# Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:
**Video conference via Zoom**
Meeting date: 5 October 2020
Meeting time: 09.30

For further information contact:
**Gareth Williams**
Committee Clerk
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**In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.Senedd.TV**

**Informal pre-meeting (09.00-09.30)**

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

## 2 Curriculum and Assessment (Wales) Bill: Evidence session

09.30-10.30 (Pages 1 – 49)

Kirsty Williams MS, Minister for Education

Georgina Haarhoff, Deputy Director, Curriculum and Assessment, Welsh Government

Ceri Planchant, Lawyer, Legal Services Department, Welsh Government

Curriculum and Assessment (Wales) Bill, as introduced

Explanatory Memorandum

**CLA(5)-28-20 – Briefing**

**CLA(5)-28-20 – Paper 1** – Letter from the Minister for Education to the Chair of the Children, Young People and Education Committee, 30 July 2020

**CLA(5)-28-20 – Paper 2** – Letter from the Minister for Education, 1 September 2020

**CLA(5)-28-20 – Paper 3** – Letter from the Minister for Education, 18 September 2020

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

10.30-10.35 (Pages 50 – 51)

**CLA(5)-28-20 – Paper 4** – Statutory instruments with clear reports

Made Affirmative Resolution Instruments

3.1 **SL(5)622 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 14) (Cardiff and Swansea) Regulations 2020**

(Pages 52 – 64)

**CLA(5)-28-20 – Paper 5** – Regulations

**CLA(5)-28-20 – Paper 6** – Explanatory Memorandum

**CLA(5)-28-20 – Paper 7** – Letter from the First Minister, 25 September 2020

**CLA(5)-28-20 – Paper 8** – Written statement, 25 September 2020

3.2 **SL(5)624 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) Regulations 2020**

(Pages 65 – 76)

**CLA(5)-28-20 – Paper 9** – Regulations

**CLA(5)-28-20 – Paper 10** – Explanatory Memorandum

**CLA(5)-28-20 – Paper 11** – Letter from the First Minister, 28 September 2020

**CLA(5)-28-20 – Paper 12** – Written statement, 27 September 2020

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

10.35-10.45

Negative Resolution Instruments

4.1 **SL(5)621 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020**

(Pages 77 – 93)

**CLA(5)-28-20 – Paper 13** – Report

**CLA(5)-28-20 – Paper 14** – Regulations

**CLA(5)-28-20 – Paper 15** – Explanatory Memorandum

**CLA(5)-28-20 – Paper 16** – Letter from the Minister for Finance and Trefnydd, 25 September 2020

**CLA(5)-28-20 – Paper 17** – Written statement, 24 September 2020

Made Affirmative Resolution Instruments

**4.2 SL(5)619 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020**

(Pages 94 – 109)

**CLA(5)-28-20 – Paper 18** – Report

**CLA(5)-28-20 – Paper 19** – Regulations

**CLA(5)-28-20 – Paper 20** – Explanatory Memorandum

**CLA(5)-28-20 – Paper 21** – Letter from the First Minister, 24 September 2020

**CLA(5)-28-20 – Paper 22** – Written statement, 22 September 2020

**4.3 SL(5)620 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 13) (Llanelli etc.) Regulations 2020**

(Pages 110 – 123)

**CLA(5)-28-20 – Paper 23** – Report

**CLA(5)-28-20 – Paper 24** – Regulations

**CLA(5)-28-20 – Paper 25** – Explanatory Memorandum

**CLA(5)-28-20 – Paper 26** – Letter from the First Minister, 25 September 2020

## 5 Papers to note

10.45-10.50

**5.1 Letter from the Minister for Environment, Energy and Rural Affairs: The Welsh Government's Supplementary LCM (Memorandum No 4) on the Agriculture Bill**

(Pages 124 – 126)

**CLA(5)-28-20 – Paper 27** – Letter from the Minister for Environment, Energy and Rural Affairs, 28 September 2020

5.2 **Letter from the First Minister to the Llywydd: Senedd and Elections (Wales) Act – provisions relating to the financing and accountability of the Electoral Commission**

(Page 127)

**CLA(5)-28-20 – Paper 28** – Letter from the First Minister to the Llywydd, 28 September 2020

5.3 **Letter from the Minister for Environment, Energy and Rural Affairs: Legislative Consent Memorandum on the Fisheries Bill**

(Pages 128 – 141)

**CLA(5)028-20 – Paper 29** – Letter from the Minister for Environment, Energy and Rural Affairs, 1 October 2020

**CLA(5)-28-20 – Paper 30** – Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Fisheries Bill

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

10.50

## 7 Curriculum and Assessment (Wales) Bill: Consideration of evidence

10.50-11.00

## 8 Update on UK Internal Market Bill

11.00-11.10 (Pages 142 – 177)

**CLA(5)-28-20 – Paper 31** – Briefing: The UK Internal Market Bill: Commons stages

**CLA(5)-28-20 – Paper 32** – Briefing: The constitutional implications of the UK Internal Market Proposals

## Date of the next meeting – 12 October 2020

# Agenda Item 2

Document is Restricted

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

Llywodraeth Cymru
Welsh Government

Lynne Neagle MS
Chair
Children, Young People and Education Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

30 July 2020

Dear Lynne

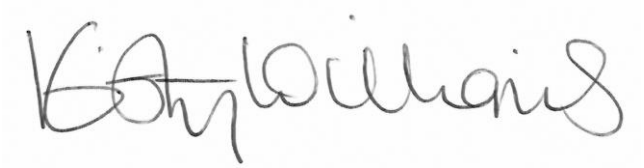
**Curriculum and Assessment (Wales) Bill**

Following the introduction of the Curriculum and Assessment (Wales) Bill into the Senedd on 6 July 2020, please find attached a copy of the statement of policy intent. This document has been provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee in due course.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely



**Kirsty Williams AS/MS**
Y Gweinidog Addysg
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**Curriculum and Assessment (Wales) Bill**

**Statement of Policy Intent for Subordinate Legislation, direction making powers and guidance**

This document provides an indication of the current policy intention for the subordinate legislation, guidance and other documents that the Welsh Ministers would be empowered or required to make or issue under the provisions of the Curriculum and Assessment (Wales) Bill (the Bill). It has been prepared in order to assist committees during the scrutiny of the Bill and should be read in conjunction with the Bill and the Explanatory Memorandum and Explanatory Notes which accompany it.

**Section 5 – Powers to amend sections 3 and 4**

**Procedure: draft affirmative**

This provision gives the Welsh Ministers a power to make Regulations that amend the sections setting out the areas of learning and experience, the mandatory elements and the mandatory cross-curricular skills. This power may be used to add new areas of learning and experience, mandatory elements and cross-curricular skills; or to remove one of those areas, elements or skills, or to revise one.

It is anticipated that amendments of this type may be required over time to reflect the changing needs of pupils and indeed society. This aspect of the curriculum will need to evolve in response to changed circumstances. Therefore, it is considered appropriate to make those changes should the need arise by way of Regulations

**Section 6 – The What Matters Code**

**Procedure: negative**

This provision places the Welsh Ministers under a duty to produce a What Matters Code setting out the key concepts in each area of learning and experience in the curriculum. The Code can be issued only after being laid before the Senedd and will not be issued if within 40 days the Senedd resolves not to approve it.

The fundamental policy intent is to set out the key concepts that must be covered by schools in their areas of learning and experience. This will assist schools to develop their curriculum. Each area of learning and experience is organised by a number of what matters statements that cover the key concepts in that area. For example, in the Mathematics and Numeracy Area of Learning and Experience there are four such statements covering the number system; algebra; geometry and data and statistics. This framework ensures an element of consistency across the country as schools are placed under a duty to ensure that both their curricula (section 6(2)) and their teaching and learning (section 6(3)) covers the What Matters Code. It is likely that amendments may be required over time to reflect the changing needs of pupils, changes to the content of an area of learning and experience, such as advances in

disciplinary knowledge, or indeed changes in society. As such it is appropriate that this detail is issued as a Code rather than being contained in the Bill.

The What Matters Statements have been developed by practitioners as part of developing the curriculum framework and were first published for feedback in April 2019. They were then refined and were published again as part of the curriculum guidance in January 2020 to enable schools to plan for the implementation of the new curriculum.

A curriculum may not be adopted by a school or setting unless it satisfies the requirements of the Code.

**Section 7 – The Progression Code**

**Procedure: negative**

This provision places the Welsh Ministers under a duty to produce a Progression Code that specifies what a curriculum will need to do to ensure pupils' progression. The Code can be issued only after being laid before the Senedd and will not be issued if within 40 days the Senedd resolves not to approve it.

The Progression Code is intended to ensure that each school's curriculum will enable pupils to progress in their learning. Each curriculum (section 7(2)) and the teaching and learning (section 7(3)) in a school must enable pupils to make appropriate progression and it can only do so if it accords with the Code.

This provides more detail about the expectations around pupil progression and it is likely that amendments may be required over time to reflect the changing needs of pupils or changes in the understanding of pupil development and progression. As such it is appropriate that this detail is issued as a Code rather than being contained in the Bill.

The Principles of Progression were published in January 2020 as part of the curriculum framework to enable schools to plan for the implementation of the new curriculum. These are found in the generic guidance and for each Area of Learning and Experience. Together these will form part of the Progression Code.

A curriculum will be deemed not to make provision for appropriate progression unless it accords with the Code.

**Section 8 – The Relationships and Sexuality Education Code**

**Procedure: negative**

This provision places the Welsh Ministers under a duty to produce a Relationships and Sexuality Education (RSE) Code that sets out the themes and matters that must be contained in a school's RSE provision. The Code can be issued only after being laid before the Senedd and will not be issued if within 40 days the Senedd resolves not to approve it.

This ensures that each school's curriculum will contain what is contained in the Code.

The RSE code will describe the high level core learning to be undertaken by pupils and children in the mandatory element of Relationships and Sexuality Education.

The RSE code will create statutory requirements in relation to what must be taught as part of RSE which will ensure that learning will be age and developmentally appropriate and it will ensure transparency of content for learners aged 3 - 16.

It anticipated that amendments may be required to the Code over time to reflect the changing needs of pupils, or changes in society. To respond to changed circumstances it is considered appropriate this detail is issued as a Code rather than being contained in the Bill.

The RSE code is currently being developed by a Working Group with a range of stakeholders and will be consulted on in the autumn of 2020.

Teaching, learning and content for RSE must accord with the Code.

**Section 13 – Welsh Ministers' duty to publish a curriculum for funded non-maintained nursery education.**

**Procedure: no procedure**

The Welsh Government has recognised that childcare settings funded to deliver early education for 3 and 4 year olds, unlike schools, do not have the resources, curriculum design skills or capacity to develop curriculum and assessment arrangements. The Welsh Ministers will therefore be under a duty to design curriculum arrangements for these settings. The Welsh Ministers will be required to keep this curriculum under review and make available any future revisions.

Funded settings will have the flexibility to adopt the Welsh Ministers' designed curriculum and assessment arrangements, design their own or work with others – such as local authorities or schools – on a curriculum to be adopted.

Based on discussions with stakeholders our expectation is, despite the flexibilities to be allowed to adopt a curriculum not published by the Welsh Government, that many funded settings will adopt the curriculum which the Welsh Government will develop with the sector rather than engage in separate or distinct arrangements.

Initial development work began in June on 'enabling pathways' to address the rapid developmental changes in children during the period of learning leading to Progression Step 1. These "enabling pathways" will be designed for schools to support the Curriculum for Wales guidance and where appropriate for use by practitioners working with learners with additional learning needs who may never progress beyond Progression Step 1. They will also form the building blocks for the curriculum arrangements for funded nursery settings.

The Welsh Government will be working with a range of stakeholders including head teachers, regional consortia, Estyn, local authority early years advisory teachers, ALN and non-maintained practitioners to develop this work. Two workshops have taken place and further workshops are planned through the remainder of the year and into 2021 until the development work – including consultations – is concluded and the curriculum published next year.

**Section 17 – Powers to make supplementary provision about curriculum adoption, review and revision**

**Procedure: negative**

Section 17 gives the Welsh Ministers powers to make Regulations about steps that need to be taken by a school or setting before adopting a curriculum. The section also gives the Welsh Ministers the power to make Regulations setting a date by which a school or setting must have adopted their curriculum, and power to specify additional circumstances in which a curriculum must be revised.

The Welsh Ministers intend to make Regulations specifying a date by which a curriculum must be adopted. This will provide schools and providers with certainty about the timetable, ensure consistency, and permit the transition to the new curriculum arrangements to be timetabled across the education sector. This is being done by secondary legislation rather than in the Bill to allow flexibility to respond to circumstances that may affect this date nearer the time. The intention is to set a date in advance of the first of September 2022 so that the curriculum must be adopted in good time before its implementation.

The Welsh Ministers do not intend to make Regulations in respect of the other powers. Such Regulations could for instance be used to specify steps a school or setting will need to take in order to determine the suitability of a curriculum for adoption or revision. We believe there is sufficient provision on the face of the Bill in respect of these matters but it is however possible that these powers may need to be exercised if as practice develops it becomes apparent that revisions are not being made in circumstances where they should be. Or it could also be the case that the Welsh Ministers make a significant change to the curriculum in the future and use these powers to ensure that curricula are revised accordingly.

We have attempted to include provision on the face of the Bill, but it is not possible to entirely foresee how practice will develop. Therefore the power to make regulations is needed to ensure that the system remains workable in case it becomes apparent that the requirements on the face of the Bill are insufficient.

**Section 18 – Power to make supplementary provision about curriculum and summaries**

**Procedure: negative**

Each school and setting is required to publish a summary of their adopted curriculum. Section 18 gives the Welsh Ministers powers to make Regulations to specify information that will need to be provided in that summary.

This section also gives the Welsh Ministers powers to make Regulations about publication of the summary. This might be exercised for example, to require publication of the summary on a school's website, or to require the summary to be sent to parents and carers, or to require publication to take place by a particular date.

The key provisions are included in the Bill in terms of adoption and review. The Regulations will only be needed to set out some technical details on the matters set out above. We consider that the best place for that detail to be set out is in Regulations. A Regulation making power will allow us to amend that detail over time as appropriate.

The objective behind having this power is to ensure consistency in what information is made available about a school's curriculum, and how and when this information is communicated to parents and carers and prospective parents and carers. Dealing with this in secondary legislation will permit the approach to what is included in a summary, and to publication, to develop as it becomes clearer what information is helpful and necessary, and what methods of publication are most effective.

It is not intended to make these Regulations in implementing the curriculum. It is intended to see how practice develops and Regulations will be made if it becomes clear that there is substantial variation in summaries of curricula or crucial information is missing from these summaries that would be needed for parents and carers. Another reason that to exercise these powers would be if schools and settings ask for a consistent approach to assist them in preparing such summaries.

**Section 25(1) – Power to impose further curriculum requirements for pupils aged 14-16**

**Procedure: negative**

Section 25 confers power on the Welsh Ministers to specify further requirements for a curriculum for 14-16 years olds. The power can be used to require something to be included in a curriculum, or to require something not to be included.

The power can be used to require a course of study to be provided by a school to this age group.

It is anticipated that Regulations could set out requirements as to minimum or maximum number of courses that could be studied at age 14-16.

A course of study is defined in the Bill as a course of education or training that leads to a qualification of the type specified in section 25(5) – essentially, one approved by Qualifications Wales, or designated by Qualifications Wales or the Welsh Ministers.

It is not intended to use this power at the outset as we expect that the requirement in the Bill for a curriculum to be broad and balanced will be sufficient. However, should there be evidence that some schools are offering a narrow curriculum to this age group, or are not providing courses of study that lead to certain qualifications then this power can be used to address the position.

**Section 26(1) – Disapplication of English as a mandatory element: maintained schools and maintained nursery schools**

English is a mandatory element in the Bill. A power of determination is given to the head teacher and governing body of a school to disapply this mandatory requirement up to the age of seven. The reason for disapplication is given in the Bill as to maintain or develop pupils' fluency in Welsh.

The intention here is to enable a school to provide Welsh immersion education up to the age of seven. This is seen as part of the schools duty to design their curriculum appropriate for their learners. The provisions are designed to enable schools to practice Welsh language immersion as they do now.

This determination and the cases and circumstances to which it applies must be specified in the published summary school's curriculum. This must also detail, for those cases and circumstances, any provision that may be made for the teaching of English.

This determination can be revoked by the head teacher and governing body.

**Section 27(1) Disapplication of English as a mandatory element: funded non-maintained nursery education**

This is the same power to disapply the mandatory element as above for funded non-maintained nursery education. Here the power is given to the provider of such education.

