bod yn dderbyniol ganddynt.	(i) Firysau tatws Y, A a chrychni'r dail naill ai'n unigol neu ar y cyd - 2.0% (ii) Firysau eraill - 2.0% (iii) Cyfuniad o firysau tatws Y, A a chrychni'r dail a firysau eraill - 2.0% (iv) Pydredd du'r coesyn - 2.0% (v) Amrywiadau mewn amrywogaeth a math neu amrywogaeth wahanol, gan gynnwys sgrwff yn y pridd - 0.2%
B	Rhaid i'r tatws hadyd fod wedi eu cynhyrchu— (a) yn uniongyrchol o datws hadyd cyn-sylfaenol, tatws hadyd sylfaenol neu datws	(i) Firysau tatws Y, A a chrychni'r dail naill ai'n

hadyd ardystiedig a raddiwyd yn radd A yr Undeb cenhedliad maes wyth neu datws hadyd ardystiedig a raddiwyd yn radd B yr Undeb cenhedliad maes wyth; neu

(b) o gnwd a dyfwyd gydag awdurdod Gweinidogion Cymru neu mewn amgylchiadau y rhoddodd Gweinidogion Cymru hysbysiad ysgrifenedig eu bod yn dderbyniol ganddynt.

unigol neu ar y cyd - 6.0%

(ii) Firysau eraill - 6.0%

(iii) Cyfuniad o firysau tatws Y, A a chrychni'r dail a firysau eraill - 6.0%

(iv) Pydredd du'r coesyn - 4.0%

(v) Amrywiadau mewn amrywogaeth a math neu amrywogaeth wahanol, gan gynnwys sgrwff yn y pridd - 0.5%

SCHEDULE 3

Regulation 2(3)

Specified diseases or pests, damage and defects and tolerances

PART 1

Pre-basic seed potatoes of Union grade PBTC produced in Wales

<i>Column 1</i>	<i>Column 2</i>
<i>Specified diseases or pests, damage and defects</i>	<i>Individual tolerances</i>
Group 1	
Wart Disease (<i>Synchytrium endobioticum</i> (Schilb) Perc)	Nil
Potato Tuber Eelworm (<i>Ditylenchus destructor</i> Thorne)	Nil
Potato Cyst Nematode (<i>Globodera</i> species infesting potatoes)	Nil
Ring Rot (<i>Clavibacter michiganensis</i> (Smith) Davis et al spp sepedonicus (Spieck & Kotth) Davis et al)	Nil
Brown Rot (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Nil
Potato Spindle Tuber Viroid	Nil
Colorado Beetle (<i>Lepinotarsa decemlineata</i> (Say))	Nil
Group II	
Blight (<i>Phytophthora infestans</i>) (Mont) de Bary)	Nil
Blackleg (<i>Erwinia carotovora</i> (Jones) Bergey et al spp <i>atroseptica</i> (Hellmers & Dowson) Dye or <i>Erwinia chrysanthemi</i> Burkholder et al or both	Nil
Soft Rots including: Watery Wound Rot (<i>Pythium ultimum</i> Trow)	Nil
Pink Rot (<i>Phytophthora erythroseptica</i> Pethybridge) and Pit Rot	Nil
Dry Rot (<i>Fusarium</i> species)	Nil
Gangrene (<i>Phoma</i> species)	Nil
Frost damaged tubers	Nil
Group III	
Skin spot (<i>Polyscytalum pustulans</i> (Owen & Wakefield) M B Ellis	Nil
Group IV	
Black Scurf (<i>Rhizoctonia solani</i> Kuhn)	Nil
Common Scab (<i>Streptomyces</i> species)	Nil
Group V	
Powdery scab (<i>Spongospora subterranea</i> (Wallr) Legerh)	Nil
Group VI	
External blemishes, including damaged	Nil

tubers or tubers other than diseased tubers whose shape is atypical for the variety	
Superficial necrosis caused by potato virus Y	Nil
Shrivelled tubers due to excessive dehydration or dehydration caused by silver scurf (<i>Helminthosporium solani</i>)	Nil
Group VII	
Dirt or other extraneous matter	1.0%

PART 2

Pre-basic seed potatoes of Union grade PB produced in Wales

Column 1	Column 2	Column 3	Column 4
Specified diseases or pests, damage and defects	Individual tolerances	Group tolerances	Collective group tolerances
Group I			
Wart Disease (<i>Synchytrium endobioticum</i> (Schilb) Perc)	Nil	–	–
Potato Tuber Eelworm (<i>Ditylenchus destructor</i> Thorne)	Nil	–	–
Potato Cyst Nematode (<i>Globodera</i> species infesting potatoes)	Nil	–	–
Ring Rot (<i>Clavibacter michiganensis</i> (Smith) Davis et al spp <i>sepedonicus</i> (Spieck & Kotth) Davis et al)	Nil	–	–
Brown Rot (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Nil	–	–
Potato Spindle Tuber Viroid	Nil	–	–
Colorado Beetle (<i>Lepinotarsa decemlineata</i> (Say))	Nil	–	–
Group II			
Blight (<i>Phytophthora infestans</i> (Mont) de Bary)	0.2%))
Blackleg (<i>Erwinia carotovora</i> (Jones) Bergey et al spp) <i>atroseptica</i> (Hellmers & Dowson) Dye or <i>Erwinia chrysanthemi</i> Burkholder et al or both	0.2%))
Soft Rots including: Watery Wound Rot (<i>Pythium ultimum</i> Trow)	0.2%))
Pink Rot (<i>Phytophthora erythroseptica</i> Pethybridge) and Pit Rot	0.2%	) 0.2%)
Dry Rot (<i>Fusarium</i> species)	0.2%))
Gangrene (<i>Phoma</i> species)	0.2%))
Frost damaged tubers	0.2%))
Group III			
Skin spot (<i>Polyscytalum pustulans</i> (Owen & Wakefield)) M B Ellis	0.2%	)	) 6.0%
Group IV			
Black Scurf (<i>Rhizoctonia solani</i> Kuhn) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-tenth of whose surface area has been affected are deemed to be unaffected by the disease	1.0%	) 5.0%)

Common Scab (<i>Streptomyces</i> species) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-third of whose surface area has been affected are deemed to be unaffected by the disease	5.0%))
Group V Powdery scab (<i>Spongospora subterranea</i> (Wallr) Legerh) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-tenth of whose surface area has been affected are deemed to be unaffected by the disease	1.0%))
Group VI External blemishes including damaged tubers or tubers other than diseased tubers whose shape is atypical for the variety Superficial necrosis caused by potato virus Y Shrivelled tubers due to excessive dehydration or dehydration caused by silver scurf (<i>Helminthosporium solani</i>)	3.0% Nil 0.5%	) ) 3.0%)	– – –
Group VII Dirt or other extraneous matter	1.0%	–	–

PART 3

Basic seed potatoes and certified seed potatoes produced in Wales

<i>Column 1</i> <i>Specified diseases or pests, damage and defects</i>	<i>Column 2</i> <i>Individual tolerances</i>	<i>Column 3</i> <i>Group tolerances</i>	<i>Column 4</i> <i>Collective group tolerances</i>
Group I Wart Disease (<i>Synchytrium endobioticum</i> (Schilb) Perc) Potato Tuber Eelworm (<i>Ditylenchus destructor</i> Thorne) Potato Cyst Nematode (<i>Globodera</i> species infesting potatoes) Ring Rot (<i>Clavibacter michiganensis</i> (Smith) Davis et al spp <i>sepedonicus</i> (Spieck & Kotth) Davis et al) Brown Rot (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al) Potato Spindle Tuber Viroid Colorado Beetle (<i>Lepinotarsa decemlineata</i> (Say))	Nil Nil Nil Nil Nil Nil Nil	– – – – – – –	– – – – – – –
Group II Blight (<i>Phytophthora infestans</i> (Mont) de Bary) Blackleg (<i>Erwinia carotovora</i> (Jones) Bergey et al spp) <i>atroseptica</i> (Hellmers & Dowson) Dye or <i>Erwinia chrysanthemi</i> Burkholder et al or both Soft Rots including Watery Wound Rot (<i>Pythium ultimum</i> Trow) Pink Rot (<i>Phytophthora erythroseptica</i> Pethybridge) and Pit Rot Dry Rot (<i>Fusarium</i> species)	0.5% 0.5% 0.5% 0.5% 0.5%	) ) ) 0.5%)))))))

Gangrene (<i>Phoma</i> species)	0.5%))
Frost damaged tubers	0.5%))
Any of these Group II defects that present as a wet rot symptom	0.2%))
Group III Skin spot (<i>Polyscytalum pustulans</i> (Owen & Wakefield) M B Ellis)	0.5% except Union grade E, Union grade A and Union grade B grades; 2.0% for Union grade E, Union grade A and Union grade B grades only))
Powdery scab (<i>Spongospora subterranea</i> (Wallr) Legerh) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-tenth of whose surface area has been affected are deemed to be unaffected by the disease (except where powdery scab takes its cankerous form)	3.0%	) 5.0%	6.0% for basic seed potatoes and 8.0% for certified seed potatoes
Group IV Black Scurf (<i>Rhizoctonia solani</i> Kuhn) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-tenth of whose surface area has been affected are deemed to be unaffected by the disease	5.0%))
Common Scab (<i>Streptomyces</i> species) Provided that seed potatoes which have at least two eyes at the rose end that are wholly unaffected and less than one-third of whose surface area has been affected are deemed to be unaffected by the disease	5.0%))
Group V External blemishes including damaged tubers or tubers other than diseased tubers whose shape is atypical for the variety	3.0%)	–
Shrivelled tubers due to excessive dehydration or dehydration caused by silver scurf (<i>Helminthosporium solani</i>)	1.0%	) 3.0%	–
Superficial necrosis caused by strains of potato virus Y	0.1%)	–
Group VI Dirt or other extraneous matter	1.0%	–	–

PART 4

Test and trial seed potatoes

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Specified diseases or pests, damage and defects</i>	<i>Individual tolerances</i>	<i>Collective tolerances</i>
Potato Tuber Eelworm (<i>Ditylenchus destructor</i> Thorne)	Nil	–
Potato Cyst Nematode (<i>Globodera</i> species infesting potatoes)	Nil	–
Ring Rot (<i>Clavibacter michiganensis</i> (Smith) Davis et al spp. <i>sepedonicus</i> (Spieck & Koth) Davis et al)	Nil	–
Brown Rot (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Nil	–
Potato Spindle Tuber Viroid	Nil	–
Colorado Beetle (<i>Lepinotarsa decemlineata</i> (Say))	Nil	–
Wart Disease (<i>Synchytrium endobioticum</i> (Schilb) Perc)	Nil	–
Potato Cyst Nematode (<i>Globodera</i> species infesting potatoes)	Nil	–
Ring Rot (<i>Clavibacter michiganensis</i> (Smith) Davis et al spp <i>sepedonicus</i> (Spieck & Koth) Davis et al)	Nil	–
Brown Rot (<i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	Nil	–
Earth or other extraneous matter	2.0%	–
Dry and wet rot, except if caused by <i>Synchytrium endobioticum</i> , <i>Clavibacter michiganensis</i> (Smith) Davis et al ssp <i>Sepedonicus</i> (Spieck & Koth) Davis et al) or <i>Ralstonia solanacearum</i> (Smith) Yabuuchi et al)	1.0%)
External blemishes including damaged tubers or tubers other than diseased tubers whose shape is atypical for the variety	3.0%	) 6.0%
Common Scab: tubers affected over more than one-third of their surface	5.0%)

⁽¹⁾ The diseases, pests, damages and defects that are to be aggregated for a relevant group tolerance; collective group tolerance or collective tolerance are indicated by “)”.

⁽²⁾ The diseases, pests, damages and defects that should not be aggregated for a relevant group tolerance; collective group tolerance or collective tolerance are indicated by “–”.

⁽³⁾ Horizontal lines within a column indicate the extent of a relevant group tolerance; collective group tolerance or collective tolerance.

SCHEDULE 4

Regulation 2(3)

Grading of seed potatoes

PART 1

Seed potatoes capable of being marketed as pre-basic seed potatoes

In the course of making a determination for the purposes of paragraph 1(b) of Schedule 1, where an authorised officer determines that seed potatoes are capable of being marketed as pre-basic seed potatoes, that officer may grade them as being seed potatoes of any of the Union grades specified in column 1 of Table 1 where that officer is satisfied following inspection that the requirements specified in column 2 in relation to that grade have been met and that the tolerances specified in column 3 have not been exceeded in respect of those seed potatoes.

Table 1

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Union Grade</i>	<i>Requirements</i>	<i>Tolerances</i>
PBTC	<p>(1) The seed potatoes must—</p> <p>(a) be derived from nuclear stock or tested tubers—</p> <p>(i) that are free from <i>Pectobacterium</i> spp., <i>Dickeya</i> spp., potato viruses A, M, S X, Y, leaf roll, potato mop top virus, tobacco rattle virus and tobacco venial necrosis or any other significant virus; and</p> <p>(ii) supplied by a source acceptable to the Welsh Ministers, which have been grown on a unit where no material of the species <i>Solanaceae</i> or other material, other than that derived from nuclear stock or tested tubers from a source acceptable to the Welsh Ministers, has been grown;</p> <p>(b) have been kept free from—</p> <p>(i) potato viruses A, M, S, X, Y, leaf roll, potato mop top virus, tobacco rattle virus and tobacco veinal necrosis or any other significant virus;</p> <p>(ii) witches' broom and backleg;</p> <p>(iii) deviations of variety and type; and</p> <p>(iv) groundkeepers;</p> <p>(c) have been produced (in the case of plants and tubers) through micro-propagation in a protected facility and in a growing medium that is free from pests; and</p> <p>(d) (in the case of tubers) not been multiplied beyond the first generation.</p>	Nil
PB	<p>(1) The seed potatoes must be derived from—</p> <p>(a) nuclear stock or tested tubers—</p> <p>(i) supplied by a source acceptable to the Welsh Ministers, which have been grown on a unit where no material of the species <i>Solanaceae</i> or other material, other than that derived from nuclear stock or tested tubers from a source acceptable to the Welsh Ministers, has been grown; and</p> <p>(ii) that are free from <i>Pectobacterium</i> spp., <i>Dickeya</i> spp., potato viruses A, M, S X, Y, leaf roll, potato mop top virus, tobacco rattle virus and tobacco venial necrosis or any other significant virus; or</p> <p>(b) a stock graded as Union grade PB of a previous field generation in the year preceding the planting of the crop; or</p> <p>(c) such other seed potatoes as are notified in writing by the Welsh Ministers as being acceptable to the Welsh Ministers;</p> <p>(2) The seed potatoes must have been kept free from—</p> <p>(i) potato viruses A, M, S, X, Y, leaf roll, potato mop top virus, tobacco rattle virus and tobacco veinal necrosis or any other significant virus;</p> <p>(ii) witches' broom and blackleg;</p>	<p>(i) Blackleg - nil</p> <p>(ii) Not true to type or of a different variety, including groundkeepers 0.01%</p> <p>(iii) Potato viruses Y, A and leaf roll - nil</p> <p>(iv) Other mosaic viruses 0.1%</p>

- (iii) deviations of variety and type;
 - (iv) groundkeepers;
 - (v) plants of a different variety.
- (3) The maximum number of field generations is four

PART 2

Seed potatoes capable of being marketed as basic seed potatoes

In the course of making a determination for the purposes of paragraph 1(b) of Schedule 1, where an authorised officer determines that seed potatoes are capable of being marketed as basic seed potatoes, that officer may grade them as being seed potatoes of any of the Union grades specified in column 1 of Table 2 where that officer is satisfied following inspection that the requirements specified in column 2 in relation to that grade have been met and that the tolerances specified in column 3 have not been exceeded in respect of those seed potatoes.

Table 2

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Union grade</i> S	<i>Requirements</i> (1) The seed potatoes must be derived from— (a) a stock of pre-basic seed potatoes or a stock which was graded as Union grade S of field generation four or less in the year preceding the planting of the crop; or (b) such other seed potatoes as are notified in writing by the Welsh Ministers as being acceptable to the Welsh Ministers (2) The maximum number of field generations, including previous generations at pre-basic grade, is five.	<i>Tolerances</i> (i) Deviations from variety and type or different variety, including groundkeepers - 0.1% (ii) Potato viruses Y, A and leaf roll either individually or in combination - 0.02% (iii) Total virus including other mosaic viruses and potato viruses Y, A and leaf roll – 0.2% (iv) Blackleg – 0.1%
SE	(1) The seed potatoes must be derived from— (a) a stock of pre-basic seed potatoes or a stock which was graded Union grade S or Union grade SE field generation five or less in the year preceding the planting of the crop; or (b) such other seed potatoes as are notified in writing by the Welsh Ministers as being acceptable to the Welsh Ministers (2) The maximum field generations, including previous generations at pre-basic or basic grade, is six.	(i) Deviations from variety and type or different variety, including groundkeepers - 0.1% (ii) Potato viruses Y, A and leaf roll either individually or in combination - 0.1% (iii) total virus including other mosaic viruses and potato viruses Y, A and leaf roll – 0.5% (iv) Blackleg – 0.5%

E	<p>(1) The seed potatoes must be derived from—</p> <p>(a) a stock of pre-basic seed potatoes or a stock which was graded as Union grade S or Union grade SE in the year preceding the planting of the crop;</p> <p>(b) a stock of pre-basic seed potatoes or a stock which was graded as Union grade S, Union grade SE or Union grade E field generation six or less in the year preceding the planting of the crop; or</p> <p>(c) such other seed potatoes as are notified in writing by the Welsh Ministers as being acceptable to the Welsh Ministers.</p> <p>(2) The maximum field generations, including previous generations at pre-basic or basic grade, is seven.</p>	<p>(i) Deviations from variety and type or different variety, including groundkeepers - 0.1%</p> <p>(ii) Potato viruses Y, A and leaf roll either individually or in combination - 0.4%</p> <p>(iii) Total virus including other mosaic viruses and potato viruses Y, A and leaf roll - 0.8%</p> <p>(iv) Blackleg – 1.0%</p>
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PART 3

Seed potatoes capable of being marketed as certified seed potatoes

In the course of making a determination for the purposes of paragraph 1(b) of Schedule 1, where an authorised officer determines that seed potatoes are capable of being marketed as certified seed potatoes, that officer may grade them as seed potatoes of any of the grades specified in column 1 of Table 3 where that officer is satisfied following inspection that the requirements specified in column 2 in relation to that grade have been met and that the tolerances specified in column 3 have not been exceeded in respect of those seed potatoes.