**Section 33(2) Power to disapply duty to implement pupil choice**

This section specifies the grounds on which a head teacher is able to refuse a pupil's decision to pursue teaching and learning chosen by the pupil under section 24. Subsection (2) of this section confers power on the head teacher to make a determination to refuse to implement a pupil's choice of teaching and learning.

The Bill specifies the following as being grounds for a head teacher to refuse to implement a pupil's choice of teaching and learning:

- The teaching and learning is not suitable, given the educational attainment of the pupil
- It is not practicable to provide the teaching and learning, because of other choices that the pupil has made under section 24

- The amount of time spent travelling to where the learning would be delivered would have a negative effect on the education of the pupil
- Securing the teaching and learning would incur disproportionate costs
- There would be an unacceptable health and safety risk to the pupil, or others, if the teaching and learning was secured.

It is also possible for a head teacher to reverse a decision to allow a pupil to undertake chosen teaching and learning, after it has already begun, but only on the more limited grounds of:

- Disproportionate cost
- Unacceptable health and safety risk to the pupil or others.

**Section 33(6) – Power to disapply duty to implement pupil choice**

**Procedure: draft affirmative**

This section specifies the grounds on which a head teacher is able to refuse a pupil's decision to pursue teaching and learning chosen by the pupil under section 24. Subsection (6) of this section confers power on the Welsh Ministers to amend these grounds by Regulations.

The grounds for a head teacher to refuse to implement a pupil's choice of teaching and learning are specified above.

It is anticipated that the grounds for refusal set out above may need to evolve over time. It is possible that future grounds may relate to whether an individual choice will offer sufficient breadth and balance. We consider it is appropriate that Regulations should be able to amend that detail as the need arises.

**Section 34(5) – Power to disapply duty to implement pupil choice: supplementary**

**Procedure: negative**

Section 34 of the Bill specifies the information a head teacher must give and to whom when a determination is made under section 33 not to implement the pupil's choice of a course of study. The Bill states that the head teacher must inform the pupil and their parent of the decision and explain the reasons for the decision, what teaching and learning is offered in its place and the right to request a review or appeal.

Section 34(5) confers power on the Welsh Ministers to make further provision by Regulations. It is anticipated that Regulations made under this power may make provision about procedural matters such as time limits by which the head teacher must make a determination, or as to the procedure to be followed in making such a determination.

It is not intended to make regulations in this regard at the outset. We believe that the procedures outlined on the face of the Bill are clear about the responsibility of schools here.

However, if it becomes clear over time that pupils and parents or carers are waiting too long in respect of the head teachers' decision or that the procedures adopted by schools are causing difficulties then this power would be used to clarify the process and ensure a consistent approach.

**Section 35(4) – Reviews and appeals relating to pupil choice**

This power of direction is given to a school's governing body to deal with appeals against a head teacher's decision not to implement a pupil's choice of a course of study under section 33 and gives them the power to implement their decision.

The governing body is given a power to direct the head teacher to take the action it considers appropriate and the head teacher is under a duty to comply. For example, in light of a successful appeal the governing body would direct the head teacher to implement the pupil's choice of course of study. The head teacher would then be duty bound to implement this decision.

**Section 40(1) Development work and experiments.**

**Procedure: no procedure**

Section 40 allows the Welsh Ministers to give a direction to a school. The direction can disapply any of the implementation requirements set out in sections 29 to 32, or provide for those implementation requirements to be modified in their application to the schools.

This direction can be given only for experimental or developmental purposes.

Section 41 specifies two conditions that must be satisfied before a direction can be given under section 40.

The first condition is that the curriculum that will be put in place, as a result of the direction, will enable pupils and children to develop as outlined in the four purposes; offer appropriate progression; be appropriate to the pupils' or children's age, ability or aptitude; take into account their additional learning needs (if any); and secure broad and balanced teaching and learning.

The second condition, in the case of a school, is that the local authority has applied for the direction with the agreement of the governing body, or vice versa; or that, where no application has been made, both the governing body and the local authority agree to the direction being given. For a foundation or voluntary aided school there is no role for the local authority in this regard.

For funded non-maintained settings it is the local authority and the setting that must agree to a proposal for a direction brought by a local authority or the Welsh Ministers.

Section 42 provides more detail about a section 40 direction: it must be made in writing and published, and the schools and settings to which it applies must publish a summary of the curriculum that they will implement as a result of the direction.

The nature of this power is such that it will only be used in rare circumstances whereby we feel it would be beneficial to trial something novel. This power gives the flexibility to do this.

**Section 43(4) – Pupils and children with additional learning**

**Procedure: negative**

Section 43 deals with the interaction between the curriculum and an individual development plan ("IDP") prepared or maintained by a local authority under the Additional Learning Needs and Education Tribunal (Wales) Act 2018. It also deals with special educational provision included in an educational health care plan ("EHC") under the Children and Families Act 2014: this is to address the position of children from England who are attending a Welsh school or setting.

This section allows an IDP or EHC to disapply or modify requirements relating to curriculum implementation, for the pupil or child to whom the IDP or EHC relates.

But this is conditional upon certain requirements being met: the local authority concerned must be satisfied that the curriculum that will be provided enables the pupil or child to develop as described in the four purposes; that it offers appropriate progression; that it is appropriate to the pupil or child's age, ability or aptitude; and that it secures broad and balanced teaching and learning.

Subsection (4) of section 43 confers power on the Welsh Ministers to make Regulations specifying further conditions that must be satisfied for an IDP or EHC to disapply or modify curriculum requirements.

It is not intended to make Regulations here at the outset as we believe that the provisions on the face of the Bill should be sufficient to specify the conditions that need to be met when disapplying or modifying a curriculum for an individual pupil. However, should it come to light that this provision is over used or that certain parts of the curriculum are often disapplied then Regulations under this power could specify extra conditions. Regulations are the most appropriate way to do this as we will need to see how practice develops to ascertain if any further conditions would be needed and, if so, what they may be.

**Section 44(1) and (2) – Temporary exceptions for individual pupils and children**

**Procedure: negative**

This section confers powers on the Welsh Ministers to make Regulations specifying cases and circumstances in which a head teacher, or the provider of funded non-maintained nursery education, may make a determination to disapply or modify the implementation of the curriculum for a pupil or child. It is anticipated that Regulations may require the head teacher or provider to be satisfied that there is not likely to be a significant change in the circumstances that give rise to the need for such a step within the prescribed period.

Any Regulations made under this section must impose conditions as set out in section 44(3). These are that the curriculum implementation requirements may be disapplied only if the curriculum that will be provided for the pupil or child: will enable the pupil or child to develop in the way described in the four purposes; will secure teaching and learning offering appropriate progression; is suitable for the age, ability or aptitude of the pupil or child; takes account of any additional learning needs of the pupil or child; and secures broad and balanced teaching and learning.

Section 44(4) permits the Regulations to require additional conditions to be met before a determination disapplying or modifying the implementation of the curriculum is made by a head teacher or provider.

Section 45 of the Bill goes into more detail about Regulations under section 44. It specifies that Regulations cannot allow a determination to be made on the grounds of a pupil or child's additional learning needs. It requires the Regulations to specify that a determination is to have effect for a fixed period of no more than six months, or for an ongoing period that must be brought to an end within six months. It allows the Regulations to make different provision about how long a second or subsequent determination made in respect of the same pupil or child will have effect for, provided that second or subsequent determination meets certain criteria about when it is made.

The Regulations may allow the person making this determination to vary or revoke the determination and may set cases, circumstances or conditions for this.

The purpose of these Regulations is to allow temporary exceptions to be made for pupils who do not have additional learning needs, for example if a pupil had been ill for some time.

Sections 44 and 45 reflect existing provision in Part 7 of the Education Act 2002.

**Section 47(8) – Appeals about temporary exceptions for individual pupils**

**Procedure: negative**

Section 47 of the Bill provides for appeals by a pupil or parent where: a head teacher has decided to make, vary or revoke a determination as described in section 44; or where a head teacher has failed to make a determination following being requested to do so.

Subsection (8) of section 47 confers power on the Welsh Ministers to make further provision about these appeals in regulations. It is anticipated that the Regulations

would make provision around procedure to be followed and time limits for appeals. The detail of that is best suited to Regulations as it sets out technical details which may change over time.

As this reflects current legislation we expect that schools already have a process in place. Therefore it is not anticipated using these powers at the outset to make further provision about the appeals process but if issues present themselves over time as practice develops then this power could be used specify more detail if required. We are considering whether it would be helpful to use these powers at the outset to make Regulations specifying time limits for appeals.

**Section 48(6) – Appeals about temporary exceptions for individual children individual children**

**Procedure: negative**

These are the same powers as Section 47(8) but for funded non-maintained providers and our intention is the same.

**Section 50(1) – Power to make further provision for further exceptions**

**Procedure: negative**

This section confers power on the Welsh Ministers to make Regulations that disapply or modify the curriculum implementation requirements in specified cases or circumstances. The Regulations could be used to permit another person – for instance a head teacher – to exercise their discretion about disapplying or modifying a requirement.

This provision is designed to reflect the existing provision in section 112 of the Education Act 2002. That power was used to disapply aspects of the national curriculum when trialling the foundation phase is certain schools. It is anticipated that the power would be used for similar purposes.

This will also allow flexibility to cover situations whereby part of a pupils' curriculum is commissioned and possibly undertaken at another place, for example at a further education institution, due to their particular interests. Some flexibility in terms of curriculum requirements may be needed to enable this to happen. These may be very individualised circumstances and it is generally best to allow head teachers to decide. This power to make Regulations may be used to specify the circumstances of modification or disapplication to ensure that curriculum content is not modified or disapplied inappropriately.

The Welsh Ministers will decide whether or not to use this power when individual school curricula are available. This will determine whether there is a need to use this power or not.

**Section 58(1) – Power to make provision in relation to assessment arrangements.**

**Procedure: negative**

Under this section the Welsh Ministers have powers to make Regulations about assessment arrangements relating to the relevant curriculum as defined in sections 11, 12, 15, 16, 52, 53 and 55 of the Bill. In relation to these curricula, these are arrangements for assessing: the progress made by pupils and children; the next steps in their progression; and the teaching and learning needed to make that progress.

These Regulations may require a relevant person to make and implement assessment arrangements; specify these arrangements; evaluate their effectiveness; keep them under review; and revise them. A relevant person under these Regulations is a head teacher, school governing body, provider of funded non-maintained nursery education, teacher in charge of a pupil referral unit, management committee of a pupil referral unit, a person providing education otherwise than at school.

The intention here is to make Regulations so that schools, funded non-maintained settings, pupil referral units and providers of education other than at school make assessment arrangements to support their curriculum.

For the most part these Regulations would not be overly prescriptive. They will require the relevant person to consider and put in place assessment arrangements that are most appropriate to their local curriculum, context and learners. The statutory guidance that the Welsh Ministers will issue on assessment under section 66 of the Bill will help support schools by providing key principles to ensure a degree of consistency in their approach.

There will be a slight variation for funded non-maintained settings in that the guidance is expected to be non-statutory. We recognise that, in the same way that it is unreasonable to expect all such settings to design their own curriculum, the same can be said for assessment arrangements. Therefore the Welsh Government will publish new curriculum and assessment arrangements for the sector.

It is intended to use these Regulations to require certain assessments to be taken nationally, for example the online personalised assessments or a future baseline assessment. In these cases, Welsh Ministers will be more prescriptive in specifying when and how these arrangements are to be made and implemented, as well as how their effectiveness to be evaluated.

This is consistent with the current approach to assessment arrangements, with the detail of the provisions outlined in orders and Regulations made under the powers set out in section 108 of the Education Act 2002.

The assessment part of the curriculum guidance published in January 2020 was developed by an Assessment Advisory Group. Membership of the group included practitioners from both English and Welsh medium Primary, Secondary, and Special schools and Foundation Phase funded non-maintained settings, as well as academics

and representatives from Regional Consortia, Estyn and Qualifications Wales. This group will provide advice to the process of developing Regulations to ensure that they are consistent with the ethos of Curriculum for Wales and that the requirements are practical from a practitioner perspective.

**Section 59(1) – Promoting and maintaining understanding of progression**

**Procedure: no procedure**

This is required to put in place a process that ensures professional dialogue takes place within and between schools for practitioners to develop and maintain a shared understanding of progression. It is essential for practitioners to undertake this process in order to ensure equity and a level of consistency for learners in terms of their progression. This is to replace the current moderation process which is currently provided for via section 108 of the Education Act 2002 and National Curriculum (Moderation of Assessment Arrangements for the Second and Third Key Stages) (Wales) Order 2015.

In keeping an adopted curriculum under review a head teacher must have regard to information derived from any assessment arrangements implemented by them under Regulations made under section 58. The process of promoting and maintaining understanding of progression is therefore a key process that will support schools to consider how their curriculum is supporting learner progression.

It is intended to direct head teachers and school governing bodies to put in place arrangements to ensure that a process to promote and maintain an understanding of progression is undertaken both within their school and between the related secondary school and its feeder primary schools. The focus of these discussions between specified teaching practitioners would be to develop and maintain understanding of progression as articulated in their adopted curriculum.

It is also intended to direct head teachers and governing bodies to ensure that the relevant staff within their school, as well as representatives from their cluster group of schools, meet at least once a year for the purpose of developing and maintaining understanding of progression.

It is also possible to specify the time period and the content of the meetings. By this we mean that over an appropriate period of time, but probably not exceeding three years, head teachers and governing bodies would be required to ensure the process undertaken within and between schools cover the full breadth of the curriculum. Regulations may also specify the staff that must attend the meetings either by reference to persons (i.e. head teacher, Additional Learning Needs Co-ordinator) or a description of the expertise of a member/members of staff to ensure that the breadth of the curriculum is covered.

Regulations may also require head teachers and governing bodies to take account of the outcomes of these discussions within and between schools when reflecting on their curriculum, assessment arrangements and learning and teaching within their school.

It is providers of funded non-maintained nursery education nor pupil referral units to put such a process in place with their related primary schools. However schools will be encouraged to engage with their relevant funded non-maintained settings and encourage them to become members of a group whose remit is to develop across the 3-16 continuum. This advice to schools will be outlined in statutory guidance to which head teachers and governing bodies will have to have regard. Although funded non-maintained providers will be encouraged to take part in such a process, it will not be a requirement for them.

**Section 66(1) – Duty to have regard to guidance**

**Procedure: no procedure**

Section 66 confers power on the Welsh Ministers to issue guidance about the exercise of functions (i.e. powers and duties) conferred by the Bill, or by Regulations made under it. It specifies persons who are required to have regard to this guidance: head teachers, school governing bodies, providers of funded non-maintained nursery education, teachers in charge of pupil referral units, management committees of pupil referral units, providers of education under section 19A of the Education Act 1996 otherwise than at school, and local authorities (This section of the 1996 Act, inserted by Schedule 2 to the Bill, requires a local authority to arrange for education to be provided to children who, because of illness, exclusion or some other reason not receive suitable education unless such provision is made.).

Before issuing the guidance, the Welsh Ministers must consult those they think appropriate.

This is a general power needed so that the Welsh Ministers are able to issue relevant guidance when the need requires.

An example of this will be guidance on assessment arrangements such as that published as part of the curriculum guidance in January 2020 ‘Supporting learner progression: assessment’. Further guidance on assessment will be developed for through a process of co-construction with practitioners supported by other experts with experience and expertise This expected to be made available in September 2021.

**Section 67(1) – Power to make provision for children receiving education in more than one setting etc.**

**Procedure: negative**

This section confers power on the Welsh Ministers to make Regulations about teaching and learning for learners who receive education in more than one setting. The section makes provision for various different ways in which this situation may arise. A child may be a registered pupil at a maintained school, maintained nursery school or a pupil referral unit, but also receive education at another such setting, or receive education otherwise than at school under Section 19A of the Education Act

1996. (This section of the 1996 Act, inserted by Schedule 2 to the Bill, requires a local authority to arrange for education to be provided to children who, because of illness, exclusion or some other reason not receive suitable education unless such provision is made.)

This section also permits Regulations of this type to be made about other children of compulsory school age who are described in the Regulations themselves. This provision is needed to ensure that the Regulations may make provision about teaching and learning to be provided to children who are receiving part-time education, but not education in more than one setting. An example might be a child who is recovering from illness and receives only two hours of education a week, at home. The curriculum requirements in the Bill would not be appropriate for a child in this position and so provision will need to be made in the Regulations about what criteria the education should meet. However, due to the large number of permutations possible, in this context, and the level of detail that will need to be entered into, it is considered necessary to deal with the position of this small class of children by way of the Regulations rather than on the face of the Bill itself.