Table 3

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<p><i>Union grade</i></p> <p>A</p>	<p>The seed potatoes must be produced—</p> <p>(a) directly from pre-basic seed potatoes, basic seed potatoes or certified seed potatoes that have been graded Union grade A field generation eight; or</p> <p>(b) from a crop grown with the authority of or in circumstances notified in writing by the Welsh Ministers as being acceptable to the Welsh Ministers.</p>	<p><i>Tolerances</i></p> <p>(i) Potato viruses Y, A and leaf roll either individually or in combination – 2.0%</p> <p>(ii) Other viruses - 2.0%</p> <p>(iii) Combination of potato viruses Y, A and leaf roll and other viruses - 2.0%</p> <p>(iv) Blackleg - 2.0%</p> <p>(v) Deviations from variety and type or different variety, including groundkeepers - 0.2%</p>
<p>B</p>	<p>The seed potatoes must be produced—</p> <p>(a) directly from pre-basic seed potatoes, basic seed potatoes, certified seed potatoes that have</p>	<p>(i) Potato viruses Y, A and leaf roll either individually or in</p>

been graded Union grade A field generation eight or certified seed potatoes that have been graded Union grade B field generation eight; or
(b) from a crop grown with the authority of or in circumstances notified in writing by the Welsh Ministers as being acceptable to the Welsh Ministers.

combination - 6.0%

(ii) Other viruses - 6.0%

(iii) Combination of potato viruses Y, A and leaf roll and other viruses - 6.0%

(iv) Blackleg - 4.0%

(v) Deviations from variety and type or different variety, including groundkeepers - 0.5%

Awdurdodiad i farchnata tatws hadyd at ddibenion profi a threialu

1. Pan geir cais am awdurdodiad a wnaed yn unol â rheoliad 9, rhaid i swyddog awdurdodedig—

- (a) dyrannu i'r person sy'n gwneud y cais rif sydd i'w alw'n "rhif adnabod y cynhyrchydd" (pan na fo un eisoes yn bod ar gyfer person hwnnw);
- (b) cynnal archwiliad swyddogol o'r tatws hadyd er mwyn penderfynu a yw gofynion yr Atodlen hon a Rhan 4 o Atodlen 3 wedi eu bodloni; ac
- (c) yn ddarostyngedig i baragraff 3 a rheoliad 9, dyroddi awdurdodiad i farchnata tatws hadyd at ddibenion profi a threialu.

2. Rhaid i awdurdodiad ddatgan—

- (a) enw a chyfeiriad y ceisydd;
- (b) rhif adnabod y cynhyrchydd;
- (c) swm y tatws hadyd y rhoddir awdurdod i'w marchnata;
- (d) y cyfnod yr awdurdodir marchnata;
- (e) dyddiad dyroddi'r awdurdodiad; ac
- (f) enw arfaethedig amrywogaeth y tatws hadyd.

3. Ni chaiff swyddog awdurdodedig ddyroddi awdurdodiad onid yw wedi ei fodloni—

- (a) bod y tatws hadyd o amrywogaeth y gwnaed cais ar ei chyfer o dan reoliad 4(1)(a) o'r Rheoliadau Rhestrau Cenedlaethol ar gyfer derbyn yr amrywogaeth o dan sylw ar Restr Genedlaethol ac nad yw'r cais wedi ei dynnu'n ôl na'i benderfynu'n derfynol;
- (b) nad yw'r tir y mae'r tatws hadyd yn tyfu arno neu lle tyfwyd hwy yn dir a ddynodwyd o dan Atodlen 14 i Orchymyn Iechyd Planhigion (Cymru) 2006(1) fel tir a halogwyd gan Glefyd y Ddafaden (*Synchytrium endobioticum* (Schilb) Perc) neu o fewn parth diogelwch a ddynodwyd o dan y Gorchymyn hwnnw;

(1) O.S. 2006/1643 (Cy. 158), a ddiwygiwyd gan O.S. 2010/1795 (Cy. 171); mae offerynnau diwygio eraill ond nid oes yr un ohonynt yn berthnasol.

Authorisation for marketing seed potatoes for test and trial purposes

1. On receipt of an application for authorisation made in accordance with regulation 9, an authorised officer must—

- (a) allocate to the person making the application a number to be known as the "producer's identification number" (where one does not already exist for that person);
- (b) conduct an official examination of the seed potatoes in order to determine whether the requirements of this Schedule and Part 4 of Schedule 3 have been met; and
- (c) subject to paragraph 3 and regulation 9, issue an authorisation to market seed potatoes for test and trial purposes.

2. An authorisation must state—

- (a) the name and address of the applicant;
- (b) the producer's identification number;
- (c) the amount of seed potatoes for which marketing is authorised;
- (d) the period for which marketing is authorised;
- (e) the date on which the authorisation was issued; and
- (f) the proposed name of the variety of the seed potatoes.

3. No authorisation is to be issued by an authorised officer unless that officer is satisfied that—

- (a) the seed potatoes are of a variety for which an application has been made under regulation 4(1)(a) of the National Lists Regulations for acceptance of the variety concerned on to a National List and that application has not been withdrawn or finally determined;
- (b) the land on which the seed potatoes are growing or were grown is not land which is demarcated under Schedule 14 to the Plant Health (Wales) Order 2006(1) as contaminated with Wart Disease (*Synchytrium endobioticum* (Schilb) Perc) or is within a safety zone demarcated under that Order;

(1) S.I. 2006/1643 (W. 158), amended by S.I. 2010/1795 (W. 171); there are other amending instruments but none is relevant.

- (c) bod y tir y mae'r tatws hadyd yn tyfu arno neu lle tyfwyd hwy yn dir nad yw wedi ei halogi gan rywogaeth *Globodera* sy'n heintio tatws;
- (d) bod y tatws hadyd wedi eu cymryd o gnwd o datws hadyd sy'n rhydd rhag rhywogaeth *Globodera* sy'n heintio tatws, *Synchytrium endobioticum* (Schilb) Perc, *Clavibacter michiganensis* (Smith) Davis et al ssp *Sepedonicus* (Spieck & Kotth) Davis et al) a *Ralstonia solanacearum* (Smith) Yabuuchi et al);
- (e) nad yw nifer y planhigion sy'n tyfu yr effeithir arnynt gan bydredd du'r coesyn yn fwy na 4%;
- (f) bod y cnwd olynol nesaf a gynhyrchir o'r tatws hadyd, ym marn y swyddog awdurdodedig, yn debygol o gynnwys—
- (i) dim mwy na 0.5% yn ôl rhif o blanhigion sy'n tyfu nad ydynt yn epilio yn driw i'w hamrywogaeth a dim mwy na 0.2% yn ôl rhif o blanhigion sy'n tyfu sydd o amrywogaeth wahanol; a
- (ii) dim mwy na 10% yn ôl rhif o blanhigion sy'n tyfu sy'n dangos symptomau, ac eithrio symptomau ysgafn, o glefydau firws difrifol sy'n gyffredin yn Ewrop (mae heintiau amryliw ysgafn sy'n peri bod deilen yn arddangos gwahanol liwiau ond nad yw'n peri anffurfio'r ddeilen i gael eu hanwybyddu); ac
- (g) bod canfyddiad wedi ei wneud nad yw'r tatws hadyd wedi eu heffeithio gan unrhyw un o'r goddefiannau ar gyfer clefydau neu blâu, difrod na diffygion a bennir yn Rhan 4 o Atodlen 3.
- (c) the land on which the seed potatoes are growing or were grown is land which is not contaminated by *Globodera* species infesting potatoes;
- (d) the seed potatoes are taken from a crop of seed potatoes free from *Globodera* species infesting potatoes, *Synchytrium endobioticum* (Schilb) Perc, *Clavibacter michiganensis* (Smith) Davis et al ssp *Sepedonicus* (Spieck & Kotth) Davis et al) and *Ralstonia solanacearum* (Smith) Yabuuchi et al);
- (e) the number of growing plants affected by blackleg does not exceed 4%;
- (f) the immediately succeeding crop produced from the seed potatoes is, in the opinion of the authorised officer, likely to contain—
- (i) not more than 0.5% by number of growing plants which do not breed true to variety and not more than 0.2% by number of growing plants which are of a different variety; and
- (ii) not more than 10% by number of growing plants which show symptoms, other than slight symptoms, of severe virus diseases prevalent in Europe (light mosaics causing discoloration and not leaf deformation are to be ignored); and
- (g) the seed potatoes are ascertained not to be affected by any of the tolerances for diseases or pests, damage or defects specified in Part 4 of Schedule 3.

ATODLEN 6 Rheoliad 16

Gwybodaeth o ran tatws hadyd o fwy na 2 gilogram a gynhyrchir mewn gwlad ac eithrio Aelod-wladwriaeth

- Rhywogaeth.
- Amrywogaeth.
- Categori.
- Gwlad lle cynhyrchir a'r Awdurdod Ardystio.
- Gwlad anfon.
- Mewnforiwr.
- Swm y tatws hadyd.

SCHEDULE 6 Regulation 16

Information in respect of seed potatoes of more than 2 kilograms produced in a country other than a member State

- Species.
- Variety.
- Category.
- Country of production and Certification Authority.
- Country of dispatch.
- Importer.
- Quantity of seed potatoes.

Manylion i'w pennu ar nodyn gwerthiant
etc.

- Enw a chyfeiriad y gwerthwr.
- Pwysau net (ac eithrio tatws hadyd cyn-sylfaenol).
- Rhywogaeth (ac eithrio tatws hadyd sylfaenol a thatws hadyd ardystiedig).
- Amrywogaeth.
- Categori.
- Gradd (fel y bo'n briodol).
- Maint (ac eithrio tatws hadyd cyn-sylfaenol).
- Rhif adnabod y cynhyrchydd neu (ac eithrio ar gyfer tatws hadyd a gynhyrchir yng Nghymru) rif cyfeirnod lot yr had.
- Manylion unrhyw driniaeth gemegol.

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Particulars to be specified in a sale note
etc.

- Name and address of the seller.
- Net weight (except pre-basic seed potatoes).
- Species (except basic seed potatoes and certified seed potatoes).
- Variety.
- Category.
- Grade (as appropriate).
- Size (except pre-basic seed potatoes).
- Producer's identification number or (except for seed potatoes produced in Wales) seed lot reference number.
- Particulars of any chemical treatment.

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Agenda Item 5.3

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 Government 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

We accept that additional detail in the guidance may be helpful and will consider this further. In the meantime, we hope that the regulations and explanatory documents alongside a high profile communications exercise means that travellers are informed as to when the isolation requirements must be followed.

Legal Advisers

Legislation, Justice and Constitution Committee

8 September 2020



Agenda Item 6.1

SL(5)613 – Modification of Curriculum Requirements in Wales Notice 2020

Background and Purpose

Paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020 contains a list of education enactments that can be modified by the Welsh Ministers. Paragraph 7(6) also sets out the extent of the modifications that can be made.

The Welsh Ministers can trigger the modifications set out in paragraph 7(6) by giving a notice. A notice must state why the Welsh Ministers consider that issuing the notice is an appropriate and proportionate action to deal with the coronavirus pandemic.

A notice under paragraph 7(6) cannot have effect for more than one month – this Notice lasts for one month, starting on 1 September 2020.

Examples of the modifications triggered by this Notice:

Act	Enactment	Modification
School Standards and Framework Act 1998	Section 69 (duty to secure due provision of religious education)	Any duty imposed on a local authority, governing body or head teacher under section 69(1) is to be treated as discharged if they have used reasonable endeavours to discharge the duty.
Education Act 1997	Section 43 (provision of careers education in schools)	Any duty imposed on a local authority, governing body, head teacher or teacher under section 43(3) is to be treated as discharged if they have used reasonable endeavours to discharge the duty.
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.
Education Act 2002	Section 108 and the National Curriculum (Key Stage 2 Assessment Arrangements) (Wales) Order 2004 and the	Any duty imposed on head teachers by these two orders made under section 108 is to be treated as discharged if they used



	National Curriculum (Key Stage 3 Assessment Arrangements) (Wales) Order 2005 made under section 108 (arrangements for pupils to be assessed)	reasonable endeavours to discharge the duty.
--	-------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------

Procedure

No procedure.

Scrutiny under Standing Order 21.7

We note:

1. the significance of this Notice;
2. the kinds of statutory duties that are being modified by this Notice as a result of the coronavirus pandemic;
3. the reasons given by the Minister for Education in paragraph 3 of the Notice for issuing the Notice, including the conclusion in paragraph 3(4) that:

"...the application of the duties described in [the Notice], in their unmodified form, would place unrealistic demands on maintained schools, maintained nursery schools and other funded nursery education providers; would harm their ability to respond flexibly and effectively to the challenges arising as a result of coronavirus and its effects; and would be likely to have a detrimental impact on children."

Implications arising from exiting the European Union

None.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

16 September 2020



2020 No. (WG20-46)

CORONAVIRUS ACT 2020

**Modification of Curriculum
Requirements in Wales Notice 2020**

The Welsh Ministers, in exercise of the powers conferred by section 38(1) of, and paragraph 7 of Schedule 17 to, the Coronavirus Act 2020⁽¹⁾, issue the following notice.

Modification of curriculum requirements

1. The following enactments are modified, for the period specified in paragraph 2, in the manner described in the table in paragraph 7(6) of Schedule 17 to the Coronavirus Act 2020—

- (a) section 69 of the School Standards and Framework Act 1998⁽²⁾ (duty to secure due provision of religious education);
- (b) section 43 of the Education Act 1997⁽³⁾ (provision of careers education in schools in Wales);
- (c) section 101 of the Education Act 2002⁽⁴⁾ (basic curriculum for maintained schools in Wales);
- (d) section 108 of the Education Act 2002 (establishment of National Curriculum for Wales by order), in relation to any duty imposed on a person by—
 - (i) the National Curriculum (Key Stage 2 Assessment Arrangements) (Wales) Order 2004⁽⁵⁾;
 - (ii) the National Curriculum (Key Stage 3 Assessment Arrangements) (Wales) Order 2005⁽⁶⁾;

(1) 2020 c. 7.
(2) 1998 c. 31.
(3) 1997 c. 44.
(4) 2002 c. 32.
(5) S.I. 2004/2915 (W. 254).
(6) S.I. 2005/1394 (W. 108).

- (iii) the Education (National Curriculum) (Assessment Arrangements for Reading and Numeracy) (Wales) Order 2013(1);
- (iv) the National Curriculum (Assessment Arrangements for the Foundation Phase and the Second and Third Key Stages) (Wales) Order 2014(2);
- (v) the National Curriculum (Moderation of Assessment Arrangements for the Second and Third Key Stages) (Wales) Order 2015(3);
- (vi) the National Curriculum (Desirable Outcomes, Educational Programmes and Baseline and End of Phase Assessment Arrangements for the Foundation Phase) (Wales) Order 2015(4);
- (e) section 109 of the Education Act 2002 (implementation of the National Curriculum for Wales in schools);
- (f) section 110 of the Education Act 2002 (implementation of the National Curriculum for Wales in respect of nursery schools etc);
- (g) sections 116A to 116K (local curricula for pupils in Key Stage 4).

The specified period

2. The specified period is the period of 30 days beginning with 1 September 2020.

Reasons for issuing the notice

3.—(1) The Welsh Ministers consider that the issuing of this notice is an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus for the following reasons.

(2) Maintained schools, maintained nursery schools and other funded nursery education providers will continue to face additional burdens, during the autumn term and beyond, which will limit their ability to perform their duties fully.

- The schools and providers will need to support children in re-integrating into the school or setting. Many children may be unready or unmotivated to learn and the schools and providers will need flexibility in order to be able to invest time in developing their readiness to learn.

(1) S.I. 2013/433 (W. 51).
 (2) S.I. 2014/1999 (W. 200).
 (3) S.I. 2015/1309 (W. 113).
 (4) S.I. 2015/1596 (W. 195).

- The schools and providers may need to adapt their teaching and learning to ensure that the key concepts that would have been taught, and the key issues that would have been covered, during the summer term are reinforced alongside the introduction of new teaching and learning. They will need the flexibility to be able to prioritise the reinforcement of that key learning (drawing on the support provided by the Welsh Government’s ‘Recruit, Recover and Raise Standards’ plan⁽¹⁾ where appropriate).
- The schools and providers will need to respond to an increase in children’s well-being needs. The time spent away from the school or setting is likely to have had a negative impact on the well-being of some children and the feedback received from schools and providers indicates that they expect to face significant well-being challenges in the autumn term. Although such challenges are often encountered at the beginning of a new term, the disruption caused by coronavirus is likely to make the situation significantly worse. The schools and providers will need the flexibility to be able to invest time in supporting children’s well-being, as well as responding to a range of well-being needs which will place additional demands on their time.
- The schools and providers will need to be given an opportunity to develop robust and coherent school-level and nursery-level plans to ensure that teaching and learning can continue in all operational scenarios, including the partial or full closure of those settings for certain periods. They may need to transition quickly from one operational scenario to another, whilst ensuring that the full range of learning continues to take place. Guidance has been issued by the Welsh Government⁽²⁾ and at regional level to help schools and providers to ensure that teaching and learning can continue safely and that children’s learning and progression is given priority in all operational scenarios.

(3) Maintained schools, maintained nursery schools and other funded nursery education providers will also face a number of logistical challenges which will place increased administrative and logistical burdens upon them, even when operating fully on site.

(1) Welsh Government announcement, 9 July 2020.
 (2) ‘Guidance on learning in schools and settings from the autumn term’, Welsh Government, July 2020.

- The schools and providers will need to place children into contact groups and minimise the interaction between children in different contact groups. This will limit, to a significant extent, their ability to mix staff and children. It may also require schools and providers to think differently, and to take different approaches, in order to secure broad and balanced learning that reflects the priorities set out in Welsh Government guidance⁽¹⁾. It may also limit their ability to allow children to move to different parts of the school or nursery site in order to access the full breadth of the curriculum (e.g, for science, physical education, music or drama).
- The schools and providers will need to estimate and manage risk in planning their operations. Welsh Government guidance⁽²⁾ recommends that schools and providers should consider the full range of interactions and activities that ordinarily occur in school or nursery life in order to minimise the risk of coronavirus transmission. The schools and providers will need time and flexibility in order to be able to devise and test their plans: these will need to make provision for all children to be on site, whereas previously no more than a third of their pupils will have been on site at any one time. The schools and providers will also need to monitor and re-evaluate their plans over time, taking account of any further changes to their operations. These demands will go well beyond their normal administrative burdens.
- The schools and providers will need to manage the implications of the Welsh Government’s “Test Trace Protect” strategy⁽³⁾. This strategy may require a child’s contact group to self-isolate if the child tests positive for coronavirus. In relation to secondary schools, Welsh Government guidance⁽⁴⁾ states that the child’s contact group may include the child’s entire year group and anyone who has shared transport with that child. Staff members may also need to self-isolate if they have been in close contact with the child. These matters mean that there may be prolonged periods during

(1) ‘Guidance on learning in schools and settings from the autumn term’, Welsh Government, July 2020.

(2) ‘Operational guidance for schools and settings from the autumn term’, Welsh Government, July 2020.

(3) ‘Test Trace Protect’, Welsh Government, May 2020, as amended from time to time.

(4) ‘Operational guidance for schools and settings from the autumn term’, Welsh Government, July 2020.

which members of staff and groups of children will be absent. This will cause disruption and will have a clear impact on the schools' and providers' ability to perform their duties fully.

(4) For these reasons, the application of the duties described in paragraph 1, in their unmodified form, would place unrealistic demands on maintained schools, maintained nursery schools and other funded nursery education providers; would harm their ability to respond flexibly and effectively to the challenges arising as a result of coronavirus and its effects; and would be likely to have a detrimental impact on children.

Kirsty Williams

Minister for Education, one of the Welsh Ministers

27 August 2020

Agenda Item 7.1

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Waste (Circular Economy) (Amendment) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before Senedd Cymru if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The Waste (Circular Economy) (Amendment) Regulations 2020 were laid before Parliament on 27 August 2020 and before the Senedd on 1 September 2020. The Regulations can be found at:
<https://www.legislation.gov.uk/uksi/2020/904/contents/made>

Summary of Statutory Instrument and its objective

3. The objective of the Regulations is to transpose the 2020 EU Circular Economy Package (CEP) requirements in England and Wales, and Scotland and Northern Ireland for composite/UK or GB changes needed. The Devolved Administrations will make their own regulations for further amendments needed to legislation which fall outside this.
4. The Statutory Instrument (SI) transposes six amending EU Directives in the field of waste:
 - Directive (EU) 2018/849 amended Directives 2000/53/EC on end-of-life vehicles (“the ELV Directive”), 2006/66/EC on batteries and accumulators and waste batteries and accumulators (“the Batteries Directive”), and 2012/19/EU on waste electrical and electronic equipment (WEEE) (“the WEEE Directive”);
 - Directive (EU) 2018/850 amended Directive 1999/31/EC on the landfill of waste (“the Landfill Directive”);
 - Directive (EU) 2018/851 amended 2008/98/EC on waste (“the Waste Framework Directive”);
 - Directive (EU) 2018/852 amended 94/62/EC on packaging and packaging waste (“the Packaging Directive”); and
 - Commission Delegated Directive (EU) 2020/362 and Commission Delegated Directive (EU) 2020/363 amend Annex II of the ELV Directive.
5. Those amending Directives make the majority of changes to the Waste Framework Directive and the Landfill Directive. Minor changes are made in

relation to the Packaging Directive. References are updated in the ELV Directive, the Batteries Directive and the WEEE Directive.

6. The SI and accompanying Explanatory Memorandum are available here: <https://www.legislation.gov.uk/ukxi/2020/904/contents/made>
7. The SI amends the following primary legislation consequential on updating the date/definitions to reflect the latest amendments to the Waste Framework Directive by 2018/851:
 - Town and Country Planning Act 1990
 - Environmental Protection Act 1990
 - Environment Act 1995
 - Waste and Emissions Trading Act 2003
 - Marine and Coastal Access Act 2009.

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

8. It is the view of the Welsh Government that the provision of the SI that amend the primary legislation listed at paragraph 7 above is within the legislative competence of the Senedd:
 - Town and Country Planning Act 1990 – regulation 2 updates reference to 2018/851;
 - Environmental Protection Act 1990 – regulation 3 updates reference to 2018/851;
 - Environment Act 1995 – regulation 4 updates reference to 2018/851;
 - Waste and Emissions Trading Act 2003 – regulation 5 updates the definition of “municipal waste”, inserts “recovery and disposal”, and updates reference to 2018/851; and
 - Marine and Coastal Access Act 2009 – regulation 6 updates reference to 2018/851.
9. The SI amends the legislation that transposed the relevant Directives in England and Wales and some legislation that partially transposed the relevant Directives in Scotland and Northern Ireland to ensure compliance with the relevant Directives as amended. Taken together this transposes the EU Circular Economy Package (CEP) in England and Wales for the changes that are required to be transposed by the end of 2020, apart from some amendments including those to hazardous waste which the Secretary of State is making on an England only basis. In parallel, any amendment to Wales only legislation including hazardous waste will be made by the Welsh Ministers, in free-standing

Wales-only regulations.

10. The SI to which this Statutory Instrument Consent Memorandum relates has been laid in the UK Parliament under the negative procedure, which will automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the provisions that amend the primary legislation referenced in this Memorandum will come into force on 1 October 2020.

Why it is appropriate for the SI to make this provision

11. As set out in paragraph 6, there is a need to amend out of date references to European law.

12. It is the view of the Welsh Government that it is appropriate and proportionate to deal with these amendments in these Regulations. The changes made are purely technical and uncontroversial and there is no change in policy.

13. The Waste (England and Wales) Regulations 2011 transposed the revised Waste Framework Directive in England and Wales on a composite basis. However, it was not possible to act compositely this time, as some amendments required are to UK/GB wide legislation. Part 4 of the SI's Explanatory Memorandum sets out the territorial extent of each regulation in the SI.

14. This approach avoided the need to duplicate amendments, which would have been the case if each administration was to make the same amendments to the existing shared legislation.

Hannah Blythyn MS

Deputy Minister for Housing and Local Government

September 2020

2020 No. 0000

ENVIRONMENTAL PROTECTION

The Waste (Circular Economy) (Amendment) Regulations 2020

Made - - - - ***

Laid before Parliament ***

Coming into force - - *1st October 2020*

CONTENTS

PART 1

Introductory Provisions

1. Citation, commencement and extent 2

PART 2

Amendments to primary legislation

2. Town and Country Planning Act 1990 2
3. Environmental Protection Act 1990 2
4. Environment Act 1995 3
5. Waste and Emissions Trading Act 2003 3
6. Marine and Coastal Access Act 2009 3

PART 3

Amendments to secondary legislation

7. The End-of-Life Vehicles Regulations 2003 4
8. The End-of-Life Vehicles (Producer Responsibility) Regulations 2005 4
9. The Hazardous Waste (England and Wales) Regulations 2005 4
10. The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 5
11. The Marine Works (Environmental Impact Assessment) Regulations 2007 5
12. The Batteries and Accumulators (Placing on the Market) Regulations 2008 6
13. The Waste Batteries and Accumulators Regulations 2009 6
14. The Marine Licensing (Exempted Activities) Order 2011 6
15. The Waste (England and Wales) Regulations 2011 6
16. The Controlled Waste (England and Wales) Regulations 2012 13
17. The Climate Change Agreements (Eligible Facilities) Regulations 2012 13
18. The Waste Electrical and Electronic Equipment Regulations 2013 13
19. The Packaging (Essential Requirements) Regulations 2015 13

20.	The Renewables Obligation Order 2015	14
21.	The Environmental Permitting (England and Wales) Regulations 2016	14
22.	The Town and Country Planning (Environmental Impact Assessment) Regulations 2017	17
23.	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017	17

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a).

The Secretary of State is a Minister designated^(b) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment.

PART 1

Introductory Provisions

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste (Circular Economy) (Amendment) Regulations 2020 and come into force on 1st October 2020.

(2) An amendment made by Part 2 has the same extent as the provision amended, except regulations 4 and 5(3), which have the extent stated in those regulations.

(3) An amendment made by Part 3 has the same extent as the provision amended.

PART 2

Amendments to primary legislation

Town and Country Planning Act 1990

2. In the Town and Country Planning Act 1990^(c), in section 336(1), in the definition of “waste”, in paragraph (a), for “Council Regulation (EU) 2017/997”, substitute “Directive (EU) 2018/851^(d)”.

Environmental Protection Act 1990

3. In the Environmental Protection Act 1990^(e), in section 75(1A), for “Council Regulation (EU) 2017/997”, substitute “Directive (EU) 2018/851”.

(a) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) with effect from exit day, but saved with modifications until IP completion day by section 1A of the Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c.1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(b) S.I. 2008/301.

(c) 1990 c.8; the definition of waste in section 336(1) was substituted by S.I.2011/988 and was amended by S.I.2018/1232.

(d) OJ No L 150, 14.6.2018, p. 109.

(e) 1990 c.43; section 75(1A) was inserted by S.I. 2019/620.

Environment Act 1995

4. In the Environment Act 1995(a), in section 56(1), in paragraph (h) of the definition of “environmental licence” as it extends to England and Wales, for “Council Regulation (EU) 2017/1997”, substitute “Directive (EU) 2018/851”.

Waste and Emissions Trading Act 2003

5.—(1) The Waste and Emissions Trading Act 2003(b) is amended as follows.

(2) For section 21(3), substitute—

“(3) In this section “municipal waste” means—

- (a) mixed waste and separately collected waste from households, including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators, and bulky waste, including mattresses and furniture; and
- (b) mixed waste and separately collected waste from other sources, where such waste is similar in nature and composition to waste from households.

(3A) But municipal waste does not include waste from production, agriculture, forestry, fishing, septic tanks and sewage network and treatment, including sewage sludge, end-of-life vehicles or waste generated by construction and demolition activities.”.

(3) In section 37—

(a) as it extends to England and Wales and Northern Ireland—

- (i) in the heading, after “waste”, insert “, recovery and disposal”;
- (ii) after subsection (1) insert—

“(1A) In this Part, “recovery” and “disposal” have the same meanings as in the Waste Directive.”;

(iii) in subsection (2), for “Council Regulation (EU) 2017/997”, substitute “Directive (EU) 2018/851”;

(b) as it extends to Scotland—

- (i) in the heading, after “waste”, insert “, recovery and disposal”;
- (ii) after subsection (1) insert—

“(1A) In this Part, “recovery” and “disposal” have the same meanings as in the Waste Directive.”;

(iii) in subsection (2), for “Council Regulation (EU) 2017/997”, substitute “Directive (EU) 2018/851”.

Marine and Coastal Access Act 2009

6. In the Marine and Coastal Access Act 2009(a), in section 75(5), for “Council Regulation (EU) 2017/997”, substitute “Directive (EU) 2018/851”.

(a) 1995 c.25. Section 41(1)(c) was substituted in relation to England by S.I. 2005/894 and in relation to Wales by S.I. 2005/1806 (W. 138), and was amended by S.I. 2011/988, 2013/755 (W.90) and 2018/942 and is prospectively repealed from IP completion day by S.I. 2019/458. Section 41(1)(g) was inserted in relation to England, Wales and Scotland by S.I. 2009/890 and was amended by S.I. 2011/2911 and 2013/755 (W. 90) and is prospectively amended from IP completion day by S.I. 2019/458. In section 56(1), paragraph (h) of the definition of “environmental licence” as it extends to England and Wales was substituted by S.I. 2011/988 and was amended by S.I. 2019/526 and is prospectively amended from IP completion day by S.I. 2019/458.

(b) 2003 c.33. Section 21(3) was amended by S.I. 2011/2499. Section 37, as it extends to England and Wales, was substituted by S.I. 2011/988 and was amended by S.I. 2019/620. Section 37, as it extends to Scotland, was substituted by S.S.I. 2011/226 and was amended by S.I. 2019/620. Section 37, as it extends to Northern Ireland, was substituted by S.I. 2019/620. Section 37, as it extends to England and Wales and Scotland and Northern Ireland, is prospectively amended from IP completion day by S.I. 2019/620.

PART 3

Amendments to secondary legislation

The End-of-Life Vehicles Regulations 2003

7. In the End-of-Life Vehicles Regulations 2003**(b)**, in regulation 2—
- (a) in the definition of “the Directive”, for “Commission Directive (EU) 2017/2096” substitute “Commission Delegated Directive (EU) 2020/363**(c)**”;
 - (b) in the definition of “the Waste Directive” for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

The End-of-Life Vehicles (Producer Responsibility) Regulations 2005

8. In the End-of-Life Vehicles (Producer Responsibility) Regulations 2005**(d)**, in regulation 2—
- (a) in the definition of “the Directive”, for “Commission Directive (EU) 2017/2096” substitute “Commission Delegated Directive (EU) 2020/363”;
 - (b) in the definition of “the Waste Directive”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

The Hazardous Waste (England and Wales) Regulations 2005

9.—(1) The Hazardous Waste (England and Wales) Regulations 2005**(e)** are amended as follows.

(2) In regulation 2(1)(a), for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

(3) In regulation 5(2), in the definition of “management”, after “recovery” insert “(including sorting)”.

(4) For regulation 19(4) substitute—

“(4) Paragraph (1) applies to the mixing of waste oil only where such mixing would impede regeneration or another recycling operation delivering an equivalent or a better overall outcome than regeneration.

(5) In paragraph (4)—

“recycling” means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes, including the reprocessing of organic material but not including energy recovery or reprocessing into materials that are to be used as fuels;

“regeneration” means any recycling operation whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, the oxidation products and the additives contained in such oils.”.

(5) In regulation 20—

(a) in paragraph (1)—

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- (a) 2009 c.23; section 75(5) was inserted by S.I. 2011/405 and amended by S.I. 2016/738 and 2018/942.
 - (b) S.I. 2003/2635. The definition of “the Directive” was amended by S.I. 2018/942. The definition of “the Waste Directive” was substituted by S.I. 2016/738 and was amended by S.I. 2018/942 and is prospectively amended from IP completion day by S.I. 2019/188.
 - (c) OJ No L 67, 5.3.2020, p. 119.
 - (d) S.I. 2005/263. The definition of “the Directive” was amended by S.I. 2018/942. The definition of “the Waste Directive” was substituted by S.I. 2016/738 and was amended by S.I. 2018/942. Both definitions are prospectively amended from IP completion day by S.I. 2019/188.
 - (e) S.I. 2005/894. Regulation 2(1)(a) was substituted by S.I. 2016/738 and amended by S.I. 2018/735 and is prospectively amended from IP completion day by S.I. 2019/188. Regulation 5(2) was substituted by S.I. 2011/988. Regulation 19(4) was inserted by S.I. 2011/988. Regulations 47(5B) and 48(6B) were inserted by S.I. 2011/988 and are prospectively amended from IP completion day by S.I. 2019/188.

- (i) for “This regulation” substitute “Paragraph (2)”;
- (ii) in sub-paragraph (b)(i), omit “and economically”;
- (b) after paragraph (2) insert—
 - “(2A) Where separation is not required pursuant to paragraph (2), the holder must make arrangements for mixed hazardous waste to be treated at a facility authorised by a waste permit to treat that waste.”.
- (6) In regulation 47(5B)—
 - (a) after “landfill of waste” insert “, as last amended by Directive (EU) 2018/850(a)”;
 - (b) at the end insert “or (3)”.
- (7) In regulation 48(6B)—
 - (a) after “landfill of waste” insert “, as last amended by Directive (EU) 2018/850”;
 - (b) at the end insert “or (3)”.

The Producer Responsibility Obligations (Packaging Waste) Regulations 2007

10. In regulation 2 of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007**(b)**—

- (a) in paragraph (1)—
 - (i) in the definition of “the Packaging Waste Directive”, for “Directive (EU) 2015/720” substitute “Directive (EU) 2018/852(c)”;
 - (ii) in the definition of “the Waste Directive”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
- (b) in paragraph (2)—
 - (i) in the definition of “disposal”, for “Article 3(10) of the Packaging Waste Directive” substitute “Article 3(19) of the Waste Directive”;
 - (ii) for the definition of “energy recovery” substitute—
 - ““energy recovery” means the use of combustible packaging waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;”;
 - (iii) omit the definition of “organic recycling”;
 - (iv) in the definition of “recycling”, for “Article 3(7) of the Packaging Waste Directive” substitute “Article 3(17) of the Waste Directive”;
 - (v) in the definition of “reuse”, for “Article 3(5) of the Packaging Waste Directive” substitute “Article 3(13) of the Waste Directive”.

The Marine Works (Environmental Impact Assessment) Regulations 2007

11. In Schedule A1 to the Marine Works (Environmental Impact Assessment) Regulations 2007**(d)**, in paragraph 15, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

(a) OJ No L 150, 14.6.2018, p. 100.
 (b) S.I. 2007/871. The definition of “the Packaging Waste Directive” was amended by S.I. 2019/188. The definition of “the Waste Directive” was substituted by S.I. 2016/738 and amended, in relation to England, by S.I. 2018/575, in relation to Wales by S.I. 2018/721 (W. 140) and in relation to Scotland by S.I. 2019/188. Both definitions are prospectively amended from IP completion day by S.I. 2019/188.
 (c) OJ No L 150, 14.6.2018, p. 141.
 (d) S.I. 2007/1518. This SI was revoked in relation to Scotland by S.S.I. 2017/115. Schedule A1 was inserted by S.I. 2017/588 and paragraph 15 of that Schedule was amended by S.I. 2018/942.

The Batteries and Accumulators (Placing on the Market) Regulations 2008

12.—(1) The Batteries and Accumulators (Placing on the Market) Regulations 2008(a) are amended as follows.

(2) In regulation 2(1), in the definition of “appliance”, after “(WEEE)” insert “, as last amended by Directive (EU) 2018/849(b)”.

(3) In regulation 7(3), for “Council Regulation (EU) 2017/997/EU” substitute “Directive (EU) 2018/851”.

(4) In regulation 26(2), for “Directive 2013/56/EU” substitute “Directive (EU) 2018/849”.

The Waste Batteries and Accumulators Regulations 2009

13.—(1) The Waste Batteries and Accumulators Regulations 2009(c) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1), in the definition of “appliance”, after “(WEEE)” insert “as last amended by Directive (EU) 2018/849”;

(b) in paragraph (1A), for “Council Regulation (EU) 2017/997/EU” substitute “Directive (EU) 2018/851”.

(3) In regulation 56(4), for “Council Directive 2011/97/EU” substitute “Directive (EU) 2018/850”.

The Marine Licensing (Exempted Activities) Order 2011

14. In article 3 of the Marine Licensing (Exempted Activities) Order 2011(d), in the definition of “the Waste Framework Directive”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

The Waste (England and Wales) Regulations 2011

15.—(1) The Waste (England and Wales) Regulations 2011(e) are amended as follows.

(2) In regulation 3(1)—

(a) in the definition of “Waste Framework Directive”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;

(b) after the definition of “waste management plan” insert—

““waste prevention measures” means measures taken before a substance, material or product has become waste that reduce—

(a) the quantity of waste, including through the re-use of products or the extension of the life span of products;

(a) S.I. 2008/2164. In regulation 2(1), the definition of “appliance” was substituted by S.I. 2015/1360 and is prospectively amended from IP completion day by S.I. 2019/188. Regulation 7(3) was substituted, in relation to England and Wales, by S.I. 2011/988 and, in relation to Scotland, by S.S.I. 2011/226 and was amended and is prospectively amended from IP completion day by S.I. 2019/188. Regulation 26 was inserted by S.I. 2012/1139 and regulation 26(2) was amended by S.I. 2018/942.

(b) OJ No L 150, 14.6.2018, p. 93.

(c) S.I. 2009/890. In regulation 2(1), the definition of “appliance” was substituted by S.I.2015/1360 and is prospectively amended from IP completion day by S.I. 2019/188. Regulation 2(1A) was inserted by, and is prospectively amended from IP completion day by, S.I. 2019/188. Regulation 56(3) was amended by S.I. 2019/188. Regulation 56(4) was inserted by, and is prospectively amended from IP completion day by, S.I. 2019/188.

(d) S.I. 2011/409. In Article 3, the definition of “the Waste Framework Directive” was substituted by S.I. 2016/738 and was amended by S.I. 2018/942.

(e) S.I. 2011/988. In regulation 3(1), the definition of “Waste Framework Directive” was substituted, in relation to England, by S.I. 2016/738 and, in relation to Wales, by S.I. 2016/691 (W. 189) and was amended, in relation to England, by S.I. 2018/575 and, in relation to Wales, by S.I.2018/721 (W. 140) and is prospectively amended from IP completion day by S.I. 2019/188. Regulations 13 and 14(2) were substituted by S.I. 2012/1889. Regulation 20(1)(a) and (3) are prospectively amended from IP completion day by S.I. 2019/188.