At present there is no definition of full time education in legislation. It is anticipated that in prescribing some of the matters set out above there may be a need to define that in Regulations made under this section. It is anticipated that will be done by reference to a number of hours that will be deemed to constitute full time education.

These powers can also be used to make Regulations regarding the progress of children of this type, the next steps in their progression, and the teaching and learning needed to make that progress.

These powers may confer functions on a head teacher of a maintained school or a maintained nursery school; a school governing body; the teacher in charge of a pupil referral unit; the management committee for a pupil referral unit; a person who provides teaching and learning for a child otherwise than at school; a provider of funded non-maintained nursery education; and a local authority in Wales and apply, modify or disapply provisions made by or under this Bill.

In these situations it is expected that providers would work together to decide how provision in multiple settings will interact so that the learner receives a full curriculum. Regulations will describe the mechanism of this process in more detail as well as to set expectations. However, more work is needed due to the potential number of different cases here. It is intended to work with various settings to develop these Regulations to ensure that these learners receive a full curriculum where possible.

**Section 70(1) – Power to make additional provision to give full effect to this Act**

**Procedure: negative**

This section confers power on the Welsh Ministers to make supplementary, incidental or consequential provision, in Regulations, where they think it necessary or appropriate to do so in order to give full effect to provision made by the Bill, or by

Regulations made under the Bill, or in consequence of any such provision. They may also make transitory, transitional or saving provision in the same circumstances.

For example, the Additional Learning Needs Education Tribunal (Wales) Act 2018 is not yet fully commenced. There is to be a phased implementation of the ALNET Act and as a result, by September 2022 there will be some children in respect of whom the current SEN law will still apply, rather than the ALNET Act. We have drafted the Bill provisions on the basis that the ALN system will apply (as well as there being children with EHC plans). For children who are still subject to the SEN system when the Bill's provisions come into force, transitory provision could be made under the power in draft section 70 of the Bill so that statements may disapply a school's curriculum.

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

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair Legislation, Justice and Constitution Committee

01/09/2020

Dear Mick,

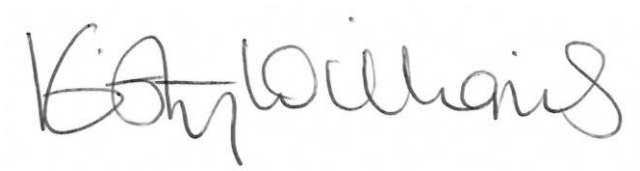
On 1 September I laid an updated version of the Curriculum and Assessment (Wales) Bill Explanatory Memorandum.

I would draw the Committee's attention to paragraphs 3.48 – 3.50, which set out the type of Religion, Values and Ethics that must be provided for each category of school and the reasons why. This small but important amendment to the document has been agreed with Senedd lawyers.

The following has also been updated:

- Chapter 5 Table 5.1 line 70(1) – Replaced 'draft affirmative' with 'negative'
- Chapter 5 Table 5.2 line 33(2) – Replaced '[J017A]' with '24'.

Yours sincerely



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Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair Legislation, Justice and Constitution Committee

18/09/2020

Dear Mick,

Thank you for your letter dated 4 August 2020 with questions in advance of my attendance at the Legislation, Justice and Constitution Committee evidence session on 5 October.

My response to the questions raised are as follows:

Human Rights

**Q1. Are you content that the Bill as a whole is compatible with the European Convention on Human Rights?**

I am satisfied the Bill as a whole is compatible with the rights protected by the Human Rights Act 1998 ("the Convention Rights").

**Q2 . The Bill makes no provision for parents to be able to withdraw their children from Religion, Values and Ethics ("RVE") or Relationships and Sexuality Education ("RSE"). Are you satisfied that this is compatible with parents' rights to respect for their religious and philosophical convictions under Article 2 Protocol 1 (right to education) and their right to freedom of thought, conscience and religion under Article 9 of the European Convention on Human Rights?**

As the question states the Bill does not provide a right to withdraw. This will ensure that every child has education in RVE and RSE. I believe that issues around RVE and RSE permeate throughout society and often raise complex issues which can be difficult for all of us and particularly children to navigate. I believe schools have a part to play in equipping pupils to understand and navigate their way through those issues. This will be achieved by providing a better understanding of both these areas from the perspective of different

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faiths, non-faiths and philosophical ideas within the context of a modern multicultural and multi faith society.

The RVE provisions are a particularly complex area of the Bill and so I have set out below a summary of what each category of school is obliged to do in the new Bill in respect of RVE. I have gone on to discuss why this approach is compliant with Article 2 Protocol 1 (A2P1), and Article 9 and Article 14 as mentioned above.

*Community schools, and foundation and voluntary schools without a religious character:*

- There is no right to withdraw from RVE;
- The provision in the curriculum for RVE must be designed having regard to the agreed syllabus[1];
- It must also be designed having regard to any guidance issued by the Welsh Ministers under the Bill.

*Foundation and voluntary controlled schools that have a religious character:*

- There is no right to withdraw from RVE;
  - The curriculum must include provision for RVE which has been designed having regard to the agreed syllabus.
  - If that provision does not accord with the school's trust deed or the tenets of its faith, the curriculum must also make provision for RVE that does accord with the trust deed or the tenets of the faith of the school ("Denominational RVE");
- The provision in the curriculum for RVE must also be designed having regard to any guidance issued by the Welsh Ministers under the Bill;
- In this type of school, the default position is for RVE which has been designed having regard to the agreed syllabus to be provided to pupils;
- But if a pupil's parent requests it, a school must provide Denominational RVE to the pupil instead of the RVE designed in accordance with the agreed syllabus. This is not a right to withdraw from RVE, but a right to request a different type of RVE.

*Voluntary aided schools that have a religious character:*

[1] The agreed syllabus is the syllabus for religious education recommended by the Agreed Syllabus Conference established by a local authority for its area and adopted by it. The agreed syllabus is determined in accordance with section 375 and Schedule 31 to the Education Act1996.

- There is no right to withdraw from RVE;
  - The curriculum must include provision for RVE which accords with the school's trust deed or, if the trust deed doesn't make provision about RVE, with the tenets of the school's faith. ("Denominational RVE")
  - If the Denominational RVE provision does not accord with the agreed syllabus, the curriculum must *also* make provision for RVE that does accord with the agreed syllabus.
  - The provision in the curriculum for RVE must also be designed having regard to any guidance issued by the Welsh Ministers under the Bill;
- In this type of school, the default position is for Denominational RVE to be provided to pupils.
- But if a pupil's parent requests it, a school must provide RVE to the pupil that accords with the agreed syllabus, instead of the Denominational RVE. Again this is not a right to withdraw from RVE, but a right to request a different type of RVE.

*Pluralistic RVE*

I am satisfied that not providing a right to withdraw in respect of RVE is compatible with the rights protected by the Human Rights Act 1998, including A2P1 and Article 9 and Article 14 when read together. It is important to note that, aside from the Bill, the law requires that if a state mandates RVE it should ensure access to pluralistic RVE or if not there should be a right to withdraw. In response to the following question I have set out the provisions in the Bill that ensure that pluralism in RVE[2] is achieved.

The Bill allows Denominational RVE to continue to be provided by faith schools but in the case of voluntary aided faith schools, a child's parent may opt out of that in favour of pluralistic RVE. By pluralistic I mean it teaches a number of different views both religious and non-religious. In doing that the Bill recognises the role of schools with a religious character in the provision of state education.

The Welsh Government recognises that historically, the state has embraced various faiths in the provision of education. In drafting the Bill, Welsh Government have endeavoured to respect this. Those faiths have a valuable role in the provision of education in Wales.

[2] As to examples of the relevant case law please (Folgerø v Norway (Application no 15472/02) [2007] ECHR 15472/02; Lautsi v Italy (2008) 46 EHRR 47, paragraph 54); (Lautsi v Italy (2012) 54 EHRR 3, paragraph 59) and R (on the application of Fox) & Others v Secretary Of State For Education [2015] EWHC 3404 (Admin).

In respect of voluntary aided schools with a religious character, although the right to withdraw is removed, that does not mean that pupils at those schools will necessarily have to receive Denominational RVE. Instead, their parents can request that they be taught RVE in accordance with the agreed syllabus, and a school must then provide this type of RVE. So, although the right to withdraw is removed, what will be provided must be pluralistic if the parent so requests. This approach has the effect of imposing a new requirement upon a school of this type (to provide RVE in accordance with the agreed syllabus if requested by a parent) and this is, in our view, proportionate.

It is important to note that I do not assume that any Denominational RVE will not be pluralistic. In conversations with my officials the Catholic Education Services have been very clear that they consider the RVE provided in Catholic schools is pluralistic. It is simply that in most cases that Denominational RVE will be provided in accordance with the trust deed, and whilst it is not feasible for the Welsh Government to consider every trust deed, the approach set out in the Bill is in our view compatible with Convention Rights.

*Pluralistic RSE*

I am also satisfied that removal of the right to withdraw in respect of RSE is compatible with the rights protected by the Human Rights Act 1998, including A2P1 and Article 9. It is important to note that aside from the Bill, the law requires that where the state mandates RSE, it must ensure access to pluralistic RSE or there should be a right to withdraw.

The RSE provisions are designed to ensure that it is provided pluralistically. That is what is required by the current law. I have in my response to the following question set out how the provisions in the Bill seek to ensure plurality in RSE.

**Q3. What safeguards exist within the Bill (or more widely) to seek to ensure that both the RVE and RSE curricula are –**

**a) designed in a way that is objective, critical and pluralistic, and**
**b) delivered in a way that is objective, critical and pluralistic,**

**thereby complying with Convention rights?**

**RVE**

The Bill makes provision in a number of respects which are designed to secure the pluralistic content and teaching of RVE. These are as follows:

*Re-naming of religious education to Religion, Values and Ethics (RVE)*

The name change reflects the broad focus and pluralistic nature of RVE. That was done by linking the Bill provision to the term “philosophical convictions” in A2P1 (see section 62 of the Bill). In other words, the RVE provided pursuant to the Bill must be compatible with A2P1 in that it must include teaching on non-religious philosophical convictions.

*Agreed syllabus*

The agreed syllabus must comply with certain requirements specified in section 375A(3) of the Education Act 1996 (as revised by paragraph 7 of Schedule 1 to the Bill). This requires that the agreed syllabus must reflect religious traditions in Great Britain while taking account of the teaching and practices of other principal religions. To ensure plurality the Bill also requires that it must reflect that a range of non-religious philosophical convictions that are held in Great Britain. Section 375A of the 1996 Act states that the reference to "philosophical convictions" in section 375A(3)(b) is to philosophical convictions within the meaning of A2P1 of the Human Rights Act 1998. The purpose of these provisions is to ensure that a range of religious and non-religious views are taught as part of RVE thus ensuring the approach to this subject is both critical and objective.

A school's curriculum must include provision for RVE that is designed having regard to the agreed syllabus, or (in the case of voluntary aided schools with a religious character) in accordance with the agreed syllabus. Thus the pluralistic requirements of the agreed syllabus will feed through into the curriculum provision for RVE.

The agreed syllabus is adopted by an Agreed Syllabus Conference. The conference will be required to represent non-religious philosophical convictions and they will have voting rights.

There will continue to be Standing Advisory Councils which advise a local authority on the provision of RVE under the Bill – these too will be required to represent non-religious philosophical convictions.

In this way pluralism is built into the agreed syllabus, and the RVE provided in schools.

**RSE**

In terms of RSE, the Bill also makes provision in a number of respects which are designed to secure the pluralistic content and teaching of RSE. These are as follows.

*Change of name:*

The Bill provides for a change in the current name in legislation from "sex education" to "Relationships and Sexuality Education" (RSE). This indicates the breadth of the subject and concepts that should be included.

*Statutory Code on RSE:*

The Bill requires the Welsh Ministers to publish a code setting out the themes and matters in RSE. This will ensure that a range of ideas on any given topic

in RSE are included in it. For example, the code may include sections on different types of marriage and other family relationships.

*Statutory Guidance:*

The code and Bill provisions will be supplemented by statutory guidance. As noted above, there is a power in section 66 of the Bill to issue statutory guidance to a range of persons who have functions in respect of the curriculum in the Bill (including local authorities, governing bodies, head teachers and providers of funded non-maintained nursery education). That guidance will enable those person/bodies, in designing RSE, to satisfy the pluralistic requirement. That guidance will be the subject of consultation. It is anticipated that it will provide practical guidance to the above bodies on how to discharge their obligations in this regard, for example, on possible matters to include or not include and on what may be good practice in the teaching of those issues in the classroom. For example, the aim would be to make it clear that schools should provide a range of ideas on any given topic and that the information should be conveyed non-doctrinally.

*Developmentally appropriate:*

The Bill l also includes express provision in sections 24(2) and 52(4) that the RSE provided must be developmentally appropriate.

The purpose of these provisions is to ensure that teaching and learning of RSE is appropriate for the child or young person and that the issues raised are approached in a way that is critical and objective. This is an important feature to ensure that parents and learners know what to expect from their school in the delivery of its RSE curriculum.

**Q4. The Bill treats schools with a religious character differently to those without, when designing and implementing the curriculum, so far as it encompasses the mandatory element of RVE.**

**a) What is the justification for this?**

**b) Are you content that this does not raise any human rights issues?**

Case law and the Convention Rights requires that pluralistic RVE must be available for all learners. If not then there must be a right to withdraw.

As noted above voluntary aided faith schools will continue to be required to teach their Denominational RVE. The Bill also ensures that all pupils will be able to have the agreed syllabus RVE if that is wanted by the parent in such schools. In doing that, the Bill recognises the role of schools with a religious character in the provision of state education. These schools make a valuable contribution to the education system and many parents and learners will want to choose this type of RVE. The Bill respects that and preserves the legal obligation on such schools to teach in accordance with their trust deeds or denomination. We in no way intend to diminish the importance of religion, rather to emphasise wider aspects.

However, in order to secure that each learner has access to pluralistic RVE in voluntary aided faith schools, parents of learners can request agreed syllabus RVE. Likewise, we recognise that parents who send their children to a foundation or voluntary controlled faith school may wish to have their child receive Denominational RVE. In that way every learner has access to the agreed syllabus RVE which will be pluralistic in nature. We consider that is compatible with the Convention Rights. The result of the above is that all children will have access to a pluralistic RVE which will include a range of religious and non-religious views. That is what the law currently requires. In that sense there is equality.

The State is neutral in this space generally. That is why the emphasis is on pluralism. There is no right to have education provided by the State according to one's own religious beliefs. So, whilst the State recognises a place for religious schools, its obligation is to provide pluralistic provision. So where a child is attending a faith school but does not share the faith of that school, there is a right to seek alternative pluralistic provision. But where a child of a particular faith attends a non-faith school, there is no right to require the State to provide education according to that faith. Therefore, so far as there is differential treatment, it is justified on the basis that the State ensures pluralism whilst respecting the ability of people to set up faith schools or to educate outside school in accordance with one's own faith.

There is already a qualified right at the moment for parents of children in voluntary aided faith schools to opt out of the Denominational RVE and have agreed syllabus RVE instead. Therefore, the new absolute right to opt out from Denominational RVE is not entirely new in that sense but is a development of that existing qualified right of parents. It is something schools will have had to address from time to time. Nonetheless, we accept this a new requirement. Some schools may find that a difficult task but we believe that task is made easier as the Bill requires them to adopt the agreed syllabus RVE and so that design task is made easier.

In practice, this means that schools with a religious character will have to design two syllabi, if requested by a parent. As there is no right to withdraw a child from RVE (or indeed RSE) the Bill needs to ensure that those children attending a faith school have access to a pluralistic RVE if that is wanted by the parent.

I consider this is compatible with the Convention Rights. As to how they can deliver that in practice, we anticipate that the numbers of pupils not following the Denominational RVE syllabus will be very small. The school would need to consider how they could best deliver on that. For example, they could be provided with additional supplementary or separate classes. My officials are working with the Catholic Education Service and the Church in Wales to consider how to assess and address the impact of implementing this requirement.

If the school did not think that was appropriate, then options could include making arrangements for additional learning to be provided at another setting or making arrangements for external providers to provide the learning on the school premises. The school would need to make that clear including what would be provided.

I have listened carefully to the concerns raised by partners and other key stakeholders but do not anticipate that there will be a large number of pupils opting out of Denominational RVE. I consider that it is likely that where parents have exercised the right to withdraw from religious education under the current legislation they will also opt out of the Denominational RVE. Our understanding is that current exercise of the right to withdraw in schools with a religious character is extremely low.