- (b) the adverse impacts of generated waste on the environment and human health; or
 - (c) the content of hazardous substances in materials and products;”.
- (3) In regulation 4—
- (a) in paragraph (1), omit “, not later than 12th December 2013”;
 - (b) omit paragraph (3).
- (4) In regulation 5—
- (a) after sub-paragraph (a) insert—
 - “(aa) includes one or more programmes of food waste prevention measures;”;
 - (b) in sub-paragraph (c)—
 - (i) in paragraph (i), after “waste prevention measures” insert “and their contribution to waste prevention”;
 - (ii) after paragraph (i) omit “and”;
 - (iii) after paragraph (ii) insert—
 - “(iii) sets out at least the waste prevention measures listed in Schedule 1, Part 5; and
 - (iv) where relevant, describes the contribution of instruments listed in Schedule 1, Part 6 to waste prevention.”.
- (5) For regulation 6(1) and (2) substitute—
- “(1) An appropriate authority must establish appropriate qualitative and quantitative indicators and targets, such as on the quantity of waste that is generated, against which to monitor and assess the implementation of the waste prevention measures.
 - (2) An appropriate authority must publish the indicators and targets it establishes.”.
- (6) In regulation 8(2)—
- (a) at the beginning, insert “Subject to Part 2A of Schedule 1, ”;
 - (b) omit “(taken together)”;
 - (c) after sub-paragraph (a) omit “and”;
 - (d) for sub-paragraph (b) substitute—
 - “(b) include the matters set out—
 - (i) in relation to England, in paragraphs 5 to 10 and 11(a)(ii) and (b) of Part 2 of Schedule 1;
 - (ii) in relation to Wales, in Part 2 of Schedule 1.”;
 - (e) after sub-paragraph (b) insert—
 - “(c) conform to the provisions in paragraph 5(1)(b) of Schedule 10 to the Environmental Permitting (England and Wales) Regulations 2016(a); and
 - (d) for the purposes of litter prevention, conform to—
 - (i) the programme of measures published pursuant to regulation 14(1) of the Marine Strategy Regulations 2010(b); and
 - (ii) each programme of measures proposed and approved under regulation 12(1) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(c)—
 - (aa) in relation to England, for river basin districts that are wholly or partly in England;

(a) S.I. 2016/1154, to which there are amendments not relevant to these Regulations.
 (b) S.I. 2010/1627, to which there are amendments not relevant to these Regulations.
 (c) S.I. 2017/407, to which there are amendment not relevant to these Regulations.

- (bb) in relation to Wales, for river basin districts that are wholly or partly in Wales.”.

(7) In regulation 13—

- (a) omit paragraph (1);
- (b) for paragraph (4) substitute—

“(4) The duties in this regulation apply where separate collection is necessary to ensure that waste undergoes preparing for re-use, recycling or other recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive and to facilitate or improve preparing for re-use, recycling or recovery, unless one of the following conditions is met—

- (a) collecting the waste paper, metal, plastic or glass together results in output from those operations which is of comparable quality to that achieved through separate collection;
- (b) separate collection of the waste does not deliver the best environmental outcome when considering the overall environmental impacts of the management of the relevant waste streams;
- (c) separate collection of the waste is not technically feasible taking into consideration good practices in waste collection; or
- (d) separate collection of the waste would entail disproportionate economic costs taking into account the costs of adverse environmental and health impacts of mixed waste collection and treatment, the potential for efficiency improvements in waste collection and treatment, revenues from sales of secondary raw materials as well as the application of the polluter-pays principle and extended producer responsibility.”.

(8) In regulation 14, for paragraphs (1) and (2) substitute—

“(1) Subject to paragraph (2), an establishment or undertaking which collects, transports or receives waste must ensure that where that waste has been separately collected it is not mixed with other material with different properties.

(2) The duty in paragraph (1) applies where keeping waste separate is necessary to ensure that waste undergoes preparing for re-use, recycling or other recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive and to facilitate or improve preparing for re-use, recycling or recovery, unless one of the following conditions is met—

- (a) mixing certain types of waste together results in output from those operations which is of comparable quality to that achieved through keeping waste separate;
- (b) keeping waste separate does not deliver the best environmental outcome when considering the overall environmental impacts of the management of the relevant waste streams;
- (c) keeping waste separate is not technically feasible taking into consideration good practices in waste collection; or
- (d) keeping waste separate would entail disproportionate economic costs taking into account the costs of adverse environmental and health impacts of mixed waste collection and treatment, the potential for efficiency improvements in waste collection and treatment, revenues from sales of secondary raw materials as well as the application of the polluter-pays principle and extended producer responsibility.”.

(9) In regulation 20—

- (a) in paragraph (1)(a), at the end insert “, as last amended by Directive (EU) 2018/850”;
- (b) in paragraph (3), in the definition of “landfill”—
 - (i) after “Directive 1999/31/EC” insert “, as last amended by Directive (EU) 2018/850”;
 - (ii) at the end insert “or (3)”.

(10) In Schedule 1—

(a) in Part 1—

(i) in paragraph 1, after “preventing or reducing” insert “the generation of waste and”;

(ii) in paragraph 2, at the end insert—

“(3) To make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy, such as those listed in paragraph 17 or other appropriate instruments and measures.”;

(b) for Part 2 substitute—

“PART 2

Matters which must be included in waste management plans

Analysis of the current waste management situation etc.

5. An analysis of the current waste management situation in England or Wales, as the case may be, the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of the Waste Framework Directive.

General policies in relation to waste and litter

6. As appropriate and taking into account the geographical level and geographical area to which the plan relates, provisions relating to—

- (a) the type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the United Kingdom, and an evaluation of the development of waste streams in the future;
- (b) existing major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste, waste containing significant amounts of critical raw materials or waste streams addressed by specific legislation;
- (c) an assessment of the need for closure of existing waste installations, and for additional waste installation infrastructure in accordance with the objective in paragraph 4;
- (d) an assessment of the investments and other financial means, including for local authorities, required to meet the needs identified following the assessment in subparagraph (c);
- (e) an assessment of existing waste collection schemes, including the material and territorial coverage of separate collection and measures to improve their operation, of any exceptions to the requirement for waste to be subject to separate collection and of the need for new collection schemes;
- (f) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;
- (g) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems;
- (h) measures to combat and prevent all forms of littering and to clean up litter;
- (i) appropriate qualitative or quantitative indicators and targets, including on the quantity of generated waste and its treatment and on municipal waste that is disposed of or subject to energy recovery.

Policies in relation to packaging waste

7. In pursuance of the objectives and measures in Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste, a chapter on the management of packaging and packaging waste, including measures taken—

- (a) to prevent the formation of packaging waste in accordance with the Packaging (Essential Requirements) Regulations 2015(a);
- (b) that consist of national programmes and projects to introduce extended producer responsibility schemes to minimise the environmental impact of packaging;
- (c) that achieve a sustained reduction in the consumption of lightweight plastic carrier bags;
- (d) that actively encourage public information and awareness campaigns concerning the adverse environmental impact of the excessive consumption of lightweight plastic carrier bags;
- (e) that encourage the increase in the share of reuseable packaging placed on the market and of systems to reuse packaging in an environmentally sound manner without compromising food hygiene or the safety of consumers.

Policies in relation to separate collection of waste

8. Measures to promote high quality recycling including the setting up of separate collections of waste, subject to regulation 13.

Policies in relation to bio-waste

9. As appropriate, measures, in accordance with the objectives in paragraphs 2 and 3—
- (a) to encourage the recycling, including composting and digestion, of bio-waste in a way that fulfils a high level of environment protection and results in output which meets relevant high-quality standards;
 - (b) to encourage home composting; and
 - (c) to promote the use of materials produced from bio-waste.

Policies in relation to re-use

10. Measures to be taken to promote preparing for re-use activities, in particular—
- (a) measures to encourage the establishment and support of preparing for re-use and repair networks;
 - (b) measures to facilitate, where compatible with proper waste management, the access of preparing for re-use and repair networks to waste held by collection schemes or facilities that can be prepared for re-use but is not destined for preparing for re-use by those schemes or facilities;
 - (c) the use of economic instruments;
 - (d) the use of procurement criteria;
 - (e) the setting of quantitative objectives.

Preparing for re-use and recycling targets and landfill reduction targets

11. Measures to be taken to ensure that—
- (a) the preparing for re-use and the recycling of municipal waste is a minimum of—
 - (i) in relation to a national waste management plan relating to Wales—

(a) S.I. 2015/1640, amended by S.I. 2018/942 and prospectively amended from IP completion day by S.I. 2019/188.

- (aa) 55% by weight by 2025;
- (bb) 60% by weight by 2030;
- (ii) in relation to any national waste management plan, 65% by weight by 2035; and
- (b) the amount of municipal waste landfilled is reduced to 10% or less of the total amount of municipal waste generated (by weight) by 2035.

Part 2A

Waste management plans: transitional provision

- 11A.**—(1) This Part applies to a waste management plan that—
- (a) is adopted before 1st October 2020; or
 - (b) is reviewed or modified under regulation 10, if the first formal preparatory act of that review or modification commenced before 1st October 2020.
- (2) A waste management plan to which this Part applies—
- (a) is not required—
 - (i) to include a statement of the appropriate authority’s policies for attaining the objectives specified in paragraphs 1 and 2(3) of Part 1 of this Schedule;
 - (ii) to include any of the matters set out in Part 2 of this Schedule; or
 - (iii) to comply with regulation 8(2)(c) or (d); but
 - (b) must include—
 - (i) a statement of the appropriate authority’s policies for attaining the objectives specified in Part 1 of this Schedule; and
 - (ii) the matters set out in Part 2 of this Schedule, as they applied immediately before 1st October 2020.”;
 - (c) after Part 4 insert—

“Part 5

Waste prevention measures referred to in regulation 5(c)(iii)

- 16.** The waste prevention measures referred to in regulation 5(c)(iii) are measures to—
- (a) promote and support sustainable production and consumption models;
 - (b) encourage the design, manufacturing and use of products that are resource-efficient, durable (including in terms of life span and absence of planned obsolescence), repairable, re-usable and upgradable;
 - (c) target products containing critical raw materials to prevent those materials becoming waste;
 - (d) encourage the re-use of products and the setting up of systems promoting repair and re-use activities, including in particular for—
 - (i) electrical and electronic equipment;
 - (ii) textiles;
 - (iii) furniture
 - (iv) packaging; and
 - (v) construction materials and products;
 - (e) encourage, as appropriate and without prejudice to intellectual property rights, the availability of spare parts, instruction manuals, technical information, or other

instruments, equipment or software enabling the repair and re-use of products without compromising their quality and safety;

- (f) reduce waste generation in processes related to industrial production, extraction of minerals, manufacturing, construction and demolition, taking into account best available techniques;
- (g) reduce the generation of food waste in primary production, in processing and manufacturing, in retail and other distribution of food, in restaurants and food services as well as in households;
- (h) encourage food donation and other redistribution for human consumption, prioritising human use over animal feed and the reprocessing into non-food products;
- (i) promote the reduction of the content of hazardous substances in materials and products;
- (j) reduce the generation of waste, in particular waste that is not suitable for preparing for re-use or recycling;
- (k) identify products that are the main sources of littering and take appropriate measures to prevent and reduce litter from such products;
- (l) aim to halt the generation of marine litter; and
- (m) develop and support information campaigns to raise awareness about waste prevention and littering.

Part 6

Examples of economic instruments and other measures to provide incentives for the application of the waste hierarchy

17. The economic instruments and other measures referred to in paragraph 2(3) of this Schedule and regulation 5(c)(iv) are—

- (a) charges and restrictions for the landfilling and incineration of waste which incentivise waste prevention and recycling, while keeping landfilling the least preferred waste management option;
- (b) ‘pay-as-you-throw’ schemes that charge waste producers on the basis of the actual amount of waste generated and provide incentives for separation at source of recyclable waste and for reduction of mixed waste;
- (c) fiscal incentives for donation of products, in particular food;
- (d) extended producer responsibility schemes for various types of waste and measures to increase their effectiveness, cost efficiency and governance;
- (e) deposit-refund schemes and other measures to encourage efficient collection of used products and materials;
- (f) sound planning of investments in waste management infrastructure;
- (g) sustainable public procurement to encourage better waste management and the use of recycled products and materials;
- (h) phasing out of subsidies which are not consistent with the waste hierarchy;
- (i) use of fiscal measures or other means to promote the uptake of products and materials that are prepared for re-use or recycled;
- (j) support to research and innovation in advanced recycling technologies and remanufacturing;
- (k) use of best available techniques for waste treatment;

- (l) economic incentives for regional and local authorities, in particular to promote waste prevention and intensify separate collection schemes, while avoiding support to landfilling and incineration;
- (m) public awareness campaigns, in particular on separate collection, waste prevention and litter reduction, and mainstreaming these issues in education and training;
- (n) systems for coordination, including by digital means, between all competent public authorities involved in waste management;
- (o) promoting continuous dialogue and cooperation between all stakeholders in waste management and encouraging voluntary agreements and company reporting on waste.”.

The Controlled Waste (England and Wales) Regulations 2012

16. In regulation 2 of the Controlled Waste (England and Wales) Regulations 2012(**a**), in the definition of “Waste Directive”, for “Council Regulation (EU) 2017/997/EU” substitute “Directive (EU) 2018/851”.

The Climate Change Agreements (Eligible Facilities) Regulations 2012

17. In regulation 2 of the Climate Change Agreements (Eligible Facilities) Regulations 2012(**b**), in the definition of “the Waste Framework Directive”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

The Waste Electrical and Electronic Equipment Regulations 2013

18. In regulation 2 of the Waste Electrical and Electronic Equipment Regulations 2013(**c**)—

- (a) in the definition of “the Directive”, for “as it had effect immediately before 4th July 2018” substitute “as last amended by Directive (EU) 2018/849”;
- (b) in the definition of “the Waste Directive”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

The Packaging (Essential Requirements) Regulations 2015

19.—(1) The Packaging (Essential Requirements) Regulations 2015(**d**) are amended as follows.

(2) In regulation 2(1)—

- (a) in the definition of “the Directive”, at the end insert “, as last amended by Council Directive (EU) 2018/852”;
- (b) in the definition of “the Waste Directive”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

(3) In Schedule 1—

- (a) in paragraph 1—
 - (i) for sub-paragraph (2) substitute—

“(2) Packaging must be designed, produced and commercialised in such a way as to—

-
- (a) S.I. 2012/811; in regulation 2, the definition of “Waste Directive” was inserted by, and is prospectively amended from IP completion day by, S.I. 2019/188.
 - (b) S.I. 2012/2999; in regulation 2, the definition of “the Waste Framework Directive” was substituted by S.I. 2016/738 and was amended by S.I. 2018/942.
 - (c) S.I. 2013/3113. In regulation 2, the definition of “the Directive” was substituted by, and is prospectively amended from IP completion day by, S.I. 2019/188 and the definition of “the Waste Directive” was inserted by S.I. 2016/738 and was amended by S.I. 2018/942 and is prospectively amended from IP completion day by S.I. 2019/188.
 - (d) S.I. 2015/1640. In regulation 2(1), the definition of “Directive” is prospectively revoked from IP completion day by S.I. 2019/188 and the definition of “the Waste Directive” was amended by S.I. 2018/942 and is prospectively amended from IP completion day by S.I. 2019/188.

- (a) permit its reuse or recovery (including recycling), in line with the waste hierarchy, and;
- (b) minimise its impact on the environment when packaging waste or residues from packaging waste management operations are disposed of.”;
- (ii) after sub-paragraph (3) insert—
 - “(4) In sub-paragraph (2)(a), the reference to “the waste hierarchy” is to be interpreted in accordance with—
 - (a) in relation to England and Wales, regulation 12(1) and (2) of the Waste (England and Wales) Regulations 2011(a);
 - (b) in relation to Scotland, paragraphs 6(2) and (3) of Schedule 4 to the Waste Management Licensing (Scotland) Regulations 2011(b);
 - (c) in relation to Northern Ireland, regulation 17(1) and (2) of the Waste (Northern Ireland) Regulations 2011(c).”;
- (b) after paragraph 3(4) insert—
 - “(5) Oxo-degradable plastic packaging is not to be considered as biodegradable.
 - (6) In sub-paragraph (5), “oxo-degradable plastic packaging” means plastic packaging made of plastic materials that include additives which catalyse the fragmentation of the plastic material into micro-fragments.”.

The Renewables Obligation Order 2015

20. In article 2(1) of the Renewables Obligation Order 2015(d), in paragraph (b) of the definition of “solid recovered fuel”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

The Environmental Permitting (England and Wales) Regulations 2016

21.—(1) The Environmental Permitting (England and Wales) Regulations 2016(e) are amended as follows.

- (2) In regulation 3—
 - (a) in the definition of “the Batteries Directive”, after “waste batteries and accumulators” insert “, as last amended by Directive (EU) 2018/849”;
 - (b) in the definition of “the End-of-Life Vehicles Directive”, after “on end-of-life-vehicles” insert “, as last amended by Commission Delegated Directive (EU) 2020/363”;
 - (c) in the definition of “the Landfill Directive”, after “landfill of waste” insert “, as last amended by Directive (EU) 2018/850”;
 - (d) in the definition of “the Waste Framework Directive”, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”;
 - (e) in the definition of “the WEEE Directive”, after “(WEEE)” insert “, as last amended by Directive (EU) 2018/849”.
- (3) In Schedule 2—
 - (a) in paragraph 1(2), for “T32” substitute “T33”;
 - (b) in paragraph 17—
 - (i) in paragraph (1)(b)—

(a) S.I. 2011/988, to which there are amendments not relevant to this regulation.
 (b) S.S.I 2011/228, to which there are amendments not relevant to this regulation.
 (c) S.I. 2011/127, to which there are amendments not relevant to these Regulations.
 (d) S.I. 2015/1947; amended by S.I. 2018/942. There are other amending instruments but none are relevant.
 (e) S.I. 2016/1154; relevant amending instruments are S.I. 2018/575, S.I. 2018/721 (W. 140) and S.I. 2018/1227. In regulation 3, the definitions of “the Batteries Directive”, “the End-of-Life Vehicles Directive”, “the Landfill Directive”, “the Waste Framework Directive” and “the WEEE Directive” are prospectively amended from IP completion day by S.I. 2019/39.

- (aa) in paragraph (ii), at the end add “, T12, T14, T15, T30, T33 or U8”;
- (bb) in paragraph (iii), for “T3 or T7” substitute, “T3, T7 or T17”;
- (ii) in sub-paragraph (3)—
 - (aa) for paragraph (a) substitute—
 - “(a) keep chronological records of—
 - (i) the quantity, nature and origin of all waste disposed of or recovered in the course of that operation;
 - (ii) where the waste operation involves the treatment of hazardous waste, the quantity of products and materials resulting from preparing for re-use, recycling or other recovery operations in the course of that operation; and
 - (iii) where relevant, the destination, frequency of collection, mode of transport and treatment method of all waste disposed of or recovered in the course of that operation; and”;
 - (bb) in paragraph (b), for “T3 or T7” substitute “T3, T7 or T17”;
 - (iii) for sub-paragraph (4)(a) and (b), substitute—
 - “(a) if the operation involves the treatment of hazardous waste—
 - (i) retain any records that it is required to keep under sub-paragraph (3) for a period of 3 years; and
 - (ii) during that period, if the exemption registration authority so directs, send those records to the exemption registration authority in such form and manner as the exemption registration authority specifies,
 - (b) if the operation does not involve the treatment of hazardous waste—
 - (i) retain any records that it is required to keep under sub-paragraph (3) for a period of 2 years; and
 - (ii) during that period make those records available to the exemption registration authority on request.”.
- (4) In Schedule 3—
 - (a) in Chapter 1, in paragraph 1(8)(b)—
 - (i) for “T32” substitute “T33”;
 - (ii) for “32” substitute “33”;
 - (b) in Chapter 3—
 - (i) in Section 1, in paragraph 1—
 - (aa) in sub-paragraph (1)(a), for “T32” substitute “T33”;
 - (bb) in sub-paragraph (2), for “T32” substitute “T33”;
 - (ii) in Section 2—
 - (aa) omit paragraph 22;
 - (bb) at the end, insert—

“Recovery of central heating oil by filtration (T33)

- 33.—(1) The recovery of central heating oil by filtering relevant waste.
- (2) The table specifying relevant waste for the purpose of this paragraph is set out below.