Bill provisions

**Q5. Sections 6 to 8 of the Bill require the Welsh Ministers to prepare codes relating to What Matters, Progression and RSE, which any curriculum implemented for learners must adhere to. Much of the detail of the curriculum will be contained in these codes. Can you explain why the codes are subject to the negative rather than the affirmative procedure?**

The key principles are set out on the face of the Bill. The Codes will contain some detail to aid head teachers, governing bodies and teachers in designing and implementing their curriculum. For example, the RSE Code will set out the themes and matters to be included in teaching and learning for RSE.

The subject-matter of the Code will need to be updated from time to time to reflect emerging issues. The Code and any changes to it will be the subject of consultation. I consider that the negative procedure does provide an appropriate opportunity for the Senedd to scrutinise the Code.

I did consider whether notwithstanding that there are aspects of the Code that would indicate that the affirmative procedure is the appropriate procedure e.g. does the it allow us to impose or increase taxation; provision involving substantial Government expenditure; powers to create unusual criminal provisions or unusual civil penalties; or powers to confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion. None of those matters apply in this instance. That though is not the whole picture and I have gone to consider whether the Code gives rise to matters of special importance that would otherwise indicate the affirmative procedure is appropriate.

Whilst the Code will contain themes and matters to be included in RSE it is anticipated that would be of a high level. The provisions on RSE in the Bill were designed not to be prescriptive as its content. Nonetheless a key aspect of the policy on RSE is dealt with on the face of the Bill - the requirement that it must be provided in a developmentally appropriate manner (see sections 24(2) and 52(4) of the Bill). The negative procedure will allow me to respond quickly and amend the Code more quickly in response to new issues in this

area.  This area is very sensitive and new complex issues will emerge from time to time

Further support to schools will be provided by way of statutory guidance which will provide more detailed information on recommendations for the teaching of RSE and in particular on the themes and matters set out in the Code. The negative procedure will provide the Senedd with the opportunity to appropriately scrutinise the Code. It will not be the role of the Code to explain how those matters should be taught.

**Q6. Section 72(6) of the Bill allows consultation on the codes, required by section 72(2)(a), to be carried out before section 72 comes into force. Do you intend to make use of this provision?**

This provision may be required to be used as much of the content for inclusion in the What Matters code and the Progression code was co-constructed and published in January 2020 as part of the Curriculum for Wales guidance documentation. We do not envisage changes to the What Matters code. We would not want to rule out changes to the Progression code if it is clear that practitioners would benefit from additional explanation. We are assessing the need for changes which would require consultation following enactment of the Bill.

The RSE code is being co-constructed by the RSE Working Group, which includes representation from key stakeholders, and will aim to consult during 2021. Use of the provision in this case is subject to changes to Bill provisions and the timing of the consultation.

The purpose of including this provision in the Bill is to ensure that the codes can be shared with head teachers and governing bodies in good time to enable them to develop their curriculum and prepare for implementation in September 2022.

**Q7. Section 17(a) of the Bill enables Welsh Ministers to make regulations about steps that need to be taken by a school or setting before adopting a curriculum. Section 17(c) provides a power to specify additional circumstances in which a curriculum must be revised. The Statement of Policy Intent ("SOPI") confirms that the Welsh Ministers do not intend to make use of these powers and states that Welsh Government *"believe there is sufficient provision on the face of the Bill in respect of these matters…"*. Given that you believe there is sufficient provision on the face of the Bill, can you confirm why the powers in section 17(a) and (c) are necessary?**

At present I do not anticipate the need to make use of the regulation making powers under section 17(a) and (c). However, should issues come to light or circumstances change, they allow the Welsh Government to make any necessary provision. As stated in the SOPI, it is not possible to entirely foresee how practice will develop. Regulation making powers under these subsections have been included to ensure that the system remains workable

in case it becomes apparent that the requirements on the face of the Bill are insufficient. Regulations, if required, would be the subject of public consultation.

**Q8. Section 25(1) of the Bill confers power on the Welsh Ministers to make regulations on additional curriculum requirements for learners in school years 10 and 11. The SOPI states that the power could be used to require schools to provide a particular course of study in the event the curriculum is not sufficiently broad and balanced.**

**a) In the event some schools offer a narrow curriculum for learners in school years 10 and 11, it may be too late for those learners by the time the issue has been brought to the attention of the Minister and any regulations have been made. For that reason, what consideration was given to placing such requirements on the face of the Bill?**

Consideration was given to including additional detail on the face of the Bill. However, I feel that a provision on the face of the Bill would not offer the flexibility needed. We anticipate that we will need to see how schools' practices develop, in the context of a very new type of curriculum, and what the shortfalls (if any) there are. For example, the Education (Local Curriculum for Pupils in Key Stage 4) (Wales) Regulations 2009 make this type of provision for the local curriculum at key stage 4. The first iteration of those regulations has been amended to prescribe different requirements as to courses of study for the local curriculum.

**b) Regulations under section 5 of the Bill which are concerned with mandatory aspects of the curriculum are subject to the affirmative procedure. Can you confirm why the negative procedure is considered appropriate for regulations made under section 25(1)?**

The key principles are again set out on the face of the Bill. The Regulations made under this power will contain some detail. However, we anticipate that we need to see how schools' practices develop, in the context of a very new type of curriculum.

This Regulation making power could not be used to make Regulations that would amend other provisions in primary legislation.

**Q9. Section 26 of the Bill enables headteachers and governing bodies of maintained schools and maintained nurseries to disapply English as a mandatory element of the curriculum up to school age 7, where it is in order to develop or maintain pupils' levels of fluency in Welsh. Can you confirm whether any determination needs to be made jointly by headteachers and governing bodies and what happens in the event of a disagreement between them?**

The determination would need to be made jointly by the head teacher and governing body in the case of maintained schools and maintained nurseries. They may also revoke the determination.

In the event of a dispute the governing body of the school will play a significant role[3]. Regulations provide that the head teacher will be a member of the governing body unless they resign. Therefore, I anticipate that any dispute will be resolved at a local level. I consider this is appropriate given a key principle of the Bill is that schools develop their own curriculum. Currently certain decisions fall to be made jointly: in the event of disagreement, compromise is required in order to avoid deadlock. We consider this will be dealt with the same way.

If there is such an extreme breakdown in relations between the head teacher and the governing body so that they cannot compromise or exercise this function reasonably that would potentially engage the powers of direction of local authorities and Welsh Ministers in the School Standards and Organisation (Wales) Act 2013. It would be for the local authority to take steps under that Act in the first instance to resolve the problem but if that was not done or did not achieve the necessary result, the Welsh Ministers could exercise their powers of direction under the same Act. I think that is unlikely to happen but, for example, if they are unable to work together or cooperate a direction is a potential option to resolve that problem.

**Q10. Section 34 of the Bill specifies the information a head teacher must provide when a determination is made under section 33 not to implement the pupil's choice of a course of study. Section 34(5) enables Welsh Ministers to make further provision by regulations. The SOPI provides that regulations may deal with matters such as time limits or procedures, but that it is not intended to make regulations at the outset as there is sufficient information on the face of the Bill. There is no information on the face of the Bill as to time limits or procedures. Given that this will impact pupils embarking on GCSE examinations where any process will need to be timely, can you confirm what consideration was given to placing more detail on the face of the Bill or requiring rather than permitting regulations to be made?**

Consideration was given to including additional detail on the face of the Bill. However, I feel that a provision on the face of the Bill would not offer the flexibility needed. The detail I anticipate that will be needed as set out in the SOPI is of a technical nature that is likely to evolve over a period of time. That is consistent with other education legislation. For example, in relation to pupil exclusions, the detail of the appeal procedures and time limits is set out in secondary legislation (see the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 (SI 2003/3227)).

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[3] It is worth noting that the constitution and procedures of a governing body are regulated primarily by the Government of Maintained Schools (Wales) Regulations 2005.

Whilst I appreciate the point made in your question, it is not possible to entirely foresee how practice will develop and there may still not be a need for these regulations to be made. Therefore, I do not feel it is necessary to require that these regulations be made. If evidence does begin to emerge then regulations will provide the most appropriate legislative vehicle to address this issue. They will allow the Government to amend the detail of any time limits from time to time and in response to changing circumstances.

**Q11. Section 40 of the Bill allows the Welsh Ministers to give a direction to a school disapplying or modifying any of the implementation requirements set out in sections 29 to 32 for experimental or developmental purposes. The statement of policy intent provides that it will only be used in rare circumstances.**

**a) Can you provide some example circumstances?**

This might involve an innovative project that is designed to test a new policy idea and raise educational standards. I anticipate that this would be used for smaller scale experiments, perhaps involving 1 or a few schools.

**b) Can you confirm how this power differs from the power in section 50(1) of the Bill which would also allow for disapplication or modification of the curriculum?**

Section 50 is designed to confer a power broadly equivalent to that in section 112 of the Education Act 2002. The power in section 112 of the 2002 Act was used when the Foundation Phase was piloted in 2008 (see the Education (Disapplication of the National Curriculum for Wales at Key Stage 1) (Wales) Regulations 2008 (SI 2008/1736)). Another example of the use of the section 112 power are the Education (National Curriculum for Wales) (Disapplication of Science at Key Stage 4) Regulations 2006 (SI 2006/1335). In that case the Regulations disapplied the requirements of the National Curriculum for Wales for science in relation to a pupil where the head teacher of the school is satisfied that the pupil is pursuing a course leading to an approved external qualification from the National Qualifications Framework at entry level, level 1 or level 2. I anticipate that this power will be used for matters that are of more general application and therefore are best suited to being dealt with by regulations which must be laid before the Senedd. I anticipate section 40 being used to deal with matters that are not of general application i.e. not all schools and which, for example, just affect one or a relatively small number of schools to address issues that are very specific to those schools.

I anticipate that the power would be used for similar initiatives in the future.

**Q12. Section 50(1) gives the Welsh Ministers a power to make Regulations that disapply or modify the curriculum implementation requirements in cases or circumstances specified in the regulations. Section 50(2) allows the Regulations to permit another person to exercise their discretion about disapplying or modifying a curriculum**

**requirement. What safeguards does you envisage would be in place to ensure there is proper exercise of that discretion?**

I recognise that disapplication or modification of the curriculum for any pupil is a serious step. However, any such proposal would be subject to prior consultation and the scrutiny of the Senedd through the laying of Regulations made under section 50 of the Bill.

If it was thought necessary in the regulations to confer a discretion on another person it would be possible to place some limitations on the exercise of that restraint, for example, the limits on the circumstances when and how the discretion could be exercised or may place time limits on how long that discretion may be exercised for.

**Q13. Section 47(6) of the Bill provides Welsh Ministers with a power to make regulations about the procedure to be followed and time-limits in respect of appeals about temporary exceptions for individual pupils. The SOPI states that the Welsh Government currently have no intention to make regulations dealing with procedure as schools already have processes in place. The SOPI also states that consideration is, however, being given to using the powers to set time-limits. Given the impact that such decisions could have on an individual pupils' education, could you confirm whether any consideration has been given to placing time-limits on the face of the Bill?**

Section 47(8) of the Bill provides a power for the Welsh Ministers to make regulations making further provision in connection with appeals under this section. We consider that whilst the power does allow us to make provision in respect of the time limits for appeals, we consider that it is more appropriate to allow schools the flexibility to determine their own procedures at this stage. We will continue to monitor the situation and should evidence emerge that there is a need for such provision in regulations then we can regulate accordingly.

We also consider that, as with the regulation making powers in section 34(5) (see above), setting out this sort of detail on the face of the Bill would not offer adequate flexibility that schools might need. If it does become necessary to legislate in this area then I anticipate that regulations will offer the appropriate amount of flexibility needed and can be amended from time to time more easily than is practical with a Bill. The Bill sets out entirely new arrangements for school curriculums and it is important to assess how school and indeed pupil needs develop.

**Q14. Section 67(1) of the Bill provides a wide power for Welsh Ministers to make regulations about teaching and learning for learners who receive education in more than one setting. The SOPI gives one example of how the power may be used, which is to define for the first time in education legislation the number of hours which are deemed to constitute full-time education. Why is the negative procedure**

**appropriate for such a wide power which would enable fundamental changes (e.g. what is meant by full-time education) to be made?**

Section 67 is needed to address the position of children receiving education in more than one setting. Say a child is receiving education at a school, and in a PRU, it would not be possible to apply the usual curriculum requirements to both the PRU and the school, because neither of them can implement a full curriculum for the child. The power in section 67(1) can be used to make provision about how the curriculum should work for a child in this position, and who the various duties should fall on.

In addition, some children will also be receiving education at only one setting, but for such a limited number of hours that it is inappropriate to apply the usual curriculum requirements to that setting. (An example might be a pupil who has been off school entirely due to stress, but who is gradually returning to school, say for 3 hours a week initially.) The power in section 67(1) could be used to make provision for these children. But in doing so it is likely to need to refer to the number of hours of teaching and learning that a child is receiving in a setting – for instance, by making provision about how the curriculum is to apply to children who are receiving only between 3 and 5 hours a week of teaching and learning at a setting.

The fact that there is no definition of full-time education is part of the background to this provision. If there was a statutory definition of full-time education, section 67 could simply state that it applies to children who are not receiving full-time education. But in the absence of this, these children will need to be defined in the regulations, and this may be done by reference to hours of education received. The object of using the power in this way would not be to define full-time education, for the purposes of education legislation generally, but to make flexible provision about how the curriculum is to apply, in the context of the varying and limited number of hours some children may be receiving at a particular setting. We consider that this detail is largely of a technical nature. .

**Q15. Section 70(1) of the Bill provides the Welsh Ministers with a power to make regulations to amend primary and secondary legislation where necessary or appropriate to enable the new curriculum framework to operate. Why is this provision subject to the negative procedure when it contains power to modify primary legislation?**

In terms of section 70 the circumstances when it could be used are set out in section 70(1) and they are as follows:

- To make supplemental provision, incidental provision or consequential provision.

- To make transitory, transitional or saving provision. This would only include provision that was needed to move from the existing curriculum and assessment arrangements to the new smoothly. For example,

some aspect of the curriculum may be needed to be retained for a cohort of pupils to avoid any unfairness to them.

Provision of this type might include provision amending primary legislation. For example, the Bill will change the name of “religious education” to Religion, Values and Ethics”. We will need to change those references across the statute book: these are consequential amendments. It is possible that we may not identify and amend all such references in the Bill in which case this power would be used to make those changes and ensure consistency in the statute book in this respect.

This power cannot be used to make provision - whether through the Henry VIII power or otherwise – that contains new substantive provision. Rather it will allow amendments to be made to primary legislation, for example, to ensure all references to religious education are amended to refer to the new subject of RVE where appropriate.

The scope of the power is to give the best effect to the policy intentions of this Bill as approved by the Senedd, enable it to be implemented effectively and ensure that the wider statute book is kept up to date and accessible.

**Q16. Section 79(2) of the Bill enables the Welsh Ministers to make orders providing for commencement of certain provisions in the Bill. The Committee’s previous recommendations on this matter on other Bills have been that commencement orders that include ‘transitory, transitional or saving provision’ should be subject to the negative procedure. What assessment was undertaken before deciding that commencement orders would not be subject to any Senedd procedure?**

I note the Committee’s views on this matter. However, any commencement Order made under this Bill will not contain new policy. It is there solely to switch on the provisions in the Bill which would at that point have been approved by the Senedd.

Impact Assessments

**17. The Equality Impact Assessment undertaken (paragraph 9.20 of the Explanatory Memorandum (EM)) states that the new curriculum will have a positive impact as regards a number of protected characteristics including disability, race, sexual orientation, and low income households. Paragraph 9.41 of the EM also states that it was not envisaged that a full Rural Proofing Impact Assessment was needed at present. Paragraph 9.49 of the EM, in relation to the Health Impact Assessment undertaken, says that learners will be provided with a range of learning which supports them to develop and maintain positive health affirming behaviours. However, paragraph 9.50 adds that the flexibility of the new curriculum may result in a variation of provision across**

**different communities which may place some learners at risk because of their background or geography. Can you explain how the concerns expressed in paragraph 9.50 of the EM align with the statements in paragraphs 9.20 and 9.41?**

As it states in the Rural Proofing section of the full Integrated Impact Assessment, “the curriculum is designed to apply to every learner in every classroom in Wales. The practitioners involved in developing the new arrangements, included schools of different sizes in locations across Wales, including rural areas, in collaboration with Welsh Government, regional consortia, local authorities, stakeholders and experts.”

The guidance has been developed to ensure that schools and learners benefit from the new arrangements, regardless of their backgrounds. Schools in rural areas will be supported to develop curricula that reflect their local needs and issues; and the opportunities, services and experiences readily accessible to them in the same way as schools and learners in urban or peri-urban areas.

We recognise there is a risk that flexibility under the new arrangements could lead to excessive variation of provision. These concerns were raised in response to the feedback phase for curriculum development last year, and have resulted in the measures we are proposing in the Bill. The legislation we are proposing places emphasis on elements of the guidance to provide a common framework which includes requirements in respect of the four purposes, areas of learning and experience, the statements of what matters and learning progression. We are of the view that the flexibility being afforded to schools within this robust common national framework, and with wider support for practitioners across Wales, will lead to learning that is more pertinent to the communities and areas in which children live, whilst also providing a broad and balanced education to support them wherever their future takes them.

**18. Paragraph 9.44 of the EM states that the potential impacts on the justice system of the proposal for a new curriculum have been considered.**

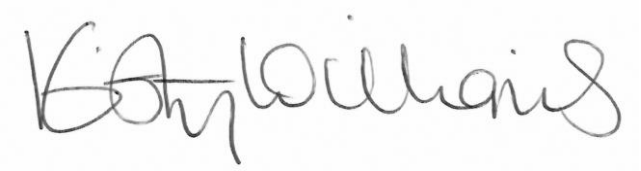
**a) Was a full justice impact assessment undertaken ahead of the introduction of the Bill?**

Yes. It was submitted to the Ministry of Justice which subsequently (January 2019) agreed that a full Justice System Identification process would not be required.

**b) Paragraph 9.46 of the EM states that a Justice Impact Identification (JSII) form is available and a link to the form will be provided on introduction. It does not appear that the JSII form is published on the Welsh Government website, and we do not believe it has been made available to Senedd Committees. When will the JSII form be made available to Senedd Members?**

The document is now available in the impact assessment section of the Welsh Government's Curriculum and Assessment (Wales) Bill web pages at the following link: https://gov.wales/curriculum-and-assessment-wales-bill-impact-assessment

Yours sincerely,



Kirsty Williams MS
Minister for Education

Agenda Item 3

# Statutory Instruments with Clear Reports

# 5 October 2020

## SL(5)622 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 14) (Cardiff and Swansea) Regulations 2020

### Procedure: Provisional Affirmative

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 by designating the City and County of Cardiff and the City and County of Swansea as local health protection areas. The effect of this in respect of these areas is to:

- provide that no household within each area may be treated as forming part of an extended household and prohibiting the formation of an extended household by such a household;
- prohibit persons living in each area from leaving or remaining away from each area without reasonable excuse;
- require residents of each area to work from home, unless it is not reasonably practicable for them to do so;
- prohibit people outside of each area entering the area without reasonable excuse.

**Parent Act:** Public Health (Control of Disease) Act 1984
**Date Made:** 25 September 2020
**Date Laid:** 25 September 2020
**Coming into force date:** 27 September 2020

# SL(5)624 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) Regulations 2020

## Procedure: Provisional Affirmative

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 ("the Principal Regulations"). The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 ("the 1984 Act").

The Regulations amend the Principal Regulations to designate the County Boroughs of Neath Port Talbot, Torfaen and the Vale of Glamorgan as local health protection areas that are subject to specific restrictions and requirements, namely that:

- no household within each 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 each area from leaving or remaining away from each area without reasonable excuse;
- require residents of each area to work from home, unless it is not reasonably practicable for them to do so;
- prohibit people from outside of each area entering the area without reasonable excuse. It is not a reasonable excuse to enter an area to work, if it is reasonably practicable for that work to be done outside the area.

**Parent Act:** Public Health (Control of Disease) Act 1984
**Date Made:** 28 September 2020
**Date Laid:** 28 September 2020
**Coming into force date:** 28 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. 1043 (W. 232)**

# PUBLIC HEALTH, WALES

# The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 14) (Cardiff and Swansea) 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 amendment designates the City and County of Cardiff and the City and County of Swansea as local health protection areas that are subject to specific restrictions and requirements.

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

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

WELSH STATUTORY INSTRUMENTS

# 2020 No. 1043 (W. 232)

# PUBLIC HEALTH, WALES

## The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 14) (Cardiff and Swansea) Regulations 2020

| | |
|---|---|
| *Made* | *at 4.24 p.m. on 25 September 2020* |
| *Laid before Senedd Cymru* | *at 6.30 p.m. on 25 September 2020* |
| *Coming into force* | *at 6.00 p.m. on 27 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. 14) (Cardiff and Swansea) Regulations 2020 and they come into force at 6.00 p.m. on 27 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 Schedule 4A, in paragraph 1, after paragraph (g) insert—

"(h) the City and County of Cardiff;

(i) the City and County of Swansea."

*Mark Drakeford*
First Minister, one of the Welsh Ministers
At 4.24 p.m. on 25 September 2020

(**1**) S.I. 2020/725 (W. 162), as amended by S.I. 2020/752 (W. 169), S.I. 2020/803 (W. 176), S.I. 2020/820 (W. 180), S.I. 2020/843 (W. 186), S.I. 2020/867 (W. 189), S.I. 2020/884 (W. 195), S.I. 2020/912 (W. 204), S.I. 2020/961 (W. 215), S.I. 2020/985 (W. 222), S.I. 2020/1007 (W. 224), S.I. 2020/1011 (W. 225), S.I. 2020/1022 (W. 227), S.I. 2020/1035 (W. 229) and S.I. 2020/1040 (W. 230).

**Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 14) (Cardiff and Swansea) 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. 14) (Cardiff and Swansea) Regulations 2020.

**Mark Drakeford**
**First Minister**

25 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 City and County of Cardiff and the City and County of Swansea are necessary and proportionate as a public health response to the current threat posed by coronavirus.

<u>European Convention on Human Rights</u>

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

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations impose restrictions and requirements in relation to individual local health protection areas, which for the purposes of the principal Regulations will now also include the City and County of Cardiff and the City and County of Swansea. In particular these restrictions and requirements prohibit leaving or remaining away from or entering the areas without reasonable excuse; provide that no household within the areas being treated as forming part of an extended household and prohibit the formation of an extended household by such a household. 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 both in these areas and more widely and is proportionate to that aim. The requirements not to leave or enter the areas 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. Additionally the Welsh Ministers must, by 1 October, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve in respect of local health protection areas, 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).

The principal Regulations were amended[1] with effect from 8 September 2020 to introduce restrictions in respect of a 'local health protection area'. There are currently seven local health protection areas[2], and these Regulations now extend restrictions to the City and County of Cardiff and the City and County of Swansea . The effect of this in respect of these new areas is to:

- provide that no household within each 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 each area from leaving or remaining away from each area without reasonable excuse;

- require residents of each area to work from home, unless it is not reasonably practicable for them to do so;

- prohibit people outside of each area entering the area without reasonable excuse. It is not a reasonable excuse to enter an area to work, if it is reasonably practicable for that work to be done outside the area.

[1] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (SI 2020/961 (W. 215))
[2] The County Boroughs of Blaenau Gwent, Bridgend, Caerphilly, Merthyr Tydfil and Rhondda Cynon Taf, the City and County Borough of Newport and 13 electoral wards of Llanelli

The Regulations come into force at 6.00 p.m. on 27 September 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 1 October, and at least once every seven days thereafter.

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 is 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 myself. In making the Regulations today there has been ongoing discussions with Public Health Wales, local authority and NHS bodies for the areas of Cardiff and Swansea, as well as ongoing discussions with the Incident Management Teams in the existing local health protection areas.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Health and Social Services explained in a press conference earlier today the intention to impose the restrictions and requirements achieved through these Regulations; the proposed changes have been 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.

**Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS**
**Prif Weinidog Cymru/First Minister of Wales**

Llywodraeth Cymru
Welsh Government

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

25 September 2020

Dear Elin

**The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 14) (Cardiff and Swansea) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 14) (Cardiff and Swansea) 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 6.00 p.m. on Sunday. 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 22 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 6 October 2020.

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

Yours sincerely

Mark Drakeford

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay
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CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Llywodraeth Cymru
Welsh Government

# WRITTEN STATEMENT
# BY
# THE WELSH GOVERNMENT

| | |
|---|---|
| **TITLE** | **Local coronavirus restrictions update** |
| **DATE** | **25 September 2020** |
| **BY** | **Vaughan Gething MS, Minister for Health and Social Services** |

Further to my update to you yesterday evening about the review of the local restrictions introduced two weeks ago in **Caerphilly borough**, I want to update you about the outcome of the formal review of the local restrictions in **Rhondda Cynon Taf** and the developing situation across Wales.

In **Rhondda Cynon Taf**, cases have continued to rise. This is to be expected – it could take two weeks or more to see the peak because of the time between infection and the onset of symptoms. Restrictions will therefore stay in place and we will continue to monitor the situation carefully.

Cases are also continuing to rise in **Blaenau Gwent** and **Bridgend**, where local restrictions were introduced earlier this week.

We have been carefully monitoring the situation in **Carmarthenshire**, which is overwhelmingly linked to a rise in cases in **Llanelli**. Eight out of 10 cases are linked to the town and the majority of these have been traced to people socialising.

We have seen a rapid increase in cases in **Swansea**. We are investigating these to determine the sources of the increase but there appears to be links to close household and

social contacts.

We have seen rising cases in **Cardiff** and a steady increase in the **Vale of Glamorgan**, which have been linked to people meeting and mixing in each other's homes; to people socialising without social distancing and some small clusters in workplaces.

We take the protection of people's health very seriously in Wales and we have carefully considered whether we need to introduce further local restrictions to control the spread of coronavirus in some of these areas of South Wales.

We have decided to introduce local restrictions in Llanelli, which will come into force from 6pm on Saturday. Local restrictions will also come into place in Swansea and Cardiff from 6pm on Sunday.

We will closely monitor the situation in Neath Port Talbot, the Vale of Glamorgan and Torfaen over the weekend and will review whether these areas also need to come under the local restriction regime at the same time as Swansea and Cardiff.

This means everyone living in Llanelli, Cardiff and Swansea will:

- Not be allowed to enter or leave the area without a reasonable excuse.
- Not be able to meet indoors with anyone they do not live with for the time being – extended households (sometimes called a "bubble") are suspended for the time being.
- All licensed premises have to stop serving alcohol at 10pm.
- Everyone must work from home wherever possible.

A large part of the population of South Wales, including our capital city, will be living in areas under local restrictions to protect their health and prevent the spread of coronavirus.

And, of course, there are series of new rules, which apply across Wales – to everyone living in Wales – which apply to licensed premises, meeting indoors and wearing face coverings.

We know people can make a real difference in their local areas – we are seeing this happen in both Caerphilly borough and Newport.

We do not want to keep these local restrictions in place for any longer than they need to be – and with people's help they will only be a short term measure to help us bring virus under control.

We are continuing to closely monitor the situation in **North Wales** where the picture is mixed – cases overall are much lower than we are seeing in South Wales at the moment but there is evidence that coronavirus is increasing in some parts of the region. We will be meeting North Wales local authority leaders next week to discuss the developing situation.

I will keep members fully informed.

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

WELSH STATUTORY INSTRUMENTS

# 2020 No. 1049 (W. 235)

# PUBLIC HEALTH, WALES

# The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) 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 amendment designates the county boroughs of Neath Port Talbot, Torfaen and the Vale of Glamorgan as local health protection areas that are subject to specific restrictions and requirements.

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

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

WELSH STATUTORY INSTRUMENTS

# 2020 No. 1049 (W. 235)

# PUBLIC HEALTH, WALES

# The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) Regulations 2020

*Made* *at 12.31 p.m. on 28 September 2020*

*Laid before Senedd Cymru*

*at 4.00 p.m. on 28 September 2020*

*Coming into force* *at 6.00 p.m. on 28 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

(**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.

they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft 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. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) Regulations 2020 and they come into force at 6.00 p.m. on 28 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 Schedule 4A, in paragraph 1, after paragraph (i) insert—

"(j) Neath Port Talbot County Borough;

(k) Torfaen County Borough;

(l) Vale of Glamorgan County Borough."

*Mark Drakeford*
First Minister, one of the Welsh Ministers
At 12.31 p.m. on 28 September 2020

(**1**) S.I. 2020/725 (W. 162), as amended by S.I. 2020/752 (W. 169), S.I. 2020/803 (W. 176), S.I. 2020/820 (W. 180), S.I. 2020/843 (W. 186), S.I. 2020/867 (W. 189), S.I. 2020/884 (W. 195), S.I. 2020/912 (W. 204), S.I. 2020/961 (W. 215), S.I. 2020/985 (W. 222), S.I. 2020/1007 (W. 224), S.I. 2020/1011 (W. 225), S.I. 2020/1022 (W. 227), S.I. 2020/1035 (W. 229), S.I. 2020/1040 (W. 230) and S.I. 2020/1043 (W. 232).

**Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) 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. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) Regulations 2020.

**Mark Drakeford**
**First Minister**

28 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 County Borough areas of Neath Port Talbot, Torfaen and the Vale of Glamorgan are necessary and proportionate as a public health response to the current threat posed by coronavirus.

<u>European Convention on Human Rights</u>

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

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations impose restrictions and requirements in relation to individual local health protection areas, which for the purposes of the principal Regulations will now also include three new local health protection areas in Neath Port Talbot County Borough, Torfaen County Borough, and Vale of Glamorgan County Borough. In particular these restrictions and requirements prohibit leaving or remaining away from or entering the areas without reasonable excuse; provide that no household within the areas being treated as forming part of an extended household and prohibit the formation of an extended household by such a household. 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 both in these areas and more widely and is proportionate to that aim. The requirements not to leave or enter the areas 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. Additionally the Welsh Ministers must, by 1 October, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve in respect of local health protection areas, 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).

The principal Regulations were amended[1] with effect from 8 September 2020 to introduce restrictions in respect of a 'local health protection area'. There are currently nine local health protection areas[2], and these Regulations now extend the restrictions and requirements to the County Boroughs of Neath Port Talbot, Torfaen and the Vale of Glamorgan. The effect of this in respect of each of these new areas is to:

- provide that no household within each 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 each area from leaving or remaining away from each area without reasonable excuse;

- require residents of each area to work from home, unless it is not reasonably practicable for them to do so;

[1] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (SI 2020/961 (W. 215))

[2] the County Boroughs of Blaenau Gwent, Bridgend, Caerphilly, Merthyr Tydfil and Rhondda Cynon Taf, the City and County Borough of Newport, 13 electoral wards of Llanelli, and the City and County of Cardiff and of Swansea.

- prohibit people outside of each area entering the area without reasonable excuse. It is not a reasonable excuse to enter an area to work, if it is reasonably practicable for that work to be done outside the area.

The Regulations come into force at 6.00 p.m. on 28 September 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 1 October, and at least once every seven days thereafter.

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 is 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 myself. In making the Regulations today there has been ongoing discussions with Public Health Wales, local authority and NHS bodies for the areas of County Boroughs of Neath Port Talbot, Torfaen and the Vale of Glamorgan, as well as ongoing discussions with the Incident Management Teams in the existing local health protection areas.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Health and Social Services explained in a press conference yesterday the intention to impose the restrictions and requirements achieved through these Regulations; the proposed changes have been 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.

**Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS**
**Prif Weinidog Cymru/First Minister of Wales**

Llywodraeth Cymru
Welsh Government

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

28 September 2020

Dear Elin

**The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 15) (Neath Port Talbot, Torfaen and Vale of Glamorgan) 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 6.00 p.m. 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 25 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 6 October 2020.

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

Yours sincerely

Mark Drakeford

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay
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CF99 1NA

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Llywodraeth Cymru
Welsh Government

# WRITTEN STATEMENT
# BY
# THE WELSH GOVERNMENT

| | |
|---|---|
| **TITLE** | **Local coronavirus restrictions update** |
| **DATE** | **27 September 2020** |
| **BY** | **First Minister Mark Drakeford** |

On Friday, Health Minister Vaughan Gething published a written statement to update Members about the latest coronavirus situation in South Wales.

We continue to see rapidly rising cases in many parts of South Wales, which has led to introduction of new local restrictions in **Llanelli** on Saturday. Local restrictions will also come into force in **Cardiff** and **Swansea** on Sunday at 6pm.

In his statement, the Health Minister said we would closely monitor the situation in **Neath Port Talbot**, the **Vale of Glamorgan** and **Torfaen** over the weekend and will review whether these areas also need to come under the local restriction regime.

These three areas have seen cases within their own boundaries rise sharply over the last few weeks and they all border areas with considerably higher rates of coronavirus.