<i>Codes</i>	<i>Waste types</i>
130701*	Central heating oil only

- (3) For the purpose of this paragraph, the specific conditions are that—

- (a) the total quantity of the waste treated over any 7 day period does not exceed 400 litres,
 - (b) the waste is stored with secondary containment,
 - (c) the treatment is carried on at a location with sealed drainage, and
 - (d) the operation is for the purpose of reusing the waste.”.
- (5) In Schedule 9, after Part 3, insert—

“Part 4

Waste separately collected for preparing for re-use and recycling not to be incinerated

1.—(1) Every environmental permit which authorises a small waste incineration plant, a waste co-incineration plant, or a waste incineration plant is deemed to contain the following condition, unless such a condition to the same effect is included in the permit.

(2) The condition is that the operator must not accept—

- (a) any waste paper, metal, plastic or glass for incineration if that waste has been separately collected for the purpose of preparing for re-use or recycling; or
- (b) any waste for incineration that results from the treatment of waste referred to in paragraph (a), unless—
 - (i) the relevant permit authorises the operator to accept that type of waste for incineration; and
 - (ii) incineration of that waste delivers the best environmental outcome in accordance with regulation 12 of the Waste (England and Wales) Regulations 2011.”.

(6) In Schedule 10—

- (a) in paragraph 2(1)(d), at the end insert “or (3)”;
- (b) after paragraph 5 insert—

“Waste separately collected for preparing for re-use and recycling not to be landfilled

5A.—(1) Every environmental permit which authorises a landfill is deemed to contain the following condition, unless such a condition to the same effect is included in the permit.

(2) The condition is that the operator must not accept—

- (a) any waste paper, metal, plastic or glass for landfill if that waste has been separately collected for the purpose of preparing for re-use or recycling; or
- (b) any waste for landfill that results from the treatment of waste referred to in paragraph (a), unless—
 - (i) the relevant permit authorises the operator to accept that type of waste for landfill; and
 - (ii) landfill of that waste delivers the best environmental outcome in accordance with regulation 12 of the Waste (England and Wales) Regulations 2011.”.

(7) In Schedule 20, in paragraph 6, at the end insert “and Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC(a)”.

(a) OJ No L 51, 25.2.2020, p. 4.

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

22. In Schedule 1 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017(a), in paragraph 9 of the descriptions of development, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

23. In Schedule 1 to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(b), in paragraph 9 of the descriptions of development, for “Council Regulation (EU) 2017/997” substitute “Directive (EU) 2018/851”.

Name
Parliamentary Under Secretary of State

Date Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement for England and Wales, and partially implement for Scotland and Northern Ireland, 6 amending EU Directives in the field of waste, namely Directive (EU) 2018/849 (OJ No L 150, 14.6.2018, p. 93), Directive (EU) 2018/850 (OJ No L 150, 14.6.2018, p. 100), Directive (EU) 2018/851 (OJ No L 150, 14.6.2018, p. 109), Directive (EU) 2018/852 (OJ No L 150, 14.6.2018, p. 141), Commission Delegated Directive (EU) 2020/362 (OJ No L 67, 5.3.2020, p. 116) and Commission Delegated Directive (EU) 2020/363 (OJ L No 67, 5.3.2020, p. 119) (“the amending Directives”).

The amending Directives amend 6 EU Directives; European Parliament and Council Directive 94/62/EC on packaging and packaging waste (OJ No L 365, 31.12.1994, p. 10), Council Directive 1999/31/EC on the landfill of waste (OJ No L 182, 16.7.1999, p. 1), Directive 2000/53/EC of the European Parliament and of the Council on end-of life vehicles (OJ No L 269, 21.10.2000, p. 34), Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators (OJ No L 266, 26.9.2006, p. 1), Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p. 3) (“the Waste Framework Directive”) and Directive 2012/19/EC of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) (OJ No L 197, 24.7.2012, p. 38) (“the relevant Directives”).

Part 2 of these Regulations amends primary legislation to update references to the Waste Framework Directive in the Town and Country Planning Act 1990, the Environmental Protection Act 1990, the Environment Act 1995, the Waste and Emissions Trading Act 2003 and the Marine and Coastal Access Act 2009. It also amends the Waste and Emissions Trading Act 2003 in relation to definitions in Article 3 of the Waste Framework Directive.

Part 3 of these Regulations amends subordinate legislation. Regulation 9 amends the Hazardous Waste (England and Wales) Regulations, as amended, which implement hazardous waste requirements in the Waste Framework Directive in England. Regulation 15 amends the Waste (England and Wales) Regulations 2011, as amended, which partially implement the Waste Framework Directive in England and Wales. Regulation 19 amends the Packaging (Essential Requirements) Regulations 2015, as amended, which partially implement Directive 94/62/EC in the UK.

(a) S.I. 2017/571, amended by S.I. 2018/875; there are other amending instruments but none is relevant.

(b) S.I. 2017/572, amended by S.I. 2018/942; there are other amending instruments but none is relevant.

Regulation 21 amends the Environmental Permitting (England and Wales) Regulations 2016 (“the 2016 Regulations”), as amended, which partially implement the relevant Directives in England and Wales. Paragraphs (2) to (6) amend the 2016 Regulations to implement the amending Directives. Paragraph (7) amends the 2016 Regulations to implement obligations relating to the management of waste from extractive industries in England and Wales in Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC (OJ L No 51, 25.2.2020, p. 4).

The remaining provisions of Part 3 update references to the relevant Directives in subordinate legislation relating to packaging waste, end-of-life vehicles, waste batteries and accumulators and waste electrical and electronic equipment and also updates references to the Waste Framework Directive in relation to the definition of waste in other subordinate legislation.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

EXPLANATORY MEMORANDUM TO

THE WASTE (CIRCULAR ECONOMY) (AMENDMENT) REGULATIONS 2020

YEAR No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument transposes (transfers requirements into UK law) six amending EU Directives in the field of waste. It amends the legislation that transposed Directive 2008/98/EC on waste (“the Waste Framework Directive”), Directive 1999/31/EC on the landfill of waste (“the Landfill Directive”), Directive 94/62/EC on packaging and packaging waste (“the Packaging Directive”), three other waste related Directives in England and Wales, and some legislation that partially transposed the same Directives in Scotland and Northern Ireland. It is making all the legislative changes required to transpose the 2020 Circular Economy Package (CEP) measures on behalf of England and Wales, apart from some amendments relating to hazardous waste which Defra is making for England only. The Welsh Government will be making a Wales-only SI to include amendments relating to hazardous waste, as well as updating references in several Wales-only SIs. Through amendments made to legislation that apply in Scotland and Northern Ireland, this instrument is partially transposing the 2020 CEP measures on behalf of Scotland and Northern Ireland (see section 6 below for further information). Further amendments to complete the transposition of the CEP will be made by Scotland and Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

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

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom
- 4.3 This instrument amends legislation with extent as follows:
- i. UK extent: regulations 5, 6, 7, 8, 12, 13 (except regulation 13(3), which amends legislation that does not extend to Scotland), 17, 18, 19, and 22;
 - ii. England and Wales extent: regulations 2, 4, 9 (though amendments apply to England only), 14 (though amendments apply to England only), 15, 16, 20, 21;

- iii. GB extent: regulations 3, 10, 23;
 - iv. England, Wales and Northern Ireland: regulation 11 (revoked by SSI 2017/115 in relation to Scotland).
- 4.4 Amendments made to legislation by this instrument have the same extent and application as that legislation apart from Regulation 4 which extends to England and Wales only and regulation 5(3)(a) and which extends to England and Wales and Northern Ireland only, and 5(3) (b) Scotland only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Waste (Circular Economy) (Amendment) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument transposes (transfers requirements into UK law) six amending EU Directives in the field of waste (Directive (EU) 2018/849, Directive (EU) 2018/850, Directive (EU) 2018/851, Directive (EU) 2018/852, Commission Delegated Directive (EU) 2020/362 and Commission Delegated Directive (EU) 2020/363).
- 6.2 Directive (EU) 2018/851, Directive (EU) 2018/850 and Directive (EU) 2018/852 amend the Waste Framework Directive, the Landfill Directive and the Packaging Directive, respectively.
- 6.3 The following Directives were all amended by Directive (EU) 2018/849: Directive 2000/53/EC on end-of life vehicles (“the ELV Directive”), Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators (“the Batteries Directive”) and Directive 2012/19/EC on waste electrical and electronic equipment (WEEE) (“the WEEE Directive”).
- 6.4 The six original Directives were transposed (for England and Wales, and partially for Scotland and Northern Ireland) by the following legislation:
- Environmental Protection Act 1990: Part 2 of this Act (waste on land) is the principal primary legislation in relation to waste and contains various duties, civil penalties and criminal offences in relation to waste.
 - The Waste and Emissions Trading Act 2003: This Act partially transposes the Landfill Directive, specifically Articles 5(1) and (2) of that Directive. The aim of those Articles is to reduce the amount of biodegradable municipal waste that is sent to landfill.
 - The End-of-Life Vehicles Regulations 2003 – S.I. 2003/2635: These regulations partially implement the ELV Directive. These regulations outline the design requirements for materials and components of vehicles put on the market after the Regulations come into effect. They also introduce minimum treatment standards and the Certificate of Destruction, which deregisters a vehicle from the national vehicle database on notification by the Authorised Treatment Facility.
 - The Hazardous Waste (England and Wales) Regulations 2005 – S.I. 2005/894: These regulations make rules for the controlled management of hazardous waste from the point of production to the final point of disposal or recovery.

- The End-of-Life Vehicles (Producer Responsibility) Regulations 2005 – S.I. 2005/2637: These regulations transfer into UK Law the aspects of the ELV Directive relating to producer responsibility for establishing collection systems to take back end-of-life vehicles free of charge and the arrangements for meeting re-use, recycling and recovery targets.
- The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 – S.I. 2007/871: These regulations partially transfer into UK law the Packaging Directive. The aim is to harmonise the management of packaging waste and prevent or reduce the impact of packaging and packaging waste on the environment by encouraging minimisation and reuse and by setting recovery and recycling targets.
- The Batteries and Accumulators (Placing on the Market) Regulations 2008 - S.I. 2008/2164: These regulations partially implement the Batteries Directive. These regulations require that new batteries (single use cells) and accumulators (commonly known as rechargeable batteries), or appliances containing batteries or accumulators that are placed on the market, must not contain prohibited levels of heavy metals, and that they must be labelled to show the presence of lead-acid, cadmium or mercury, and to promote recycling. They also provide that certain types of new electrical and electronic equipment must be designed in a way that facilitates the easy removal of waste batteries and accumulators for recycling purposes.
- The Waste Batteries and Accumulators Regulations 2009 - S.I. 2009/890: These regulations partially implement the Batteries Directive. These regulations establish the scope of ‘producer responsibility’, requiring producers of batteries and accumulators to take responsibility for separately collecting and recycling batteries and accumulators once they become waste.
- The Waste (England and Wales) Regulations 2011 - S.I. 2011/988: These regulations transpose the Waste Framework Directive in England and Wales. They require the appropriate authority to establish and review waste management plans and waste prevention programmes and place duties on those involved in waste management. These regulations also make provisions for the registration of waste carriers, brokers and dealers; written waste transfer notes; and require planning authorities and the appropriate authority to consider Articles in the Waste Framework Directive when exercising their planning and offshore licencing functions.
- The Waste Electrical and Electronic Equipment Regulations 2013 - S.I. 2013/3113: These regulations transpose the main provisions of the WEEE Directive. They provide that producers of electronic and electrical equipment will be financially responsible for managing the waste that arises from products they place on the market. Producers must also be registered with the regulators. These regulations require that systems must be established for the collection, treatment, recovery and environmentally sound disposal of most types of WEEE; and that the costs of these systems must be largely borne by WEEE producers.
- The Packaging (Essential Requirements) Regulations 2015 - S.I. 2015/1640: These regulations specifically implement Articles 9 and 11 of the Packaging Directive. They set the essential requirements that packaging must meet before it can be placed on the market. They provide enforcement authorities with powers for the enforcement of those obligations.

- The Environmental Permitting (England and Wales) Regulations 2016 – S.I. 2016 No. 1154: Schedule 10 of these regulations partially implements the Landfill Directive and Schedule 9 partially implements the Waste Framework Directive. These regulations set out an environmental permitting and compliance regime that applies to various activities capable of causing environmental pollution.

- 6.5 In parallel to the changes made by this instrument outlined in section 2, any amendments to Wales only legislation such as hazardous waste will be made by Welsh Ministers, in free-standing, Wales-only regulations. Scotland will also make amendments to Scotland-only legislation as necessary to transpose the CEP fully in Scotland. The Department of Agriculture, Environment and Rural Affairs (“DAERA”) will be making the legislative changes to waste legislation, which is only applicable in Northern Ireland, as required to transpose the 2020 CEP measures on behalf of Northern Ireland.
- 6.6 The Welsh Ministers will be seeking the consent of Senedd Cymru (Welsh Parliament) for the Secretary of State to make the legislative changes in this instrument on their behalf in relation to those aspects that amend primary legislation.

7. Policy background

What is being done and why?

- 7.1 The UK is committed to moving towards a more circular economy which will see us keeping resources in use as long as possible, extracting maximum value from them, minimizing waste and promoting resource efficiency. The UK’s ambition to move to a circular economy is reflected in many of the changes required as part of the CEP. The CEP introduces a revised legislative framework, identifying steps for the reduction of waste and establishing an ambitious and credible long-term path for waste management and recycling.
- 7.2 The amendments in this instrument include the alignment across three Directives of definitions, terms and powers, plus measures to tackle specific waste issues.
- 7.3 In terms of CEP measures to be transposed by 2020, a combination of non-legislative changes (e.g. changes to guidance) and legislative changes with a minor impact (mainly ‘copy out’ i.e. the implementing legislation adopts the same wording as that of the Directive), will transpose most of the requirements of the CEP.
- 7.4 The bulk of substantive changes to laws, regulations and administrative provisions made under the CEP affect two Directives:
- The Waste Framework Directive
 - The Landfill Directive
- 7.5 Measures are to be taken to prevent waste generation and to monitor and assess the implementation of those measures. These measures must be included in waste prevention programmes (see Section 7.10 below).
- 7.6 Requirements for separate collection of waste are amended to provide more detail on the circumstances under which separate collection of waste is not necessary to ensure that waste undergoes preparing for reuse, recycling, or other recovery operations (see regulation 15(7) and (8) for transposition of this into legislation for England and Wales).

- 7.7 Amendments will ensure that waste collected separately for preparing for re-use or recycling is not incinerated or landfilled, except for waste resulting from subsequent treatment operations of the separately collected waste for which incineration or landfilling delivers the best environmental outcome in accordance with the waste hierarchy. The Environmental Permitting (England and Wales) Regulations 2016 are amended to introduce a new statutory permit condition on waste incinerators and landfills, placing restrictions on waste paper, metal, plastic and glass separately collected for preparing for re-use or recycling from being accepted for incineration or landfilling (see regulation 21(5) and (6)(b)).
- 7.8 Unlawfully mixed hazardous waste will now have to be separated where that is technically feasible. Economic viability of separation is no longer a consideration. Lawfully mixed hazardous waste must be treated at a permitted facility. This is being implemented in England by amending the Hazardous Waste (England and Wales) Regulations 2005 (see regulation 9(5)). Amendments to the Hazardous Waste (England and Wales) Regulations 2005 also require that mixing waste oils is prohibited only where mixing would impede the regeneration, or other recycling operation of the waste oil delivering an equivalent or a better overall environmental outcome, in accordance with the waste hierarchy (see regulation 9(4)).
- 7.9 Additional matters must now be included in waste management plans. These requirements are being met by amending regulation 8 of, and Schedule 1 to, the Waste (England and Wales) Regulations 2011 (see regulation 15(6) and (10)).
- 7.10 In establishing waste prevention programmes, further measures must be included. These requirements are being met by amending the Part 2 of, and Schedule 1 to, the Waste (England and Wales) Regulations 2011 (see regulation 15(3) to (5) and (10)).
- 7.11 Regulations are amended to require certain establishments and undertakings to keep records of the quantity of materials and products resulting from the treatment of hazardous waste. The Environmental Permitting (England and Wales) Regulations 2016 are being amended to require relevant waste operations, which operate under a registered waste exemption, to record, retain and submit specific information on hazardous waste and the products and materials resulting from the treatment of hazardous waste (see regulation 21(3) of this instrument). Sites that treat hazardous waste under an environmental permit will be required, under existing permit conditions, to record, retain and submit this information to the relevant regulators.
- 7.12 The UK Government and the devolved administrations have previously consulted on some measures on packaging, which meet the Resources and Waste Strategy and the Welsh Government's Circular Economy Strategy commitment to extend producer responsibility for packaging¹. Changes being made in this instrument are minor and consist of updates to definitions, including a clarification that oxo-degradable plastics should not be classified as biodegradable.

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

- 8.1 This instrument does not relate to withdrawal from the European Union and thus does not require the statement requirements under the European Union (Withdrawal) Act 2018.

¹ <https://www.gov.uk/government/consultations/packaging-waste-changing-the-uk-producer-responsibility-system-for-packaging-waste>

9. Consolidation

9.1 No consolidation is considered necessary.

10. Consultation outcome

- 10.1 During the negotiations of the CEP, Defra held regular discussions with key stakeholders on the possible implications of the proposals. The UK and Welsh, Scottish and Northern Ireland Governments have decided that these measures will be transposed as described in the public statement, without a formal consultation, given the changes are relatively minor and technical.
- 10.2 However, Defra conducted a light-touch form of engagement with local authority groups and key representatives of the landfill, incineration and recycling sector in relation to the restrictions on incinerating or landfilling waste separately collected for preparing for re-use or recycling. The aim of these discussions was to inform industry of the proposed legislative changes and how they would be implemented, and to seek their views on those changes. These measures were broadly welcomed by the sector who saw them as a driver to encourage treatment of material further up the waste hierarchy by ensuring higher levels of extraction of recyclable material from the waste stream. Any concerns raised were either settled during the discussion or resolved by clarifications afterwards.
- 10.3 The following public statement was released on 29 July 2020 which outlined how the CEP measures would be transposed (transferred into UK law), see:
<https://www.gov.uk/government/publications/circular-economy-package-policy-statement/circular-economy-package-policy-statement>.

11. Guidance

11.1 Guidance to industry regarding the changes covered in this instrument will be published in due course. Further implementation of the CEP in Scotland, Wales and Northern Ireland will also include updated guidance, as relevant.

12. Impact

- 12.1 There is no impact on charities or voluntary bodies from the measures in this instrument.
- 12.2 The impact on the public sector is additional Regulator costs in ensuring operators submit additional information and advise on new requirements (£0.05m); Government cost of amending IT systems (£0.17m) and loss in tax revenues (£3.3m). No new burdens were identified on local authorities.
- 12.3 An Impact Assessment has not been prepared for this instrument. Instead a Regulatory Triage Assessment (RTA) has been prepared which demonstrates that the measures in this instrument have an equivalent annual net direct cost to businesses below the +/- £5m threshold.
- 12.4 The analysis in the RTA indicates that the impact on businesses across the UK (all over a ten-year period, discounted) are as follows:
- adjustment and administrative costs to hazardous waste site operators in submitting additional information (£0.8m);
 - administrative costs of adjusting to new requirements (£15.9m);

- additional net costs to private business waste holders (£1.4m); and
 - additional net benefit to Mechanical Biological Treatment (MBT) plants or other treatment (£6.5m), additional net benefits to recycling centres (£0.5m).
- 12.5 The undiscounted costs for private waste holders will be £1.6m compared to £0.9m for local authorities over a ten-year period.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses. No action is considered necessary to minimise the impact on small businesses given the low level of impact expected, as described below.
- 13.2 Costs to individual businesses are proportional to the volume of waste handled, which in turn is expected to be proportional to turnover.
- 13.3 We estimated that micro and small waste collection businesses would encounter total annual net costs of £13,000 and £2,000, respectively. Additional costs to micro and small waste holders represent only 0.001% of their turnover.
- 13.4 We estimate that micro and small business landfill operators would expect total additional annual costs of £3,000 and £4,000, respectively. Small incinerator businesses would see additional net costs of £0.12m annually. Additional net costs to micro and small landfill operators and small incinerator operators represents only 0.0082% of the estimated turnover of micro and small non-hazardous waste treatment and disposal businesses.

14. Monitoring & review

- 14.1 No further review clause is necessary in this instrument as the main pieces of legislation that this instrument is amending contain review clauses and the costs to businesses is below the +\-£5m threshold.

15. Contact

- 15.1 Kathryn Arnold at the Department for Environment, Food and Rural Affairs, Telephone: 02080 255306 or email: Waste-EUExit@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Chris Preston, Deputy Director for Resources and Waste Policy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Hannah Blythyn AS/MS
Y Dirprwy Weinidog Tai a Llywodraeth Leol
Deputy Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA/HB/2728/20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

2 September 2020

Dear Mick,

I am writing to inform you that I have laid a statutory instrument consent memorandum (“the memorandum”) in relation to The Waste (Circular Economy) (Amendment) Regulations 2020 (“the Regulations”) which were laid before Parliament on 27 August.

The primary purpose of the Regulations is to transpose the 2020 EU Circular Economy Package (CEP) requirements in England and Wales, and Scotland and Northern Ireland for composite/UK or GB changes needed. The Devolved Administrations will make their own regulations for further amendments needed to legislation which fall outside this.

The amendments contained in the Regulations cover a range of primary legislation. These amendments update the date/definitions to reflect the latest amendments to the Waste Framework Directive.

The Regulations are subject to the negative procedure in Parliament and, provided no Member of Parliament prays against them, will come into force on 1 October.

Yours sincerely

Hannah Blythyn AS/MS
Y Dirprwy Weinidog Tai a Llywodraeth Leol
Deputy Minister for Housing and Local Government

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

Page 234
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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

Document is Restricted



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee

11 September 2020

Dear Mick

The Committee Report on the Welsh Government's Supplementary LCM (Memorandum No 2) on the Agriculture Bill

Thank you and members of the Legislation, Justice and Constitution Committee for your report on the Supplementary LCM for the amendments made to provisions relating to Wales in the Agriculture Bill during the House of Commons' amending stages. I have considered the recommendations made, and my response is provided in Annex 1. As agreed in my response to Recommendation 2 of this Committee's first report on the Bill's LCM, a full summary of the Welsh Ministers' regulation-making powers can be found in Annex 2.

Introduced in the House of Commons, the Agriculture Bill completed Committee Stage in the House of Lords on 28 July. Report Stage is yet to be scheduled, however my officials have been working closely with the UK Government to monitor the progress of the Bill and latest indications suggest the Bill is expected to receive Royal Assent by the end of October.

I am pleased to inform the Committee that following many weeks of close working between officials from all four administrations, government amendments to clauses 32 (identification and traceability of animals) and 37 (regulation of organic products) were tabled and agreed at Committee Stage (Lords). These amendments add appropriate requirements for the Secretary of State to obtain the consent of the Devolved Administrations before exercising powers under these provisions. I consider this a satisfactory resolution to the outstanding concerns which I made clear, in my evidence session on 16 March, were red line issues which needed to be addressed before I could be in a position to recommend agreeing legislative consent to the Senedd.

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

During Lords Committee Stage, amendments were also made to clauses 42 and 53. Clause 42(4) and (5), which would have specifically conferred powers on the Secretary of State to require the Welsh Ministers to provide information to the Secretary of State, was removed. Clause 53 was amended to allow for the early commencement of subordinate legislation making powers in the Bill. This is necessary to ensure powers are in place by the end of the implementation period (31 December 2020) to enable us, for example, to continue providing financial support to farmers in Wales in 2021. A further Supplementary LCM with detail of these amendments to clauses 32, 37, 42 and 53 will be laid shortly for your consideration.

Once again, I would like to reiterate the importance of this Bill as a vehicle to deliver stability and continuity to Welsh agriculture while we continue to develop the groundwork for our own Agriculture (Wales) Bill, to be introduced in the next Senedd term as set out in my oral statement on 8 July.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

ANNEX 1

Response to the Legislation, Justice and Constitution Committee's Report on the Supplementary LCM for the Agriculture Bill (laid on 23 July 2020)

Committee's Recommendation	Welsh Government's Response
<p>Recommendation 1</p> <p>The Minister should revisit recommendation 1 in our first report on the LCM for the Bill and provide an appropriate and full response to the Committee.</p> <p>“The Minister should write to us explaining the extent to which the Bill relates to any common framework and, if appropriate, clearly identify the provisions that are necessary to achieve that framework.”</p>	<p>Accept</p> <p>The Agriculture Bill is a framework bill in the sense it provides Ministers powers to make provision, by subordinate legislation, to enable the continued provision of agricultural support beyond 2020 and ensure the effective operation of agricultural sectors in the UK following our departure from the EU. In the case of England, the Bill also provides the legal framework required to replace the CAP and create a new domestic system based on the principle of paying public money for the delivery of public goods.</p> <p>The Bill, however, does not make provision for, or give effect to, a UK Common Framework. As stated in my previous response, the governments of all four nations, following extensive discussions, have agreed that the UK Common Framework for Agricultural Support would be best managed through a Ministerial Concordat. This is being developed to ensure effective co-ordination and dialogue on agricultural support between the four governments. My officials are working closely with colleagues in the UK Government and the other Devolved Administrations to develop this non-legislative framework which is expected to cover areas such as market intervention, data collection and sharing arrangements alongside arrangements to reduce bureaucracy and provide clarity for cross border holdings.</p>
<p>Recommendation 2</p> <p>The Minister should confirm whether the amendments to clause 32 are as a result of changes in the Welsh Government's position on the identification and traceability of animals and whether this led the Minister to request that the clause be amended</p>	<p>Accept</p> <p>Clause 32(2) amends section 8(1)(a) of the Animal Health Act 1981 to substitute 'the marking of animals' with 'the means of identifying animals'. Previously the substantive amendment had been restricted to England. The amendment removes any potential for ambiguity when secondary legislation relating to the identification of animals is made under section 8(1)(a), as it ensures that new developments in technology and methodology of identifying animals are captured by the</p>

	<p>provision, such as the use of electronic identification. The Welsh Government is working closely with Defra and the other Devolved Administrations to develop our respective policies on identification and traceability of animals. The amendment of this clause, extending its application to Wales, is necessary to ensure we are aligned and using consistent legal powers to make changes which will support seamless cross border trading.</p> <p>Clause 32(3)-(4) was amended so as to dis-apply certain provisions of EU Regulations in relation to Wales. The dis-application had previously been restricted to England. These provisions come into force on such day as the Welsh Ministers may by regulations made by statutory instrument appoint and relate to systems for the identification and regulation of bovine, ovine and caprine animals. The amendment is considered necessary to protect Welsh interests, as EU legislation in this policy area stipulates that – by April 2024 - the provisions of EU law in question will cease to apply to member States.</p> <p>If the amendment to clause 32(3) and (4) had not been secured, England would be able to dis-apply that legislation and make secondary legislation under the 1981 Act in its place. If the EU provisions were dis-applied in England alone, either unilaterally or to mirror the EU position, problems could arise in relation to cross border trade as England and Wales would be operating under different rules, which could cause confusion for the industry and could jeopardise exporting regulations.</p> <p>The implementation of pre movement notification and electronic movement reporting of livestock which is central to the impending new multispecies system in Wales, and its ability to share information and data with other administrations could also be jeopardised.</p>
<p>Recommendation 3</p> <p>The Minister should provide the Committee with an update on the progress made in resolving the outstanding concerns in relation to clauses 32, 36 and 37, which should include detail of how the Minister’s concerns will be resolved, i.e. whether by means of legislative or non-legislative solutions.</p>	<p>Accept</p> <p>Following many weeks of close working between officials from all four UK administrations, government amendments to clauses 32 (identification and traceability of animals) and 37 (regulation of organic products) were tabled and agreed at Lords Committee Stage. These amendments add appropriate requirements for the Secretary of State to obtain the consent of the Devolved Administrations before exercising powers</p>

	<p>under these provisions. Additional detail describing the amendments will be set out in the Supplementary LCM to be laid shortly. I consider this a satisfactory resolution to the outstanding concerns which I made clear, in my evidence session on 16 March, were red line issues which needed to be addressed before I could be in a position to recommend agreeing legislative consent to the Senedd.</p>
<p>Recommendation 4</p> <p>The Minister should confirm whether the amendments to Schedule 5 were tabled at the request of the Minister.</p>	<p>Accept</p> <p>Throughout the development of this Bill, and the previous Agriculture Bill, my officials have worked closely with the UK Government and the other Devolved Administrations to ensure the Bill contains the necessary powers for the Welsh Ministers. Amendments to Schedule 5, and other provisions relating to Wales, were tabled at my request.</p>
<p>Recommendation 5</p> <p>The Minister should provide more detail on the effect of the amendments made to paragraphs 2 and 4 of Schedule 5, specifically as regards whether the changes amount to a broadening of the regulation-making powers in those paragraphs.</p>	<p>Accept</p> <p>The lack of clarity with the wording ‘simplifying and improving’ was a concern raised by members of this Committee during scrutiny of the previous Bill. Having reflected on this, I requested these amendments to paragraphs 2 and 4 of Schedule 5 to ensure the powers conferred on the Welsh Ministers under these provisions can be used for specified purposes.</p>
<p>Recommendation 6</p> <p>The Minister should provide detailed information to the Committee on the UK Government’s revised position regarding the need for legislative consent for clauses 40 to 42 of the Bill.</p>	<p>Accept</p> <p>The detail on the WTO clause was outlined in the original Legislative Consent Memorandum, paragraphs 55 and 56 where it stated Sub-clauses (42) (4) and (5) give the Secretary of State the powers to set out in regulations provisions for collecting information for the purposes of compliance with Agreement on Agriculture obligations, including from the Welsh Ministers. It is the Welsh Government’s view that these provisions required consent because they make provision with regard to agriculture and concern the domestic implementation of international obligations.</p> <p>Following representation from myself and Minister Ewing, the Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, wrote to me on 6 July confirming the removal of clause 42(4) and (5).</p>

<p>Recommendation 7</p> <p>The Minister should provide the Committee with the detail of the agreement reached with the Secretary of State on the exercise of the regulation-making powers in clauses 40 to 42.</p>	<p>Accept</p> <p>The bilateral agreement between the Welsh and UK governments of March 2019 requires the Secretary of State to consult the Welsh Ministers before making regulations using powers conferred under clauses 40 to 42. This agreement also sets out a robust and transparent mechanism for involving Welsh Ministers in the operation of the regulations, including a mechanism for dispute resolution, reflecting extensive discussions with the UK Government (both Defra and Cabinet Office).</p> <p>In her letter to me dated 6 July, Minister Prentis also confirmed the UK Government's intention to enshrine the commitments set out in the bilateral agreement in a concordat to be developed between the governments of our four nations.</p>
<p>Recommendation 8</p> <p>The Minister should respond to all recommendations in this report as a matter of urgency and ahead of the Welsh Government tabling a legislative consent motion for the Bill.</p>	<p>Accept</p> <p>I am committed to ensuring the Senedd has adequate time to consider those provisions within the Bill which require the Senedd's consent. I have responded to all recommendations made by the Committee to date and will respond to future recommendations in a timely manner.</p>

ANNEX 2: Powers of the Welsh Ministers to make subordinate legislation in the Agriculture Bill

Introduction

The Agriculture Bill (the Bill) was introduced in the House of Commons on 16 January 2020. At the request of the Minister for Environment, Energy and Rural Affairs, the Bill makes provision in relation to Wales in respect of devolved matters. The Welsh Government laid a Legislative Consent Memorandum (LCM) before the Senedd on 12 February. A supplementary LCM was laid on 11 June, setting out the amendments made to provisions relating to Wales during the House of Commons' amending stages.

Table 1 details the powers of the Welsh Ministers to make subordinate legislation in the Bill provisions. It provides justification as to why it is appropriate to seek these powers and outlines the Senedd procedure attached to each power. This document is to be provided to the Senedd's Legislation, Justice and Constitution (LJC) and Climate Change, Environment and Rural Affairs (CCERA) Committees in response to Recommendation 2 of the LJC Committee's report on the LCM in relation to the Agriculture Bill.

Overview

Powers being taken for the Welsh Ministers through the Bill

The Agriculture Bill is an important legislative vehicle to give farmers and land managers in Wales much needed stability and continuity during this period of exceptional uncertainty. Powers being taken for the Welsh Ministers are necessary to enable the continued provision of existing agricultural support in Wales after 2020 and to ensure the effective operation of agricultural sectors following the UK's departure from the EU.

Powers for the Welsh Ministers to operate or transition towards new financial assistance, as previously provided for under paragraphs 1 to 3 of Schedule 3 to the Agriculture Bill introduced to the UK Parliament in September 2018, are not being taken in this Bill. It is the Welsh Government's intention that appropriate provision will be made by an Agriculture (Wales) Bill to be introduced in the next Senedd term. Schedule 5 ("provision relating to Wales"), and a small number of related provisions, are subject to a sunset clause (clause 44) and are due to expire at the end of 2024 in accordance with that provision.

Senedd procedure for delegated powers in the Bill

The Welsh Government has worked closely with the UK Government to ensure powers for the Welsh Ministers in this Bill with significant policy implication are subject to the affirmative resolution procedure. This will allow the Senedd the opportunity to duly scrutinise the subordinate legislation made under those provisions. For those regulation-making powers where the subject-matter is considered to be more technical in nature, where it may be appropriate to legislate swiftly and where the discretion of the Welsh Ministers over the subordinate legislation is more limited, the negative resolution procedure has been chosen in accordance with the Welsh Government's guidelines on subordinate legislation.

Table 1: Justification for the Welsh Ministers’ powers to make subordinate legislation under provisions in the UK Agriculture Bill

Provision: Power Conferred	Justification	Legislative Procedure
<p><u>Clause 31 (fertilisers):</u> Amendments to an existing delegated power in section 74A of the Agriculture Act 1970 to regulate fertilisers on the basis of their function and to specify additional matters for which provision may be made relating to the regulation of fertilisers.</p>	<p>A delegated power already exists in the Agriculture Act 1970 to regulate fertilisers based on their content and composition (section 74A). Clause 31(2) amends the definition of a “fertiliser”, provided for in section 66 of the Agriculture Act to enable a broader range of materials to be regulated as fertilisers. Clause 31(3) amends the existing delegated power (section 74A(1)) to enable regulations to be made setting out safety and quality requirements for fertilisers by reference to function, as well as content or composition. The functions to be regulated will be consulted on and may be subject to a staged roll out. The functions regulated will need to change to keep pace with scientific developments.</p> <p>Amendments are also required to enable regulations made pursuant to this clause to set out the conformity assessment procedures to be carried out on fertilisers according to their content, composition or function to assess their compliance with statutory requirements or otherwise mitigating risks to the health and safety of humans, plants, animals or the environment presented by fertilisers. Regulations may provide for functions to be conferred on a public authority to monitor or enforce compliance and may require the retention of information relating to the compliance of fertilisers with statutory requirements. The clause will also enable the amendment or repeal of retained EU law relating to fertilisers.</p>	<p>The first regulations made by the Welsh Ministers under section 74A(1) which contain provision under section 74A(1A) to (1E) of the Agriculture Act 1970 will be subject to the affirmative resolution procedure. Subsequent regulations made by the Welsh Ministers, under section 74A(1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) or (1E)(a)(i) or (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative resolution procedure (clause 31(5), amending section 84 of the Agriculture Act 1970). Otherwise the negative resolution procedure applies (see section 84(2)(b), Agriculture Act 1970).</p>
<p><u>Clauses 36 and 37:</u> Powers for the Welsh Ministers in respect of the certification of</p>	<p>This power gives the Welsh Ministers the ability to make new organics regulations, including to modify retained EU legislation (if and to the extent that provision made by the regulations would be within the legislative competence of the</p>	<p>Affirmative resolution procedure where—</p>

<p>organic products and import and export controls (if and to the extent that provision made by the regulations would be within the legislative competence of the Senedd if contained in an Act of the Senedd (ignoring any requirement for the consent of any person) (clause 37(1)(c)).</p>	<p>Senedd). This allows the Welsh Ministers to achieve domestic policy objectives and make changes negotiated with major trading partners to facilitate the requirements of trade agreements. This will ensure that the UK organics sector can continue to operate to world leading standards of organic production, to remain competitive, to adapt with the latest science, and to access global markets.</p> <p>Regulations made under clause 36 can make provision for and in relation to the certification of organic products (clause 36(1)), the import and export of organic products (clause 36(5) and (7)) and the enforcement of organic regulation (clause 36(8)). These powers are available to each of the devolved administrations in certain circumstances (see clause 37(1)(b) to (d)). The Welsh Ministers may make regulations if and to the extent that provision made by the regulations would be within the legislative competence of the Senedd if contained in an Act of the Senedd (ignoring any requirement for the consent of any person) (clause 37(1)(c)). Regulations may also be made under clause 36 by the Secretary of State (clause 37(1)(a)). The consent of the Welsh Ministers is required before the Secretary of State makes regulations under clause 36 that could be made by the Welsh Ministers under that provision (clause 37(2)).</p>	<p>(a) the regulations are made under section 36(1) and contain provision referred to in section 36(3), or</p> <p>(b) the regulations are made under subsection (1), (5) or (7) of section 36 and they are the first regulations to be made under that subsection by the authority making them.</p> <p>Otherwise, regulations under clause 36 are subject to negative resolution procedure (unless section 47(5) applies, in which case affirmative resolution procedure).</p>
<p><u>Clause 44(7) (duration of provision in relation to Wales):</u></p> <p>Power for the Welsh Ministers to make transitional, transitory or saving provision in connection with this section.</p>	<p>In response to recommendations made by the Senedd committees during their scrutiny of the previous Agriculture Bill, introduced in 2018, Schedule 5 (provision relating to Wales) and a number of related provisions are subject to a sunset provision (clause 44) and will expire at the end 2024 in accordance with that provision.</p> <p>The delegated power in clause 44(7) is required to ensure any necessary transitional, transitory and saving provision in connection with the sunset provision can be made by the Welsh Ministers.</p>	<p>Regulations under this clause which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure.</p> <p>Other regulations under this clause are subject to negative resolution procedure.</p>