We have held a series of meetings today with public health experts, local authority leaders, the NHS, police and police and crime commissioners to assess the latest position in each of these areas.

All participants agreed local restrictions should be introduced in Neath Port Talbot, the Vale of Glamorgan and Torfaen. These will come into effect at 6pm on Monday (28 September).

This means everyone living in these three local authorities will:

- Not be allowed to enter or leave the area without a reasonable excuse.
- Not be able to meet indoors with anyone they do not live with for the time being – extended households (sometimes called a “bubble”) are suspended for the time being.
- All licensed premises have to stop serving alcohol at 10pm.
- Everyone must work from home wherever possible.

A large part of the population of South Wales will now be living in areas under local restrictions to protect their health and prevent the spread of coronavirus.

Although the restrictions are the same in each local authority, this does not mean people from one local area under local restrictions can travel to another area under local restrictions without a reasonable excuse, such as travelling for work or education.

This is not a regional lockdown. We have introduced a series of local restrictions in these South Wales local authority areas to respond to a specific rise in cases in each area, all of which have distinct and unique chains of transmission.

In some places, such as Caerphilly and Newport, we have seen positive falls in response and we will be able to take action to relax these restrictions in these areas if they continue.

It is important everyone follows the rules where they live. We need everyone’s help to bring coronavirus under control. We need everyone to pull together and to follow the measures which are there to protect you and your loved ones.

We continue to closely monitor the situation in **North Wales** where cases overall are lower than we are seeing in South Wales at the moment but there is evidence that coronavirus is increasing in some parts of the region. We will be meeting North Wales local authority leaders next week to discuss the developing situation.

# SL(5)621 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) 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 those 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 Curacao, Denmark, Iceland and Slovakia, and make associated transitional provisions.

In addition, these Regulations:

1. add an exemption to the isolation requirements for UK-resident elite athletes (and persons providing elite athletes with coaching or other support) when returning from overseas training programmes;
2. make exceptions from the isolation requirements for elite athletes and support staff to attend medical screenings and for new signings to participate in competitions; and
3. insert additional events into the list of specified sporting events in Schedule 4, in order to except persons competing in (or providing coaching or other support to persons competing in) those events from the requirements to isolate.

## Procedure

Negative.

## Technical Scrutiny

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

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

In the Welsh language version of the Regulations, there is an incorrect cross reference in the heading preceding regulation 3, which reads:

> *'Darpariaeth drosiannol mewn cysylltiad â rheoliad 24'*.

The reference to *'rheoliad 24'* should be a reference to *'rheoliad 2'*. The English version is correct.

## Merits Scrutiny

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative resolution 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 25 September 2020.

In particular, we note that the letter confirms as follows:

> *"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."*

## Implications arising from exiting the European Union

None.

## Welsh Government response

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

**Legal Advisers**
**Legislation, Justice and Constitution Committee**
**29 September 2020**

WELSH STATUTORY INSTRUMENTS

# 2020 No. 1042 (W. 231)

# PUBLIC HEALTH, WALES

## The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) 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 Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/962) (W. 216);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020 (S.I. 2020/981) (W. 220);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020 (S.I. 2020/1015) (W. 226).

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 Curacao, Denmark, Iceland and Slovakia 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.

Part 3 of these Regulations make miscellaneous amendments to the International Travel Regulations.

Regulation 4 of these Regulations amends regulation 10 of the International Travel Regulations to provide an exception to the requirement to isolate for elite athletes and persons supporting them arriving in Wales for the purpose of undergoing medical assessments with a business for the purpose of contracting to participate in elite competitions. Regulation 4 also permits such elite athletes, upon contracting with a business to participate in the elite competition on behalf of that business.

Regulation 5 of these Regulations amends the list of exempt persons in Schedule 2 to the International Travel Regulations for domestic elite athletes, coaches and other support persons upon their return to Wales when having been in a non-exempt country for the purpose of an elite training programme.

Regulation 6 of these Regulations amends the list of sporting events in Schedule 4 to the International Travel Regulations.

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

WELSH STATUTORY INSTRUMENTS

# 2020 No. 1042 (W. 231)

# PUBLIC HEALTH, WALES

# The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020

| | |
|---|---|
| *Made* | *at 3.13 p.m. on 25 September 2020* |
| *Laid before Senedd Cymru* | *at 6.00 p.m. on 25 September 2020* |
| *Coming into force* | *at 4.00 a.m. on 26 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. 12) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 26 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 in Schedule 3 to the International Travel Regulations

**Removal of countries and territories from the list of exempt countries and territories**

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

"Curacao"

"Denmark"

"Iceland"

"Slovakia".

**Transitional provision in connection with regulation 2**

**3.**—(1) Paragraph (2) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 26 September 2020, and

(b) was last in a country or territory listed in regulation 2—

(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 26 September 2020.

(2) P is, by virtue of having been in a country or territory listed in regulation 2, 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.

(**1**) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220) and S.I. 2020/1015 (W. 226).

# PART 3

## Miscellaneous Amendments

**Amendments to regulation 10 (exceptions to isolation requirements)**

**4.**—(1) Regulation 10 of the International Travel Regulations is amended as follows.

(2) After paragraph (4)(jd) insert—

"(jh) where P is an elite athlete who has travelled to the United Kingdom to undergo one or more medical examination, to attend that medical examination, provided—

(i) the medical examination is for the purpose of a business determining whether to offer P a contract to participate in an elite competition on behalf of that business,

(ii) P is in possession of written confirmation from that business of the arrangements referred to in paragraph (i), and

(iii) such arrangements were made prior to P arriving in the United Kingdom;

(ji) where P is a person who is travelling with an elite athlete for the purpose of sub-paragraph (jh), to provide assistance and support to that elite athlete in connection with such medical examination;

(jj) where P is an elite athlete who has contracted with a business to participate in an elite competition, to participate in such competition or undertake training or other activities connected to that elite competition;";

(3) In paragraph (8), in the appropriate places insert—

""elite athlete" ("*athletwr elît*") has the same meaning as in paragraph 38(2)(a) of Schedule 2";

""elite competition" ("*cystadleuaeth elît*") has the same meaning as in paragraph 38(2)(b) of Schedule 2".

**Amendment to Schedule 2 (exempt persons)**

**5.**—(1) In Schedule 2 (exempt persons) to the International Travel Regulations, paragraph 38 is amended as follows.

(2) In sub-paragraph (1)(b), for "support or other coaching" substitute "coaching or other support".

(3) After sub-paragraph (1)(c) insert—

"(d) is an elite athlete who attended an overseas training programme for the purpose of training or preparing for participation in an elite competition,

(e) provided coaching or other support to an elite athlete at an overseas training programme for the purpose of training or preparing that elite athlete for participation in an elite competition,".

(4) In the words after sub-paragraph (1)(e), after "overseas elite competition" insert "or the overseas training programme".

**Additions to the list of specified sporting events in Schedule 4 (specified sporting events)**

**6.**—(1) Schedule 4 (specified sporting events) to the International Travel Regulations is amended as follows.

(2) In paragraph 3, at the end insert—

"(i) Professional Darts Corporation - Boylesports Grand Slam of Darts;

(j) Professional Darts Corporation - Ladbrokes Players Championship Finals;

(k) Professional Darts Corporation - William Hill World Darts Championship;

(l) Professional Darts Corporation - Boylesports World Grand Prix."

(3) In paragraph 5, at the end insert—

"(o) European Tour - Scottish Championship."

(4) In paragraph 7, at the end insert—

"(c) Motorsport UK - British Kart Championships;

(d) Motorsport UK - British Rallycross Championships;

(e) British Touring Car Championships;

(f) British Rallycross Championships;

(g) British GT Championship & BRDC F3 Championship;

(h) Goodwood Speed Week;

(i) Formula Ford Festival Brands Hatch."

(5) In paragraph 10, at the end insert—

"(g) World Snooker Tour - German Masters Qualifiers;

(h) World Snooker Tour - Northern Ireland Open;

(i) World Snooker Tour - UK Championships;

(j) World Snooker Tour - Scottish Open;

(k) World Snooker Tour - World Grand Prix."

(6) In paragraph 14, at the end insert—

"(h) International Championship Boxing - Queensberry Promotions."

(7) At the end insert—

"**20.** Netball - England Roses v Jamaica Sunshine Girls - Vitality International Netball Series."

*Vaughan Gething*
Minister for Health and Social Services, one of the Welsh Ministers
At 3.13 p.m. on 25 September 2020

**Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) 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. 12) Regulations 2020

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

25 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.

In addition the International Travel Regulations are amended by adding new sectoral exemptions for categories of elite sports people and support staff including medical teams returning from overseas training camps. Exceptions from the isolation requirement are also made for elite athletes and support staff to attend medical screenings and new signings to play in competitions. Events are added to the list of sporting events in Schedule 4.

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

*Coming into force*

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been 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 isolate upon arrival in Wales – most recently on 19 September 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 Curaçao, Denmark, Iceland and Slovakia has increased. On the basis of this advice the Welsh Government considers that isolation requirements should now be introduced for travellers coming into Wales from those countries.

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 26 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.

New sectoral exemptions categories of elite sports people and support staff including medical teams are included in Schedule 2. This is to enable elite sportspersons to undergo the necessary examinations that must be completed before they can be signed by a professional sporting body or club. The existing exemption for elite sportspersons and their support staff gives rise to some inadvertent differences in treatment between returning to Wales from competing overseas and returning to Wales having taken part in training overseas. The exemption has been amended to address those differences by allowing sportspersons and ancillary sportspersons who return from overseas training to be exempt from the requirement to isolate.

An exception from the isolation requirement is made for an elite sports person who has contracted with a business to participate in an elite competition, to participate in such competition or undertake training or other activities connected to the elite competition. This exception has been introduced to deal with the situation where a new signing would fall outside of the scope of current provisions.

Events are added to the list of sporting events in Schedule 4 which will take place before the International Travel Regulations expire.

The Welsh Ministers consider that these amendments are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

## 5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

## 6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/3151/20

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

25 September 2020

Dear Llywydd,

**The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020**

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove Curaçao, Denmark, Iceland and Slovakia from the list of exempt countries and territories. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from those countries and territories.

The Regulations also provide exceptions to the isolation requirement for elite sportspersons travelling to the United Kingdom for medical examinations (as well as any persons accompanying them to provide necessary assistance) and for new signings to play in competitions. Additionally, the Regulations provide new exemptions for elite athletes, coaches and other support persons upon their return to Wales when having been in a non-exempt country for the purpose of an elite training programme. A number of sporting events have been added to Schedule 4.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Yours sincerely,

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

Llywodraeth Cymru
Welsh Government

# WRITTEN STATEMENT
# BY
# THE WELSH GOVERNMENT

| | |
|---|---|
| **TITLE** | **The Health Protection (Coronavirus, International Travel) (Wales) Amendments** |
| **DATE** | **24 September 2020** |
| **BY** | **Vaughan Gething Minister for Health and Social Services** |

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on 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.

Today I reviewed the latest JBC assessments and I have decided that Curacao, Denmark, Iceland and Slovakia will be removed from the list of exempt countries and territories.

The Welsh Government intends to further amend the regulations by adding new sectoral exemptions for elite sports people and support staff including medical teams. Events will added to the list of specified sporting events.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Saturday 26 September.

# SL(5)619 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020

## Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (**the Principal Regulations**).

The amendments—

(a) provide that in premises licensed for the sale of alcohol for consumption on the premises, food or drink may only be served to customers who are seated (subject to certain exemptions for buffets, workplace canteens and premises in educational establishments such as university canteens), and customers must be seated when consuming the food or drink,

(b) provide that premises licensed for the sale of alcohol (whether for consumption on the premises or off the premises) may not serve or supply alcohol after 10.00 p.m. (and may not serve or supply alcohol again before 6.00 a.m. the following morning);

(c) provide that premises licensed for the sale of alcohol for consumption on the premises must close at or before 10.20 p.m. (and may not reopen before 6.00 a.m. the following morning);

(d) remove the exemption from the requirement to wear a face covering applicable in premises where food or drink is sold, replacing it with a reasonable excuse for customers not to wear a face covering while seated.

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

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

The Committee notes that these Regulations introduce a general tightening of restrictions in respect of premises that sell food and drink in Wales.

We also note the Welsh Government's justification for any potential interference with human rights. The Explanatory Memorandum to these Regulations states:

> "*The Regulations impose restrictions and requirements in relation to licensed premises including times after which alcohol may not be sold, opening and closing times, with some exceptions albeit in such cases premises will be prohibited from selling alcohol, and the operation of a seated service becoming a specific reasonable measure under the duty of those responsible for premises to take reasonable measures to minimise the risk or exposure to, and spread of, coronavirus. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life) 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 both in these areas and more widely and is proportionate to that aim.*"

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

We note there has been no public consultation on these Regulations and what the First Minister says in the Explanatory Memorandum regarding informing the public about these particular Regulations:

> "*I outlined the intention to impose the restrictions and requirements achieved through these Regulations in a televised broadcast on the evening of 22 September; the proposed changes have been widely reported by the media.*"

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

We make these points with regard to the Principal Regulations as a whole, rather than the Principal Regulations as specifically amended by these Regulations.

2.1 We note that keeping up to speed with all the changes is becoming increasingly difficult and confusing for members of the public. We note in particular the following recent news

story that highlights the confusion in Blaenau Gwent: https://www.bbc.co.uk/news/av/uk-wales-54269020

We are concerned that similar confusion is happening across Wales.

2.2 We also note, generally in respect of the Principal Regulations, that:

(a) Deleting regulation 12B(3)(b) of the Principal Regulations means that regulation 12B(5) is no longer required. However, regulation 12B(5) remains in the Principal Regulations.

(b) Regulation 4(2) of the Principal Regulations placed a duty on the Welsh Ministers to review the need for local restrictions by 24 September 2020 and then every 7 days. The local restrictions in Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport (**the No.11 Restrictions**) were slotted into the Principal Regulations on 22 September 2020. It is unclear what the Welsh Government's approach was to reviewing the No.11 Restrictions within the pre-existing timescale of 24 September 2020.

## Implications arising from exiting the European Union

None.

## Welsh Government response

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

**Legal Advisers**
**Legislation, Justice and Constitution Committee**
**30 September 2020**

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

WELSH STATUTORY INSTRUMENTS

# 2020 No. 1035 (W. 229)

# PUBLIC HEALTH, WALES

# The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020

## EXPLANATORY NOTE

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

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

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

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the "principal Regulations"). The amendments—

(a) provide that in premises licensed for the sale of alcohol for consumption on the premises, food or drink may only be served to customers who are seated (subject to certain exemptions for buffets, workplace canteens and premises in educational establishments such as university canteens), and customers must be seated when consuming the food or drink;

(b) provide that premises licensed for the sale of alcohol (whether for consumption on the premises or off the premises) may not serve or supply alcohol after 10.00 p.m. (and may not serve or supply alcohol again before 6.00 a.m. the following morning);

(c) provide that premises licensed for the sale of alcohol for consumption on the premises must close at or before 10.20 p.m. (and may not re-open before 6.00 a.m. the following morning);

(d) remove the exemption from the requirement to wear a face covering applicable in premises where food or drink is sold, replacing it with a reasonable excuse for customers not to wear a face covering while seated.

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

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

WELSH STATUTORY INSTRUMENTS

# 2020 No. 1035 (W. 229)

# PUBLIC HEALTH, WALES

## The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020

| | |
|---|---|
| *Made* | *at 2.45 p.m. on 24 September 2020* |
| *Laid before Senedd Cymru* | *at 4.45 p.m. on 24 September 2020* |
| *Coming into force* | *at 6.00 p.m. on 24 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. 12) Regulations 2020 and they come into force at 6.00 p.m. on 24 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 12—

(a) after paragraph (2A) insert—

"(2B) Where paragraph (2) applies to a person responsible for open premises authorised for the sale or supply of alcohol for consumption on the premises, the sale or supply of food or drink for consumption on the premises must be carried out in accordance with the reasonable measure specified in paragraph (2C) (subject to paragraphs (2D) and (2E)).

(2C)The reasonable measure is that customers must be seated in the premises anywhere other than at a bar—

(a) when ordering food or drink,

(b) when being served with food or drink, and

(c) when consuming food or drink.

(2D) But where the premises provide food on a buffet basis, customers may select food from the buffet and return to where they are seated provided a distance of 2 metres is maintained between any persons at the buffet (except between two members of the same household, or a carer and the person assisted by the carer).