<p><u>Clause 50(1):</u> Power for the Welsh Ministers to make by regulations supplementary, incidental or consequential provision in connection with—</p> <p>(i) section 32(3) and (4), so far as relating to Wales, (ii) section 43 and Schedule 5, (iii) section 44, and (iv) section 49 and Schedule 7 so far as they apply in relation to Wales.</p>	<p>It is not possible to establish in advance all consequential, supplemental, transitional, transitory and savings provisions that may be required, particularly given that we do not yet know the outcome of EU exit negotiations; a power is needed to avoid any legal uncertainty or legal gaps after the Bill comes into force. Regulations made using this power may modify primary legislation, retained direct EU legislation or subordinate legislation (clause 50(2)).</p>	<p>Regulations under section 50(1) which contain provision modifying primary legislation (with or without other provision) are subject to affirmative resolution procedure.</p> <p>Other regulations under subsection (1) are subject to negative resolution procedure.</p>
<p><u>Clause 50(5):</u> Power for the Welsh Ministers to make by regulations transitional, transitory or saving provision in connection with—</p> <p>(i) section 32(3) and (4), so far as relating to Wales, (ii) section 43 and Schedule 5, (iii) section 44, and (iv) section 49 and Schedule 7 so far as they apply in relation to Wales.</p>	<p>When a new provision comes into force, it is often necessary to make transitional, transitory or savings provision to ensure a smooth transition. It is not possible to establish in advance all transitional, transitory or saving provisions that may be required. As with clause 50(1), this power is needed to avoid any legal uncertainty or legal gaps after the Bill comes into force.</p>	<p>No procedure</p>
<p><u>Clause 53(3):</u> Powers, so far as not brought into force by subsection (1)(a)</p>	<p>This clause contains powers to bring certain provisions of the Bill into force by commencement regulations at the</p>	<p>No procedure</p>

<p>or (b), for the Welsh Ministers by regulations made by statutory instrument to appoint—</p> <p>(a) so far as relating to Wales—</p> <p>(i) section 32(3) and (4),</p> <p>(ii) paragraphs 10 to 16 and 18 of Schedule 3, and</p> <p>(iii) section 34 so far as relating to those paragraphs,</p> <p>(b) Part 2 of Schedule 5, and section 43 so far as relating to that Part, and</p> <p>(c) Parts 2 and 4 of Schedule 7, and section 49 so far as relating to those Parts.</p>	<p>appropriate time. By virtue of subsection (5), different days may be appointed for different purposes.</p>	
<p><u>Schedule 3, para 6(7):</u></p> <p>Powers for the Welsh Ministers by regulations made in a statutory instrument to amend section 84 of the Agricultural Holdings Act 1986 so as to-</p> <p>a) include a person in, or remove a person from, the definition of “professional authority”;</p> <p>b) reflect changes in the name or internal organisation of any</p>	<p>Under the Agricultural Holdings Act 1986 an arbitrator may be appointed by agreement between the parties to resolve a dispute, or if the parties cannot agree they can apply to the President of the Royal Institution of Chartered Surveyors (“RICS”) to appoint an arbitrator. Industry feedback has highlighted a lack of arbitrators in the sector to resolve tenancy disputes.</p> <p>This regulation-making power allows the Welsh Ministers in relation to Wales to amend the list of persons who may appoint arbitrators under the 1986 Act. This is necessary to widen the pool of arbitrators, therefore providing more choice and making the service more accessible for tenants and landlords. This will enable the list to be updated from time to time to keep it up to date with any changes or additions that</p>	<p>Negative resolution procedure</p>

body mentioned in that definition.	may be needed (e.g. if the listed organisations change their name or new organisations need to be added).	
<p><u>Schedule 3, para 7:</u></p> <p>Powers for the Welsh Ministers by regulations to make provision for the tenant of an agricultural holding to refer for arbitration or third party determination requests for landlord's consent to activities that are restricted under the terms of their tenancy agreement or requests for variation of terms where those requests relate to the tenant accessing financial assistance in exceptional market conditions or the tenant meeting a statutory obligation.</p>	<p>Most AHA leases were written over twenty years ago in a very different commercial and policy landscape. Many include standard landlord restrictive clauses to prevent the tenant from undertaking activities without the tenant first gaining the landlord's consent. Such restrictive clauses present a constraint on some tenants' ability to develop a productive and viable business and meet statutory requirements. The regulation-making powers, conferred on the Welsh Ministers in relation to Wales are needed to ensure that tenants under the Agricultural Holdings Act 1986 are not unfairly restricted in this way.</p> <p>Details of a dispute resolution process will be designed and implemented in consultation with industry, including representatives of both tenants and landlords, to ensure a balanced approach between the interests of both parties is taken.</p>	Negative resolution procedure
<p><u>Schedule 3, para 17:</u></p> <p>Paragraph 17 amends section 39(8) of the Agricultural Holdings Act 1986 to confer a power on the Welsh Ministers, in relation to Wales, to make regulations specifying the criteria that must be considered when determining a person's suitability to become a tenant of the holding.</p>	<p>The current legislation is incompatible with current policy objectives of improving farming productivity by encouraging the transfer of land into the hands of skilled commercial farmers. This power to make regulations to update the criteria governing the suitability of a tenant to succeed to an Agricultural Holdings Act 1986 agreement is necessary to enable productive commercial farmers to succeed to AHA holdings in the future. Recent consultations in England and Wales on this issue show widespread support for the provisions to be updated.</p> <p>Details of the new 'Business Competence Test' will be developed in further consultation with industry ensuring representatives of both tenants and landlords are able to</p>	Negative resolution procedure

	<p>contribute their views on the most appropriate criteria to include. In addition, it is important that the regulations can be reviewed and updated regularly to ensure they remain up to date with continued professional development in farming and business skills.</p>	
<p><u>Schedule 5, para 2(1):</u> Powers for the Welsh Ministers by regulations to modify legislation governing the basic payment scheme (“BPS”)</p>	<p>This power will allow the Welsh Ministers to adapt the legislation governing the BPS for one or more specified purposes in light of the experience of operating the scheme and feedback from stakeholders.</p> <p>A public consultation launched on 31 July 2020 is seeking views on proposals to amend the retained (EU) legislation governing BPS during any interim transition period, until powers are provided through an Agriculture (Wales) Bill, in the next Senedd term.</p> <p>Proposals include modifications to make the scheme operation more efficient and effective; remove spent provisions; remove or reduce burdens and ensure the sanctions applied are appropriate and proportionate.</p>	<p>Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)</p>
<p><u>Schedule 5, para 3(1):</u> Powers for the Welsh Ministers by regulations to provide for the continuation of the BPS beyond 2020, including power to provide for the direct payments ceiling for Wales to be determined by Welsh Ministers</p>	<p>This power is necessary to enable the Welsh Ministers to continue operating the BPS beyond 2020. The Minister for Environment, Energy and Rural Affairs has committed to extending BPS in 2021.</p> <p>Under the terms of the Withdrawal Agreement, BPS 2020 is being delivered as an equivalent domestic scheme, pursuant to the Direct Payment to Farmers (Legislative Continuity) Act 2020.</p> <p>The public consultation launched on 31 July seeks views on proposals including continuing to provide agricultural support through an extended BPS scheme until new powers are provided through an Agriculture (Wales) Bill in the next Senedd term.</p>	<p>Affirmative resolution procedure</p>

<p><u>Schedule 5, para 4(1):</u> Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and subordinate legislation relating to that legislation.</p>	<p>This power is needed to allow the Welsh Ministers to make amendments to the horizontal EU legislation to remove complexities. The power may be exercised to make changes for one or more purposes specified at paragraph 4(2). The power allows modifications to be made to align the scheme rules with domestic circumstances, in light of continued experience of operating the schemes and in response to feedback from stakeholders.</p> <p>A public consultation launched on 31 July 2020 seeks views on proposals to make amendments to the monitoring and financing of domestic CAP schemes to align with Welsh Government procedures and Senedd scrutiny, until new powers are provided through an Agriculture (Wales) Bill, in the next Senedd term.</p>	<p>Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)</p>
<p><u>Schedule 5, para 5(1):</u> Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation.</p>	<p>This power is needed to allow the Welsh Ministers to operate a domestic equivalent to EU RDP in Wales.</p> <p>A public consultation launched on 31 July 2020 seeks views on proposals to align rural development with Welsh Government procedures, Senedd scrutiny and distinct Welsh legislation including the Environment (Wales) Act 2016 and the Well-Being of Future Generations (Wales) Act 2015, until new powers are provided through an Agriculture (Wales) Bill, in the next Senedd term.</p> <p>The proposals apply to any new domestic rural development support arrangements. The existing Welsh Rural Development Programme 2014-2020 will continue to be governed by EU Law pursuant to the terms of the Withdrawal Agreement.</p>	<p>Affirmative resolution procedure</p>
<p><u>Schedule 5, para 8(1):</u> Powers for the Welsh Ministers by regulations to modify</p>	<p>This regulation-making power will allow the Welsh Ministers to use public intervention and private storage aid powers more effectively in exceptional circumstances. The nature of</p>	<p>Negative resolution procedure (unless clause 47(5) applies, in</p>

<p>retained direct EU legislation relating to public market intervention or aid for private storage for the purposes of altering the operation of provisions of such legislation, so far as they have effect in relation to Wales in connection with exceptional market conditions which are the subject of a declaration under paragraph 6 of Schedule 5 (declaration relating to exceptional market conditions).</p>	<p>exceptional market conditions is that they cannot be forecast, so we cannot know, for example, what products might require intervention and when. This clause allows the Welsh Ministers to tailor these types of aid to specific exceptional conditions.</p>	<p>which case affirmative resolution procedure)</p>
<p><u>Schedule 5, para 8(2):</u> Powers for the Welsh Ministers by regulations to modify retained direct EU legislation relating to public market intervention or aid for private storage for specified purposes.</p>	<p>The Common Agricultural Policy currently provides powers to remove surplus products from the market and stabilise market prices by purchasing, storing and reselling certain goods once prices have risen (Public Intervention) or by paying producers to store products for an agreed period to remove them from the market (Private Storage Aid). These domestic powers will enable the Welsh Ministers to alter the operation of these provisions -in ways not currently provided for in the existing legislation, to ensure these schemes are tailored to the domestic market. This could include, for example, changing the products which are eligible for specific aid schemes, to tailor them to domestic market conditions. There is also a specific power to phase out these schemes as the sector becomes self-reliant.</p>	<p>Negative resolution procedure (unless clause 47(5) applies, in which case affirmative resolution procedure)</p>
<p><u>Schedule 5, para 9(2):</u> Powers for the Welsh Ministers to make regulations requiring persons in or closely connected with an agri-food</p>	<p>This power is intended to improve transparency of data collection throughout the agri-food supply chain and to improve dissemination of this information. The power will enable the Welsh Ministers to make regulations to collect and</p>	<p>Affirmative resolution procedure</p>

<p>supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in Wales.</p>	<p>share data relevant to the agri-food supply chain. A requirement to provide information must serve certain purposes. Each purpose must be in, or covered by, the list in paragraph 11(4), including productivity, supply-chain fairness and transparency, animal health and welfare, and risk management.</p>	
<p><u>Schedule 5, para 14(1):</u> Powers for the Welsh Ministers to make provision for enforcement of a requirement imposed under paragraph 9(1) or (2) of Schedule 5 (agri-food supply chains: requirement to provide information)</p>	<p>A power to enforce requirements to provide data is needed to ensure powers to collect data are effective and to tailor penalties for failing to provide information so they are proportionate, and to allow for evolving technology and policy objectives.</p>	<p>Affirmative resolution procedure</p>
<p><u>Schedule 5, para 15(1):</u> Powers for the Welsh Ministers by regulations, in relation to products which fall within a specified sector and are marketed in Wales, to make provisions about the standards with which those products must conform</p>	<p>This power will enable the tailoring and modernisation of the existing marketing standards in retained EU law for agricultural products marketed in Wales. Marketing standards are technical in nature, and this power will enable their modification to keep in line with modernisation and to reflect the domestic agricultural market. In relation to products for which EU marketing standards do not exist (including new products which may be added to paragraph 16 using the power under paragraph 16(3)), the power in paragraph 15(1) gives the Welsh Ministers the flexibility to introduce new standards that will be tailored to suit the domestic agricultural sectors.</p> <p>Regulations made under paragraph 15(1) may also provide for the enforcement of marketing standards. In accordance with paragraph 15(3) provision may be made in respect of a range of enforcement matters including (amongst other</p>	<p>Affirmative resolution procedure</p>

	things) conferring powers of entry, imposing monetary penalties, creating offences punishable by a fine and appeals.	
<p><u>Schedule 5, para 16(3):</u> Powers for the Welsh Ministers to amend paragraphs 15 and 16 for or in connection with the purpose of—</p> <p>(a) adding or removing an agricultural product from paragraph 16(1);</p> <p>(b) altering the description of an agricultural product in paragraph 16(1).</p>	<p>The products listed in paragraph 16(1) largely reflect the products covered by current marketing standards law. This is subject to change as new sectors develop and become increasingly important. Therefore, a regulation-making power is needed to enable amendments to paragraphs 15 and 16 of Schedule 5 so that the list of products and their description may be updated over time, and any necessary amendments may be made to paragraph 15 consequential on those amendments to paragraph 16(1).</p>	Affirmative resolution procedure
<p><u>Schedule 5, para 17(1):</u> Powers for the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales</p>	<p>This power is needed to enable the updating of carcass classification provisions for slaughterhouses in Wales. It will allow carcass classification rules to be tailored to suit the domestic sector, to ensure that these rules do not place an excessive burden on farmers and others in the food supply chain and to continue to match modifications made to the rules at international level to ensure domestic farmers and slaughterhouses are not disadvantaged.</p> <p>Paragraph 17(2) sets out the enforcement matters that regulations under paragraph 17(1) may cover including, for example, the provision of information, conferring powers of entry, imposing penalties, creating offences and providing for appeals. This provides powers for an effective enforcement regime and will help to ensure a consistent and fair approach with existing penalties as and when new rules are introduced.</p>	Affirmative resolution procedure

Mick Antoniw MS
Chair of Legislation, Justice and Constitution Committee

11 September 2020

Dear Mick,

**Legislation, Justice and Constitution Committee Report on the Welsh Government's
Legislative Consent Memorandum on the Trade Bill**

Thank you for providing a copy of the Legislation, Justice and Constitution Committee's report and recommendations on the legislative consent memorandum (LCM) for the Trade Bill.

Please find the Welsh Government's response to the report's recommendations at Annex A.

I would like to thank the Committee for its scrutiny of the Trade Bill LCM. I share your concerns about the potential impact of new trade deals on Wales however, as you are aware, the scope of this Bill relates only to rolling over existing trade agreements rather than new trade deals.

I acknowledge your concerns about securing concessions on the face of this Bill but I would emphasise that doing so in the context of a UK Government with a large majority in the House of Commons is very challenging. Whilst there is much in the Bill which I would prefer was amended, I would also point out that previous efforts to amend the Bill in the last parliamentary session resulted in intergovernmental agreements being reached with the UK Government on key areas of concern. This position was accepted by the Senedd at a time when the then Government had more reason to compromise.

This is why my approach has been to work with UK Ministers to secure concessions via intergovernmental agreements, a technique frequently used by Ministers across the devolved administrations to hold the UK Government to account.

As you will know, the Bill has completed its passage through the Commons. The first reading in the House of Lords took place on 21 July and the second reading is scheduled for 8 September. The UK Government's aim is to obtain Royal Assent for the Bill by the end of the transition period.

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

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

The forthcoming House of Lords stages will provide a further opportunity for legislative amendments to be debated and potentially secured. With this in mind, and in order to partly address several of your recommendations I will:

- Write to the Speaker of the House of Lords requesting an amendment is tabled to clause 2 which would have the effect of preventing the regulation making powers from being exercised by UK Ministers to make amendments to the Government of Wales Act 2006.
- Write to the Minister of State for Trade Policy requesting that a despatch box commitment is restated in the House of Lords by UK Ministers that the UK Government will engage with the devolved administrations in advance of any decision to use the clause 2(7) powers to extend the sunset provision.

I can assure you that protecting Wales' interests in international matters is one of my key priorities. I will continue to make representations to the UK Government on all trade policy matters via the Ministerial Forum for Trade where I am able to influence discussions and make Wales' voice heard.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan MS/AS

Minister for International Relations and the Welsh Language
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol

Annex A

Welsh Government Responses to Recommendations from the Legislation, Justice and Constitution Committee on the Legislative Consent Memorandum for the UK Trade Bill

Recommendation	Welsh Government Response
<p>Recommendation 1</p> <p>The Minister should make representations to the UK Government seeking a review of the procedure to be applied to regulations made under clause 1.</p>	<p>Decision – Reject</p> <p>The Welsh Government has not previously raised objections to regulations made under clause 1 being subject to the negative procedure and this was the basis on which it recommended that the Senedd provided legislative consent to the Trade Bill 2017-19.</p> <p>In coming to this position, the Welsh Government has taken into account the fact that this power would be exercised to make largely technical changes to existing domestic legislation in order to implement the GPA once the UK is an independent member. For example, this could include amendments to the Procurement Contract Regulations 2015 to ensure that the list of central government contracting authorities covered by those regulations is consistent with the UK’s obligations under the GPA. It could also include amendments to domestic legislation in response to another party joining the GPA or in response to a current member leaving the GPA.</p> <p>As the extent of discretion that could be exercised by either UK Ministers or the Welsh Ministers is very limited in practice, and accepting that the UK parliament has already had the opportunity to scrutinise the UK’s membership of the GPA, the Welsh Government reached a view where it was comfortable with the provision being subject to the negative procedure.</p> <p>The Senedd accepted this position when it agreed a legislative consent motion (LCM) on 12 March 2019, and subsequently on 21 May 2019 in light of two supplementary LCMs. It was accepted there was very little chance of successfully securing an amendment from the UK Government to change the proposed procedure from negative to affirmative at that time.</p> <p>The current UK Government is in a strengthened position, having won a significant majority in parliament, and has made it clear that it has no intention of changing the procedure to be applied to regulations made under clause 1. It is therefore extremely unlikely that any representations we should make to the UK Government on this matter would receive serious consideration.</p> <p>Financial Implications – None.</p>

<p>Recommendation 2</p> <p>The Minister should write to the Committee notifying us of the outcome of the representations made to the UK Government as a result of recommendation 1.</p>	<p>Decision – Reject</p> <p>Due to the reasons outlined in recommendation 1, it is not considered appropriate for the Minister to make representations to the UK Government on this matter.</p> <p>Financial Implications – None.</p>
<p>Recommendation 3</p> <p>The Minister should seek an amendment to the Bill so that the regulation-making power in clause 1 can be exercised when Ministers consider it ‘necessary’, rather than where Ministers consider it ‘appropriate’.</p>	<p>Decision – Accept in Principle</p> <p>We agree with the Committee that the choice between ‘necessary’ or ‘appropriate’ is important and must be carefully considered in relation to each specific Bill and its circumstances. In this particular situation, we are mindful of the time-limited nature of this legislation, in that the Bill only relates to implementing international agreements that were already in place before the UK exited the EU, and the already very limited scope of the powers in practice.</p> <p>The Welsh Government agrees that the term ‘necessary’ would be preferable in the context where changes should only be made where they are necessary to ensure that international obligations are complied with. However, since any amendment to the Bill would require the same standard to be applied to the regulation making powers conferred on UK Ministers, it is highly unlikely that such an amendment can be carried – and again, in considering the 2017-19 Trade Bill the Senedd did not consider this an issue which should impede the granting of legislative consent.</p> <p>We do not therefore believe it appropriate for us to proactively seek an amendment which would restrict these powers, although we would not oppose efforts in the House of Lords to bring forward such an amendment.</p> <p>Financial Implications – None.</p>
<p>Recommendation 4</p> <p>The Minister should seek an amendment to clause 2(6)(a) of the Bill to the effect that it cannot be used by UK Ministers to make regulations that amend the <i>Government of Wales Act 2006</i>.</p>	<p>Decision – Accept</p> <p>Whilst it is technically possible that the UK Government could use clause 2(6)(a) to make regulations that amend the Government of Wales Act 2006 (GoWA), in practice, it is extremely unlikely that this would happen, as the clause 2 powers are very limited in scope.</p> <p>To mitigate the risk of clause 2 being used by UK Ministers in this way, the Welsh Government has worked to secure commitments from the UK Government, albeit intergovernmental, non-legislative and non-binding, that clause</p>

	<p>2 powers will not be used in areas of devolved competence. As such, on 23 June 2020, at the Trade Bill Committee meeting in the House of Commons, the Minister of State for Trade Policy restated assurances made by predecessors during the passage of the Trade Bill 2017-19 that the UK Government would not normally legislate within devolved areas without the consent of the relevant devolved administrations and never without consultation first. In addition, and further to representations from the Minister for International Relations, the Minister for Trade Policy also made a new commitment that his department will work closely with the devolved administrations at all stages of trade negotiations.</p> <p>However, whilst the UK Government has previously indicated that it is not minded to exercise the clause 2 powers to make amendments to GoWA and has made commitments at the despatch box that it will not normally do so, and we do not envisage a situation when this action would ever be required, we do recognise that there is a small risk that UK Ministers could utilise these powers. We agree with the Senedd that it is not acceptable for UK Ministers to use secondary powers to amend the core primary legislation underpinning the devolution settlement.</p> <p>The Welsh Government will therefore write to the Speaker of the House of Lords requesting an amendment is tabled to clause 2 which would have the effect of preventing the regulation making powers from being exercised by UK Ministers to make amendments to GoWA.</p> <p>Financial Implications – None.</p>
<p>Recommendation 5</p> <p>The Minister should seek an amendment to the Bill so that the regulation-making power in clause 2 can be exercised when Ministers consider it ‘necessary’, rather than where ministers consider it ‘appropriate’.</p>	<p>Decision – Accept in Principle</p> <p>Please see the response provided to Recommendation 3 which also addresses Recommendation 5.</p> <p>Financial Implications – None</p>
<p>Recommendation 6</p> <p>The Minister should seek an amendment to the Bill to secure a requirement on the UK Government to obtain the Welsh Ministers’ consent before it</p>	<p>Decision – Reject</p> <p>The Welsh Government previously tabled amendments to the 2017-19 Bill along with the Scottish Government that would have required UK Ministers to obtain the consent of the Welsh and Scottish Ministers before making regulations under clauses 1 and 2 that made provision within devolved competence.</p>

<p>makes regulations under clauses 1(1) and 2(1).</p>	<p>These amendments were rejected, but concessions were secured from the UK Government, in the form of non-legislative commitments made at the despatch box, that it would not normally legislate in areas of devolved competence without consultation. These commitments have been restated by the Minister for Trade Policy in relation to the 2019-21 Bill as detailed in the response to Recommendation 4.</p> <p>The Welsh Government reached a position on the previous Bill where it accepted that a requirement for the UK Government to obtain consent on the face of the Bill would lead to devolved administrations effectively having a veto over international agreements negotiated by the UK Government. The Welsh Government decided that securing non-legislative commitments at the despatch box rather than pushing for a veto was consistent with its objectives set out in its published trade policy document, 'Trade Policy: the issues for Wales'. In addition, it was accepted that this compromise was the only way to move the Trade Bill forward to achieve continuity for Welsh businesses and citizens at the end of the transition period. The Senedd was previously content to provide legislative consent on this basis.</p> <p>The Committee states in the report that other UK Bills such as the Environment Bill include concurrent plus powers, requiring the consent of the Welsh Ministers before UK Ministers may make regulations in devolved areas. The Welsh Government accepts that both the Environment Bill and the Fisheries Bill include concurrent plus powers, but in these cases the core subject matter of the Bills is clearly devolved. The Trade Bill differs from the Environment and Fisheries Bills in that only limited parts of the Bill make provision in devolved areas. Other UK Bills relating to international agreements needed as a result of the UK leaving the EU, such as the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019, have passed through parliament with despatch box commitments being accepted as a legitimate, although not ideal device which devolved governments can use to hold the UK Government to account.</p> <p>Financial Implications – None.</p>
<p>Recommendation 7.</p> <p>The Minister should seek an amendment to the Bill to secure a requirement on the UK Government to obtain the Senedd's consent before it makes regulations under clause 2(7).</p>	<p>Decision – Reject</p> <p>The Welsh Government previously reached a position where it was content to recommend legislative consent to clause 2(7) on the basis of the non-legislative commitments secured from the UK Government during the passage of the Trade Bill 2017-19, which included a despatch box commitment to engage with devolved administrations before extending the period during which clause 2 powers can be used under the Bill. The Senedd accepted this position and provided legislative consent on this basis.</p>

	<p>As detailed in the response to Recommendation 6, despatch box commitments have been accepted as a legitimate, although not ideal device that devolved governments can use to hold the UK Government to account in relation to UK Bills. It would therefore be consistent with the approach taken to other legislation to rely on a despatch box commitment in this instance.</p> <p>It is noted however, that this commitment was made on 17 July 2018 and has not been explicitly restated by the Minister for State for Trade Policy in relation to extending the sunset period. The Welsh Government will therefore write to the UK Government requesting that this commitment is explicitly restated by Ministers at the despatch box during the House of Lords stages.</p> <p>Financial Implications – None.</p>
<p>Recommendation 8</p> <p>The Minister should seek urgent discussions with the UK Government regarding the commitments made on the operation of the TRA, specifically as regards consulting the Welsh Government on the TRA's recommendations, and seek changes to the agreed commitments so that they properly reflect the Welsh Government's status as the Government in Wales, and not as a department of the UK Government.</p>	<p>Decision – Reject</p> <p>Matters relating to the Trade Remedies Authority (TRA) are not within the competence of the Senedd although this is an area where Welsh businesses and citizens clearly have an interest. The Welsh Government has recommended supporting the proposed measures for establishing a new independent body, the TRA, to investigate trade disputes on the basis that Welsh Government is involved in the investigatory process but that the UK Government will act on behalf of the UK in its entirety.</p> <p>It is important to note that it will be a legal obligation for the UK to have an authority in place to manage and deliver trade remedies once the UK accedes to the World Trade Organisation (WTO). As Wales is not a member of the WTO in its own right, the legal obligation lies with the UK Government and not the Welsh Government.</p> <p>The Welsh Government's position is that we would not expect to be involved in the operational activities of the TRA, as it is an independent body. The Welsh Government believes that being able to act as a contributor in any case being investigated by the TRA, and at the same time as other UK Government departments, ensures that our views are fed into the process at the most appropriate time, when recommendations are being considered and developed. If we are consulted on the recommendations at the stage when they are made to the Secretary of State, rather than being involved in the process at an early stage of an investigation, this would present a risk that the UK Government could come to an established, collective view without our involvement. In practice, this would provide us with a very limited chance of influencing the outcome or reopening discussions, should we wish to do so. Involvement at an earlier stage of the process, at a point when different competing interests within the UK Government will be being exposed and resolved will be more beneficial as this will enable</p>

	<p>greater leverage. This process is already working in practice as officials have received several invitations to contribute to investigations from the Trade Remedies Investigations Directorate (TRID) within the UK Government, which is managing investigations during the transition period.</p> <p>The Welsh Government previously secured non-legislative commitments from the UK Government on the ways in which we will be able to interact with the Authority and maintain a level of involvement in the investigation process on 4 February 2019. A Written Statement providing more detail about the commitments made by the UK Government was published on 30 April 2019.</p> <p>The view of Welsh Government is that these commitments, alongside the detailed information about how the UK Government will involve the Welsh Government in proceedings provided in the Written Statement, provide satisfactory assurance that we will be involved in the investigatory process at the most appropriate time, in the most appropriate way. The evidence to date is that the assurances are being implemented in practice.</p> <p>Financial Implications – None</p>
<p>Recommendation 9</p> <p>The Minister should seek urgent discussions with the UK Government regarding the commitments made on the operation of the TRA, specifically as regards a duty on the TRA to provide advice to the Welsh Ministers, and seek changes to the agreed commitments so that they properly reflect the Welsh Government's role in implementing international trade agreements.</p>	<p>Decision – Reject</p> <p>Please see the response provide to Recommendation 8 which also addresses Recommendation 9.</p> <p>Financial Implications – None</p>



The Rt Hon the Lord Fowler, Lord Speaker
House of Lords
London
SW1A 0PW

11 September 2020

Dear Lord Speaker,

Following the completion of consideration by the House of Commons, the Trade Bill 2019-21 is now before the House of Lords. I understand that the second reading will take place on 8 September with further stages yet to be timetabled.

I think it important that peers intending to participate in consideration of the Bill should be aware of the Welsh Government's concerns about some of its provisions.

Let me be clear, first of all, that there is much in the Trade Bill which we would prefer was amended. However, within this letter I have restricted my comments to provisions within the Bill that have been deemed to require legislative consent.

I agree that legislation is required to provide stability and continuity as the UK withdraws from the European Union, but the Bill must work with, not against, the devolution settlement. The purpose of this letter is to make clear that, in my view, the Bill, and in particular clause 2 as currently drafted, needs amendment to ensure it does not undermine that settlement.

Clause 2(1) confers powers on a Minister of the Crown and Ministers from the devolved governments to implement international trade agreements. Clause 2(6) sets out examples of the provision which may be made by regulations, which can include amendments to primary legislation. The UK Government has previously indicated that it is not minded to exercise the clause 2 powers to make amendments to the Government of Wales Act 2006 (GoWA). Indeed, the UK Government has made commitments at the despatch box that it will not normally do so, and we do not envisage a situation when this action would ever be required. Nevertheless, there remains a low, but real risk that UK Ministers could use these powers. We believe that it is in principle problematic to provide Ministers with delegated powers to amend the fundamental devolution statutes without full scrutiny by Parliament.

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

We were very disappointed that amendments to require the UK Government to formally engage with the devolved nations on this matter, were rejected in the Commons. We would therefore hope that peers would bring forward amendments to have the effect of preventing the regulation making powers from being exercised by UK Ministers to make amendments to the GoWA (or equivalent legislation in the case of Scotland and Northern Ireland).

I am copying this letter to the Leader of the House; the Shadow Leader; the Convenor of the Crossbench Peers; Lord Grimstone of Boscobel Kt, Minister for Investment, UK Government; Viscount Younger of Leckie, Lord in Waiting (Government Whip), UK Government; Ivan Mckee MSP, Minister for Trade, Investment and Innovation, Scottish Government; and Diane Dodds MLA, Minister for the Economy, Northern Ireland Executive.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

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



Llywodraeth Cymru
Welsh Government

Greg Hands MP
Minister of State for Trade Policy
Department for International Trade
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11 September 2020

Dear Greg,

I am writing to thank you for restating despatch box commitments previously made in July 2018 by one of your predecessors in relation to concurrent powers for Welsh Ministers within the Trade Bill.

However, a recent report published by the Senedd's Legislation, Justice and Constitution Committee on a Welsh Government legislative consent memorandum highlighted that your restatement of despatch box commitments originally made in 2018 did not include an explicit restatement of a commitment made in relation to clause 2(7) powers to extend the sunset period.

It would therefore be helpful if you could ask the Minister responsible for the Trade Bill's passage through the House of Lords to restate the commitment that the UK Government will engage the devolved administrations in the decision-making process in advance of any decision to use the clause 2 powers to extend the sunset period.

Your assistance in this matter would be greatly appreciated.

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

I am copying this letter to Lord Grimstone of Boscobel Kt, Minister for Investment, and Viscount Younger of Leckie, Lord in Waiting (Government Whip).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language



Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

16 September 2020

Dear Mick

I am writing in response to your letter regarding scrutiny of regulations arising from the UK's exit from the European Union and the Protocol between the Welsh Government and the Legislation, Justice and Constitution Committee of Senedd Cymru.

As you have highlighted in your letter, the Protocol that was agreed in October 2018 between your Committee and the Welsh Government ceased to have effect on 31 January 2020 according to its agreed terms. The Protocol has positively contributed to effective working between the Welsh Government and the Senedd, and I agree that in light of the transition period and in expectation of further EU exit related legislation, the Protocol should continue to apply, as originally drafted, to regulations made by the Welsh Ministers under the European Union (Withdrawal) Act 2018 while at the same time expanding its terms to apply to relevant regulations made under the European Union (Withdrawal Agreement) Act 2020 or the 2018 Act as amended by the 2020 Act, and also to regulations made by the Welsh Ministers under the Agriculture, Fisheries, Environment and Trade Bills once enacted.

Regarding the operation of the Standing Order 30C process, I also agree that the resurrected Protocol could be a vehicle for the Welsh Government to commit to following the principle of the Standing Order 30C process when Welsh Ministers consent to relevant regulations under the 2020 Act, the 2018 Act as amended by the 2020 Act and, following further review, the Agriculture, Fisheries, Environment and Trade Bills once enacted.

This agreement will need to be kept under review, and any further amendments to the Protocol will need to be discussed and agreed when necessary. This expanded Protocol should have effect until the end of the Fifth Senedd.

Best Wishes

MARK DRAKEFORD

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

Rt Hon Mark Drakeford MS
First Minister of Wales

23 July 2020

Dear Mark

Scrutiny of regulations arising from the UK's exit from the European Union - Protocol between the Welsh Government and the Legislation, Justice and Constitution Committee of Senedd Cymru

I am writing to you with regards to the **Protocol** that was agreed in October 2018 with our Committee and the Welsh Government. You will know that the Protocol was agreed within the context of the United Kingdom's exit from the European Union and the Welsh Ministers' powers to make regulations under the *European Union (Withdrawal) Act 2018* (the 2018 Act).

We recognise that under the terms of the Protocol it ceased to exist on 31 January 2020. However, in light of the transition period and in expectation of further EU exit related legislation, we believe there is merit in resurrecting the Protocol so that it continues to apply to regulations made under the 2018 Act while at the same time expanding its terms as set out below.

The Protocol set out an understanding between our Committee and the Welsh Government of the administrative arrangements for the scrutiny of regulations that are to be made by the Welsh Ministers under the powers conferred by Part 1 of Schedule 2 to the 2018 Act. At the time the Protocol was drafted and agreed, there was recognition that there would be a need to keep the Protocol under review, particularly as regards its application to the scrutiny of regulations made or to be made under other relevant EU exit related Acts (paragraph 18).

At our meeting on 6 July 2020, we discussed our forward work plans for the autumn term. We are mindful of the comments made to date, by both yourself and the Counsel General, about the potential for a significant volume of EU exit related subordinate legislation to be made before the end of this calendar year. This will, inevitably, have implications for our Committee's workload during the autumn term, and I am writing



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separately to the Trefnydd and Counsel General to request an update on the likely volume of such subordinate legislation.

While that update will be beneficial to our work planning, we appreciate that the programme of EU exit legislation will be subject to change, as was the case with the initial tranche of subordinate legislation that was made to ensure the continued effectiveness of retained EU law after exit day. As such, we would now like to ask that a resurrected Protocol be expanded to apply to relevant regulations made under the *European Union (Withdrawal Agreement) Act 2020* (the 2020 Act). Further, we ask that you give consideration as to whether a resurrected Protocol should also apply in the future to relevant regulations made under other key EU exit related primary legislation, particularly the Agriculture, Fisheries, Environment and Trade Bills once enacted.

In addition to the matter of extending the application of a resurrected Protocol to other EU exit related legislation, we would also like to raise with you the operation of the Standing Order 30C process.

As you are aware Standing Order 30C applies only to regulations made under the 2018 Act. During our scrutiny of legislative consent memoranda for each subsequent EU exit related Bill, where appropriate we have considered and made recommendations regarding how the Senedd should be notified when relevant regulations are made by UK Ministers in devolved areas with the consent of the Welsh Ministers.

To date we have received inconsistent responses from the Welsh Ministers in relation to our recommendations. For example, with regards to relevant regulations that may be made under the Fisheries [Act], the Minister for Environment, Energy and Rural Affairs said that she would not follow the principle of the Standing Order 30C process but would write to our Committee. However, with regards to relevant regulations that may be made under the Environment [Act], the Minister told us that she would formally notify the Senedd as per the Standing Order 30C process.

We are, as ever, mindful of the pressures placed on the Welsh Government, and none more so than at a time of a global health emergency. However, the issue of the Welsh Ministers consenting to another government to act on its behalf in a devolved area is a significant constitutional matter, and one which all Senedd Members should be made aware of in timely fashion. It is for this reason we have in our reports recommended the extension of the Standing Order 30C process where it has been appropriate to do so.

We would like to suggest that the Protocol be used as a vehicle for the Welsh Government to commit to abide by the principle of Standing Order 30C when making relevant regulations under the 2020 Act, and the Agriculture, Fisheries, Environment and Trade Bills once enacted. This could be kept under review, and any further amendments to the Protocol could be discussed and agreed when necessary.

This approach would avoid the need to amend the Senedd's Standing Orders in the short term, while also providing an opportunity for further reflection on the suitability of Standing Order 30C in the long term.



We suggest that a resurrected and expanded Protocol should have effect until the end of the Fifth Senedd. It would then be a matter for our successor Committee to discuss with the next Welsh Government in the Sixth Senedd.

I look forward to receiving your response at the earliest opportunity, and preferably before the start of the Senedd's autumn term.

Yours sincerely,

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

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

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



Jeremy Miles AS/MS
Chwslwr Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

Agenda Item 8.4



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

17 September 2020

Dear Mick,

Inter-institutional Agreement - Intergovernmental Relations Review Ministerial Meetings

I recently updated you on the Joint Ministerial Committee (EU Negotiations) mandate for, and agreement to, the ongoing work around the Intergovernmental Relations Review (IGRR).

I previously reported that Intergovernmental Relations (IGR) ministers met to discuss machinery and dispute avoidance and resolution on 12 August. Further meetings were scheduled for 8 and 10 September. These meetings were merged and took place on 10 September.

I chaired this meeting, and was joined by the Minister for the Constitution and Devolution, Chloe Smith MP, UK Government, Jenny Gilruth MSP, Minister for Europe and International Development, Scottish Government, and Ministers Gordon Lyons MLA and Declan Kearney MLA, Northern Ireland Executive.

Noting the significant impact and adverse implications of the UK Government's Internal Market Bill on intergovernmental relations, we nonetheless agreed the need to jointly progress the work on the IGR review within this forum.

We made further progress on dispute avoidance and resolution, and machinery, though there is more work to do and we asked officials to continue to collaborate on the proposals. I will provide further information in due course.

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

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

I have written similarly to the Chair of the External Affairs and Additional Legislation Committee, David Rees MS.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Miles', with a stylized, cursive script.

Jeremy Miles AS/MS

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

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