(2E) Sub-paragraphs (a) and (b) of paragraph (2C) do not apply to—

(a) workplace canteens, or

(**1**) S.I. 2020/725 (W. 162), as amended by S.I. 2020/752 (W. 169), S.I. 2020/803 (W. 176), S.I. 2020/820 (W. 180), S.I. 2020/843 (W. 186), S.I. 2020/867 (W. 189), S.I. 2020/884 (W. 195), S.I. 2020/912 (W. 204), S.I. 2020/961 (W. 215), S.I. 2020/984 (W. 221), S.I. 2020/985 (W. 222), S.I. 2020/1007 (W. 224), S.I. 2020/1011 (W. 225) and S.I. 2020/1022 (W. 227).

(b) premises in an educational establishment.

(2F)For the purposes of paragraph (2B)—

(a) food or drink sold by a hotel or other accommodation as part of room service is not to be treated as being sold for consumption on the premises;

(b) food or drink sold for consumption in an area adjacent to the premises where seating is made available for customers is to be treated as being sold for consumption on the premises."

(b) after paragraph (5) insert—

"(6) In this regulation and regulation 12ZA, open premises are authorised for the sale or supply of alcohol where the premises have been granted or given an authorisation under the Licensing Act 2003(**1**), and "authorisation" has the meaning given by section 136(5) of that Act. "

(3) After regulation 12 insert—

**"Restrictions on licensed premises**

**12ZA.**—(1) A person responsible for open premises authorised for the sale or supply of alcohol may not sell or supply alcohol between 10.00 p.m. and 6.00 a.m.

(2) Where the premises are authorised for the sale or supply of alcohol for consumption on the premises, the person responsible for the premises—

(a) must close the premises (to customers) at or before 10.20 p.m. each day, and

(b) may not open the premises before 6.00 a.m. each day.

(3) Despite paragraph (2), a cinema may close later than 10.20 p.m. only for the purpose of concluding the showing of a film which begins before 10.00 p.m.

(4) Paragraph (2) does not apply to open premises located in—

(a) a sea port;

(b) an airport.

(5) In its application to the premises of a hotel or other accommodation, paragraph (2) applies only to those parts of the premises in which alcohol is sold or supplied for consumption on the premises.

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(**1**) 2003 c. 17.

(6) Paragraphs (1) and (2) do not allow the premises to be open, or alcohol to be sold or supplied, in contravention of an authorisation granted or given in respect of the premises."

(4) In regulation 12B—

(a) omit paragraph (3)(b);

(b) after paragraph (4)(g) insert—

"(h) where P is seated in premises where food or drink is sold, or otherwise provided, for consumption on the premises."

(5) In regulation 17(2), for "or 12(2), or paragraph 7 of Schedule 4A" substitute ", 12(2) or 12ZA(1) or (2)".

(6) In regulation 20(1)(a), for ", or paragraphs 5(1) or 7(1)" substitute "or 12ZA(1) or (2), or paragraph 5(1)".

(7) In Schedule 4A, omit paragraph 7.

*Mark Drakeford*
First Minister, one of the Welsh Ministers
At 2.45 p.m. on 24 September 2020

**Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) 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. 12) Regulations 2020.

**Mark Drakeford**
**First Minister**

24 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 restrictions now being imposed in relation to licensed premises are necessary and proportionate as a public health response to the current threat posed by coronavirus.

<u>European Convention on Human Rights</u>

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

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations impose restrictions and requirements in relation to licensed premises including times after which alcohol may not be sold, opening and closing times, with some exceptions albeit in such cases premises will be prohibited from selling alcohol, and the operation of a seated service becoming a specific reasonable measure under the duty of those responsible for premises to take reasonable measures to minimise the risk or exposure to, and spread of, coronavirus. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life) 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 both in these areas and more widely and is proportionate to that aim.

## 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).

The principal Regulations were amended[1] with effect from 22 September 2020, so as to introduce requirements on most licensed premises in local health protection areas to close by 11pm and not open before 6am. These provisions are now being replaced with new requirements covering all of Wales. This will have the effect that:

- premises with a licence to sell alcohol for consumption on the premises must stop selling at 10pm, close by 10.20pm and not reopen until 6am;

- such premises are required to provide seated service only;

- premises with an off-sales licence for alcohol to cease the sale of alcohol by 10pm;

In addition, these Regulations extend the requirement to wear face coverings to now include customers in indoor hospitality unless they are at a table and eating or drinking, and staff when in the public area of the premises.

The Regulations come into force at 6.00 p.m. on 24 September 2020.

These Regulations also make minor technical and consequential amendments to the principal Regulations.

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.

[1] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020 SI 2020/1022 (W. 227)

The Welsh Ministers consider that introducing these requirements and restrictions by means of the amendments made to the principal Regulations is 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 myself. In making the Regulations today there has been ongoing discussions with Public Health Wales, local authorities and NHS bodies, as well as representatives of the hospitality sector in Wales.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. I outlined the intention to impose the restrictions and requirements achieved through these Regulations in a televised broadcast on the evening of 22 September; the proposed changes have been 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.

**Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS**
**Prif Weinidog Cymru/First Minister of Wales**

Llywodraeth Cymru
Welsh Government

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

24 September 2020

Dear Elin

**The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 12) 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 21 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 6 October 2020.

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

Yours sincerely

Mark Drakeford

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay
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Llywodraeth Cymru
Welsh Government

# WRITTEN STATEMENT
# BY
# THE WELSH GOVERNMENT

**TITLE** **Keeping Wales Safe from Coronavirus**

**DATE** **22 September 2020**

**BY** **First Minister Mark Drakeford**

This morning, I took part in a UK-wide COBR meeting, chaired by the Prime Minister and attended by the First Ministers of Scotland and Northern Ireland and the deputy First Minister of Northern Ireland.

The meeting discussed a series of UK-wide actions, which would be introduced collaboratively in each of the four nations to respond to an increase in coronavirus transmission.

I also welcomed the Prime Minister's commitment to having a regular and reliable rhythm to UK-wide decision making – with the devolved governments having a clear and important role in that process.

In recent weeks, we have seen an overall rise in cases of coronavirus across Wales – that rise is not uniform. Some parts of Wales have seen a sharper and more pronounced increase in cases of the virus than other parts, which led to the introduction of local restrictions in six local authority areas in South Wales to protect people's health.

At the last review of the coronavirus restrictions, we introduced new Wales-wide measures to help control the spread of the virus – these included the requirement for everyone over 11 to wear a face covering in an indoor public place and a new limit on the number of people who can meet indoors at any one time. In Wales, only six people from the same exclusive extended household group can meet indoors – extended households are currently suspended in the areas subject to local restrictions.

Each of the four UK governments today agreed about the need to take further coordinated, preventative action to control the spread of virus.

Some of these actions, such as the need for people to work from home wherever possible, are already in force in Wales and have been since late March. We also continue to

encourage people to think very carefully about who they meet and whether they need to travel.

We will, however, be introducing some new measures in Wales, which will come into force at the same time as the rest of the UK and which are designed to help prevent a fresh coronavirus crisis.

From Thursday at 6pm, hospitality businesses in Wales – including pubs, cafes, restaurants and casinos – will have to close at 10pm. They will also have to provide table service only. Off-licences, such as supermarkets, will also have to stop selling alcohol at 10pm.

If we are to make difference to coronavirus in Wales, we need everyone's help. We need everyone to follow the rules and guidance and to take the steps, which will not only protect them and their loved ones but will also keep Wales safe.

# SL(5)620 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 13) (Llanelli etc.) Regulations 2020

## Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 ("the Principal Regulations"). The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984.

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).

The principal Regulations were amended[1] with effect from 8 September 2020 to introduce restrictions in respect of a 'local health protection area', and these Regulations now extend restrictions to a further local health protection area comprising 13 electoral wards in the Llanelli area of Carmarthenshire[2]. The effect of this in respect of the new area is to:

- provide that no household within that 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 that area from leaving or remaining away from the area without reasonable excuse;
- require residents of that area to work from home, unless it is not reasonably practicable for them to do so;
- prohibit people outside of that area entering the area without reasonable excuse. It is not a reasonable excuse to enter the area to work, if it is reasonably practicable for that work to be done outside the area.

The Regulations also amend regulation 12 of the principal Regulations, the obligation to take all reasonable measures to minimise the risk of exposure to, or the spread of, coronavirus. From 24 September[3] all licensed premises are prohibited from selling alcohol after 10.00 p.m. and must close no later than 10.20 p.m. These provisions are now extended so as to include premises which, although not licensed, permit customers to 'bring your own' alcohol.

[1] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (SI 2020/961 (W. 215))
[2] As set out in paragraph 1(g) of Schedule 4A to the principal Regulations, these are: Bigyn; Bynea; Dafen; Elli; Felinfoel; Glanymor; Hendy; Hengoed; Llangennech; Lliedi; Llwynhendy; Tyisha; and Swiss Valley.
[3] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020 (SI 2020/1035 (W.229))

This means customers must order from, be served at, and consume their food and drink whilst seated (other than at the bar). The premises must also close by 10.20 p.m. and may not reopen before 6.00 a.m.

The Regulations came into force at 6.00 p.m. on 26 September 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 1 October, 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

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

## Merits Scrutiny

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

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

The Committee notes that these Regulations introduce a tightening of Covid-19 related restrictions to 13 electoral wards in the Llanelli area of Carmarthenshire. As such, these Regulations engage various human rights under the Human Rights Act 1998/European Convention on Human Rights. The Committee notes the summary in the Explanatory Memorandum as to which rights are engaged and why such engagement is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread Covid-19 in the 13 electoral wards in the Llanelli area of Carmarthenshire. In particular, the Committee notes the following from the Explanatory Memorandum:

> "*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 both in these areas and more widely and is proportionate to that aim. The requirements not to leave or enter the areas 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 Committee notes also the Welsh Ministers must, by 1 October, review the need for the restrictions and requirements imposed by the Regulations, and their proportionality to what they seek to achieve in respect of the 13 electoral wards in the Llanelli area of Carmarthenshire, and do so at least once every seven days thereafter.

**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 Explanatory Memorandum states no public consultation or regulatory impact assessment has been carried out in relation to these Regulations due to the serious and imminent threat arising from coronavirus and the need for an urgent public health response. The Explanatory Memorandum further states that this is because:

- the Welsh Government has been updating individuals and business throughout the changes to the Principal Regulations;
- the Minister for Health and Social Services informed the public, via a press conference on 25 September 2020, of the intention to impose restrictions and requirements upon the 13 electoral wards in the Llanelli area of Carmarthenshire; and
- the changes to the Principal Regulations have been widely reported in the media.

## 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**
**30 September 2020**

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

WELSH STATUTORY INSTRUMENTS

# 2020 No. 1040 (W. 230)

# PUBLIC HEALTH, WALES

# The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 13) (Llanelli etc.) 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) designate 13 electoral wards (referred to in legislation as electoral "divisions") in the Llanelli area as a local health protection area that is subject to specific restrictions and requirements;

(b) provides that for certain purposes (opening hours and requirement for customers to be seated) open premises which are not licensed to sell or supply alcohol, but which allow

people to consume their own alcohol on the premises, are to be subject to the same requirements as premises which are authorised for the sale or supply of alcohol.

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

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

WELSH STATUTORY INSTRUMENTS

# 2020 No. 1040 (W. 230)

# PUBLIC HEALTH, WALES

## The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 13) (Llanelli etc.) Regulations 2020

| | |
|---|---|
| *Made* | *at 1.31 p.m. on 25 September 2020* |
| *Laid before Senedd Cymru* | *at 5.30 p.m. on 25 September 2020* |
| *Coming into force* | *at 6.00 p.m. on 26 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. 13) (Llanelli etc.) Regulations 2020 and they come into force at 6.00 p.m. on 26 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 12(6), for "regulation 12ZA" substitute "regulations 12ZA and 12ZB".

(3) After regulation 12ZA insert—

"**Application of certain restrictions to "bring your own" premises**

**12ZB.** Regulations 12(2B) to (2E) and 12ZA(2) to (4) apply to open premises not authorised for the sale or supply of alcohol for consumption on the premises, but which allow customers to consume their own alcohol in the premises, as they apply to open premises that are authorised for the sale or supply of alcohol for consumption on the premises."

(4) In Schedule 4A, in paragraph 1, after paragraph (f) insert—

"(g) the area comprising the following electoral divisions(**2**) in the county of Carmarthenshire—

(i) Bigyn;

(ii) Bynea;

(iii) Dafen;

(iv) Elli;

(v) Felinfoel;

(**1**) S.I. 2020/725 (W. 162), as amended by S.I. 2020/752 (W. 169), S.I. 2020/803 (W. 176), S.I. 2020/820 (W. 180), S.I. 2020/843 (W. 186), S.I. 2020/867 (W. 189), S.I. 2020/884 (W. 195), S.I. 2020/912 (W. 204), S.I. 2020/961 (W. 215), S.I. 2020/985 (W. 222), S.I. 2020/1007 (W. 224), S.I. 2020/1011 (W. 225), S.I. 2020/1022 (W. 227) and S.I. 2020/1035 (W. 229).

(**2**) The names and areas of which were specified (among other electoral divisions) by the County of Carmarthenshire (Electoral Arrangements) Order 1998 (S.I. 1998/3136).

(vi) Glanymor;
(vii) Hendy;
(viii) Hengoed;
(ix) Llangennech;
(x) Lliedi;
(xi) Llwynhendy;
(xii) Tyisha;
(xiii) Swiss Valley."

*Mark Drakeford*
First Minister, one of the Welsh Ministers
At 1.31 p.m. on 25 September 2020

**Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 13) (Llanelli etc.) 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. 13) (Llanelli etc.) Regulations 2020.

**Mark Drakeford**
**First Minister**

25 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 13 electoral wards in the Llanelli area, and making provision in respect of premises which permit 'bring your own' are necessary and proportionate as a public health response to the current threat posed by coronavirus.

<u>European Convention on Human Rights</u>

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

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations impose restrictions and requirements in relation to individual local health protection areas, which for the purposes of the principal Regulations will now also include 13 electoral wards in the Llanelli area. In particular these restrictions and requirements prohibit leaving or remaining away from or entering the areas without reasonable excuse; provide that no household within the areas being treated as forming part of an extended household and prohibit the formation of an extended household by such a household. 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 both in these areas and more widely and is proportionate to that aim. The requirements not to leave or enter the areas 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. Additionally the Welsh Ministers must, by 1 October, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve in respect of local health protection areas, 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).

The principal Regulations were amended[1] with effect from 8 September 2020 to introduce restrictions in respect of a 'local health protection area'. There are currently six local health protection areas[2], and these Regulations now extend restrictions to a further local health protection area comprising 13 electoral wards in the Llanelli area of Carmarthenshire[3]. The effect of this in respect of the new area is to:

- provide that no household within that 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 that area from leaving or remaining away from the area without reasonable excuse;

- require residents of that area to work from home, unless it is not reasonably practicable for them to do so;

[1] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (SI 2020/961 (W. 215))
[2] The County Boroughs of Blaenau Gwent, Bridgend, Caerphilly, Merthyr Tydfil and Rhondda Cynon Taf, and the City and County Borough of Newport.
[3] As set out in paragraph 1(g) of Schedule 4A to the principal Regulations, these are: Bigyn; Bynea; Dafen; Elli; Felinfoel; Glanymor; Hendy; Hengoed; Llangennech; Lliedi; Llwynhendy; Tyisha; and Swiss Valley.

- prohibit people outside of that area entering the area without reasonable excuse. It is not a reasonable excuse to enter the area to work, if it is reasonably practicable for that work to be done outside the area.

The Regulations also amend regulation 12 of the principal Regulations, the obligation to take all reasonable measures to minimise the risk of exposure to, or the spread of, coronavirus. From 24 September[4] all licensed premises are prohibited from selling alcohol after 10.00 p.m. and must close no later than 10.20 p.m. These provisions are now extended so as to include premises which, although not licensed, permit customers to 'bring your own' alcohol. This means customers must order from, be served at, and consume their food and drink whilst seated (other than at the bar). The premises must also close by 10.20 p.m. and may not reopen before 6.00 a.m.

The Regulations come into force at 6.00 p.m. on 26 September 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 1 October, and at least once every seven days thereafter.

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 is 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 myself. In making the Regulations today there has been ongoing discussions with Public Health Wales, local authority and NHS bodies for the area of Llanelli, as well as ongoing discussions with the Incident Management Teams in the existing local health protection areas. The evidence and advice they have provided has been instrumental in determining the extent of the new local health protection area.

[4] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020 (SI 2020/1035 (W.229))

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Health and Social Services explained in a press conference earlier today the intention to impose the restrictions and requirements achieved through these Regulations; the proposed changes have been 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.

**Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS**
**Prif Weinidog Cymru/First Minister of Wales**

Llywodraeth Cymru
Welsh Government

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

25 September 2020

Dear Elin

**The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 13) (Llanelli etc.) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. **13) (Llanelli etc.**) 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 tomorrow. 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 22 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 6 October 2020.

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

Yours sincerely

Mark Drakeford

**MARK DRAKEFORD**

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Lesley Griffiths AS/MS
**Gweinidog yr Amgylchedd, Ynni a Materion Gwledig**
**Minister for Environment, Energy and Rural Affairs**

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/LG/3171/20

Mick Antoniw MS
Legislation, Justice and Constitution Committee
Ty Hywel
Cardiff Bay
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Mick.Antoniw@senedd.wales

28 September 2020

Dear Mick,

**Welsh Government's Supplementary LCM (Memorandum No 4) on the Agriculture Bill**

Thank you and members of the Legislation, Justice and Constitution Committee for your scrutiny of the amendments made to provisions relating to Wales in the Agriculture Bill during the House of Lords' amending stages. I committed to write to the Committees and Members of the Senedd should there be any further amendments requiring the legislative consent of the Senedd prior to the plenary debate.

Introduced in the House of Commons, the Agriculture Bill completed Report Stage in the House of Lords on 22 September. We expect the Bill to receive Royal Assent by the end of October.

I can inform the Committee three further government amendments were made to the Bill. Under Standing Order 29.1(i) and 29.2(iii), the Welsh Government is required to lay a LCM in the Senedd normally no later than 2 weeks after those amendments are tabled or agreed, but due to the advanced stage of the Bill and therefore the lack of time available for normal Senedd scrutiny, I am writing to outline the amendments made. Full details can be found in Supplementary Legislative Consent Memorandum no.4.

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Amendment to Schedule 5 (and related provision) with regard to references to retained direct EU legislation

After the amendment was made to paragraph 5, Welsh Government Legal Services identified another potential issue with the provision, arising from the different possible interpretations of Article 138 of the Withdrawal Agreement and its implications on EU legislation relating to rural development, and the Common Agricultural Policy more generally.

Amendments have been tabled in relation to RDP, Common Market Organisation and Apiculture which confirm the specified legislation does become retained EU law on IP completion day, and ensure the powers given to the Welsh Ministers in Schedule 5 are operable;

A narrow financial assistance power has been included which allows the Welsh Ministers to pay those people who have ongoing agreements under the current RDP scheme after the EU funding has been exhausted. This power is designed to allow the Welsh Ministers to continue to fulfil their contractual obligations if Technical Measures cannot be agreed with the EU pursuant to Article 138(5) of the Withdrawal Agreement to bring the programme to an end. It is limited in scope, and can only be used to give financial assistance to those who have ongoing, existing agreements/contracts;

A regulation-making power to amend retained EU legislation in relation to Apiculture has been included. This ensures in the future, the retained EU apiculture framework could be amended to implement a new scheme. A technical amendment will be tabled at Third Reading on October 1 to confirm this regulation-making power is subject to the negative procedure;

These are now Clauses 17 (continuing EU programmes: power to provide financial assistance), Clause 18 (retained direct EU legislation), Clause 55 (interpretation), Clause 59 (financial provision), Clause 60 (extent) and Schedule 5 – Paragraph 4.

Food Security

Clause 19 (Duty to report to Parliament on UK food security) places a duty on the Secretary of State to report to Parliament on data relevant to UK food security. During scrutiny, Committees raised concern around the reporting frequency on food security, I accepted more frequent reporting may be necessary given the potential pace of development in this area. This clause was also subject to much debate during the House of Lords passage.

A UK Government amendment has been made to increase the reporting frequency of the Secretary of State from every 5 years to every 3 years with a requirement to lay the first report under clause 19 on or before the “relevant day” as defined in the Bill.

Power to make consequential and transitional provision

Clause 50 (power to make consequential etc. provision) provided for a general and broad power by regulations to make supplementary, incidental or consequential provision in connection with any provision of the Bill (including powers to modify primary legislation, retained direct EU legislation or subordinate legislation).

The clause is amended to create two new provisions. One (Clause 57) deals with supplementary, incidental or consequential provision (and comprises what was section 50(1) to (4), as amended at House of Lords Report stage), the other (Clause 58) deals with transitional etc., provision (and comprises what was section 50(5) and (6), as amended at House of Lords Report stage).

In summary, officials requested these amendments be made at Report stage so the Welsh Ministers, and not the Secretary of State, may exercise the powers to make consequential

and transitional provision under what was clause 50(1) and 50(5) in relation to certain additional provisions, as requested (as well as the provisions previously covered).

The Secretary of State may not make consequential or transitional provision which could be made by the Welsh Ministers in respect of those provisions, with one exception. The Secretary of State may make consequential provision in respect to sections 36 and 37 (organic products), if the Secretary of State has first consulted the Welsh Minsters. This means the Welsh Ministers and the Secretary of State have concurrent powers to make consequential provision so far as relating to Wales in respect of sections 36 and 37. Further detailed briefing on these amendments will follow.

Non-Government Amendments made at House of Lords Report Stage

There have been further amendments I have noted for the Committee below which we are currently analysing. I am recommending consent on the basis if these new amendments remain in the Bill, and if they affect my consent recommendation, I will table a further debate.

These non-government amendments were included in the Bill during House of Lords Report Stage and include the following:

- Clause 20 – National Food Strategy;
- Clause 38 – Application of pesticides: limitations on use to protect human health;
- Clause 47 – Requirement for agricultural and food imports to meet domestic standards;
- Clause 48 – Contribution of agriculture and associated land use to climate change targets;
- Clause 49 – Trade and Agriculture Commission.

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 I set out in my oral statement on 8 July.

Regards

**Lesley Griffiths AS/MS**
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

**Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS**
**Prif Weinidog Cymru/First Minister of Wales**

Llywodraeth Cymru
Welsh Government

Elin Jones MS
Llywydd and Chair of Business Committee
Llywydd@senedd.wales

28 September 2020

Dear Elin

I am writing further to my letter of 4 June 2020, in which I asked Business Committee to initiate work to implement the provisions in section 28 of and Schedule 2 to the Senedd and Elections (Wales) Act 2020 which relate to the financing and accountability of the Electoral Commission.

I indicated that the Welsh Government would bring forward an Order to bring into force those provisions, subject to the completion of the necessary Standing Order changes, the establishment of a Llywydd's Committee, and the negotiation of an inter-institutional funding agreement.

As sufficient progress has been made in respect of that work, I consider the conditions I set out are met. I am therefore pleased to confirm that I will bring into force the relevant provisions on 1 October.

I am copying this letter to the Chairs of the Finance and Legislation, Justice and Constitution Committees, to the Auditor General for Wales and to the Head of the Electoral Commission in Wales.

Yours sincerely

Mark Drakeford

**MARK DRAKEFORD**

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Llywodraeth Cymru
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Ein cyf/Our ref: LG/3222/20

Mick Antoniw MS
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1 October 2020

Dear Mick

I wish to provide an update on the UK Fisheries Bill, ahead of the scheduled Legislative Consent Motion (LCM) debate, which has been rescheduled for 6 October. Thank you for your report, published on 24 September, on the Supplementary Legislative Consent Memorandum (Memorandum No.2). I have responded to your recommendations in this letter which satisfies your ***recommendation 1***.

## House of Commons Committee stage

A Supplementary Legislative Consent Memorandum (Memorandum No. 3) was laid on 16 September in respect of amendments tabled at Commons Committee stage. I have today laid a final Supplementary Legislative Consent Memorandum (Memorandum No. 4) (SLCM (No.4)), in advance of the LCM debate, which captures those amendments agreed at Commons Committee stage which had not been covered in the Memorandum laid on 16 September and clarifies some amendments made previously (Your ***recommendation 8*** is responded to via SLCM (No.4)). A new version of the Bill has been published and I have provided the link here:
https://publications.parliament.uk/pa/bills/cbill/58-01/0181/200181.pdf

References to clause/schedule numbers in this letter relate to the new version of the Bill.

## House of Commons Report stage

My officials provided input during the early Bill stages to ensure all amendments which related to the legislative competence of the Senedd could be included at Commons Committee stage. However, as a result of delays by UK Government, some further amendments will be sought at Commons Report stage.

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To support the Senedd consideration of the LCM, I have set out details here of further amendments being pursued:

Legislation (Wales) Act 2019 – amendments are being sought to apply the Legislation (Wales) Act 2019 to subordinate legislation made under the Bill and which will apply in relation to the Welsh zone. These amendments are consequential upon clause 43 of the Fisheries Bill which is extending the Senedd's competence to the Welsh zone in relation to fishing, fisheries and fish health.

Agency Arrangements power – amendments are being sought to provide powers for the four fisheries administrations to enter into agency type arrangements. We currently have a power under section 83 of the Government of Wales Act 2006 which enables the Welsh Ministers to make this type of arrangement with Welsh and English public bodies. We have sought the same type of power in relation to fishing, fisheries and fish health functions only to enable the four UK administrations to establish helpful joint working arrangements which would enable collaboration and the efficient exercise of functions to achieve robust and effective fisheries management outcomes.

Schedule 3 - Sea Fishing Licences: Further provision, and Schedule 8 – Powers to make further provision: devolved authorities – we continue to seek improvement of some aspects of the scope and operation of the Welsh Ministers powers and their relationship with the corresponding Secretary of State Bill powers.

Schedule 10 – Amendments of the Marine and Coastal Access Act 2009

- a small amendment is needed to make it an offence to contravene an order under 134B of the Marine and Coastal Access Act 2009 (MCAA) (as amended by the Fisheries Bill), which was unintentionally omitted.
- an amendment is sought to remove subsection (2) of section 189 of the MCAA. Under section 189 the Welsh Ministers may by order make provision in relation to Wales, to manage exploitation of sea fisheries. Subsection (2) currently limits the availability of that power, such that it may only be used by the Welsh Ministers if no other alternative legal power can be identified. This restriction is unnecessary and I am seeking its removal.
- an amendment is sought to the consultation requirements that apply to the Welsh Ministers order making power under section 134A and 134B.

I will inform the Committee and Members of the Senedd up to date on any changes made at Commons Report stage, which impact on the legislative competence of the Senedd, following the LCM debate.

**Clause 23 (formally 24) – determination of fishing opportunities**

In relation to clause 23 of the Bill, and ***recommendation 2*** in your report, I wrote to the Climate Change, Environment and Rural Affairs and Legislation, Justice and Constitution Committees on 3 September and advised I had written to the UK Government to seek agreement on the key issues on which I need assurance in order to recommend the Senedd gives consent to the Bill. I have received a response from DEFRA and have attached the exchange of letters at Annex 1 and 2.

I acknowledge the concerns raised by Committees in their scrutiny and we continue to press for swift progress on the Fisheries Framework Memorandum of Understanding (MoU). It was my intention for the Committee to have the opportunity to review the MoU prior to seeking the Senedd's consent, however, given the wide ranging nature of the MoU, its dependency on the Joint Fisheries Statement and the timings of the Bill progressing through UK Parliament, this is now not possible.

I can assure the Committee and Members of the Senedd I am confident the commitments made by UK Government, including in the exchange of letters attached, provides the ongoing assurance needed to fully resolve these concerns and I am seeking Senedd consent on this basis. We will continue to work with UK Government to finalise the MoU, within the parameters set out in the letters.

**Sunset provisions**

I also wish to address a point raised by Committee in its scrutiny regarding sunset provisions and ***recommendation 3*** of your report. My position remains we do not support the inclusion of sunset provisions in this Bill, for reasons I have already set out in my responses to Committee. However, given the strength of feeling here and recognising the concerns raised, I will commit to making a biennial report to the Senedd on the implementation of the provisions in the Bill which relate only to Wales, until such time as a Welsh Fisheries Bill is introduced.

**Schedule 3**

Your ***recommendation 4*** seeks for the Bill to be amended to remove reference to 'or expedient' from paragraphs 1, 2 and 5 of Schedule 3, and in ***recommendation 5*** you ask me to clarify under what circumstances the Welsh Ministers would consider it expedient to exercise the powers in Schedule 3 as a sea fish licensing authority.

We have no plans at the moment to use these powers, but I would note these licensing powers may be part of the statute book for many years, possibly decades, like previous sea fishing licensing primary legislation. As such, it is necessary to have this power, and to have it to the full extent that other UK sea fish licencing authorities will have it, to attach licence conditions as appear necessary or expedient, to respond to any changing needs to keep fisheries licensing up to date and fit for purpose. Regulations made under this power will be subject to Senedd scrutiny.

**Schedule 11 - Retained direct EU legislation: minor and consequential amendments**

Your ***Recommendation 6*** seeks for me to write to the Committee and explain whether the Welsh Ministers have lost functions as result of previous amendments made, or as a result of amendments now proposed in the Bill, to the following:
• The Common Fisheries Policy Regulation (Regulation (EU) No 1380/2013);
• The North Sea Multi-Annual Plan (Regulation (EU) 2018/973);
• The Western Waters Multi Annual Plan (Regulation (EU) 2019/472),

In ***Recommendation 7*** you ask, if functions have been lost to the Welsh Ministers for me to write to the Committee and explain how those functions are to be restored.

The Welsh Ministers have not lost functions. The functions you refer to were previously European Commission functions and upon implementation period completion day transfer to the Secretary of State as the subject matter to which they relate is reserved. The functions under these retained EU law provisions vest in the Secretary of State for the whole of the UK, and therefore Wales is in the same position in respect to this provision as the other devolved administrations. I refer to Annex 1 to my letter to the Committee dated 3 September 2020 for a fuller discussion of the functions.

**Consent**

I am grateful to Members of the Legislation, Justice and Constitution Committee for its scrutiny of the Bill and for indicating it would recommend consent, subject to clarity and reassurances, which I hope I have now provided. I can confirm I have tabled a consent motion recommending the Senedd consent to the UK Fisheries Bill.

I have written in similar terms to Mike Hedges MS, Chair of Climate Change, Environment and Rural Affairs Committee and have copied this letter to all Members of the Senedd.

Regards

**Lesley Griffiths AS/MS**
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

**Lesley Griffiths AS/MS**
**Gweinidog yr Amgylchedd, Ynni a Materion Gwledig**
**Minister for Environment, Energy and Rural Affairs**

Llywodraeth Cymru
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Ein cyf/Our ref LG/2656/20

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1 September 2020

Dear Victoria,

**Determination of fishing opportunities**

Further to your letter of 8 April 2020 I am seeking an agreement between our Governments on the use of the power to determine fishing opportunities within clause 24 and consultation requirements within clause 25 of the UK Fisheries Bill. I will need to provide the Senedd with assurance we have reached agreement on the detail of how our Governments will work together in relation to the use of this power before the Senedd debate on legislative consent (29 September). This agreement will be in lieu of the Senedd having the opportunity to consider the detail of the Fisheries Framework Memorandum of Understanding (MoU) which I note, due to other pressures, is still in development.

I am conscious we are building on many years of close collaboration in fisheries management. We do not want to curtail any of the good practice already in place and

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**Minister for Environment, Energy and Rural Affairs**


see this as an opportunity to enhance and clarify the existing arrangements and responsibilities. I am seeking your agreement on the following matters:

**Exercise of clause 24 power**
Clause 24 primarily provides a legal mechanism to give effect to agreements reached at any future coastal states negotiations, setting the top level UK catch limit for the calendar year or relevant period. It is our expectation the power will not normally be used for any other purpose, in recognition of the fact setting catch limits for species not covered by coastal states agreements, is a matter for the four administrations of the UK to act in relation to their separate jurisdictions.

As you know our concern is the power may be exercised in a way which impacts solely on a Welsh stock, which would otherwise be entirely managed by the Welsh Minsters, without meaningful input from Welsh Ministers, and this is why we have agreed to set out the assurances around the use of the power in an MoU.

**Retain existing engagement arrangements**
Fisheries management historically, and necessarily, has always required fisheries administrations to work collaboratively as equal partners across the UK. I would like to see in the MoU a statement confirming a continuing commitment to these existing best-practice arrangements and governance principles, locking them in place as a collective UK position. I would like to see the MoU confirm these arrangements which follow the principles of: mutual respect, shared responsibility, open and transparent information sharing, and clear dispute resolution procedures.

I expect the detail to include a no surprises approach, being enabled by the ongoing governance arrangements via the SSG and working groups, as well as Welsh representation in all matters of interest to Wales.

**Meaningful consultation**
Clause 25, requires the Secretary of State to consult the Welsh Ministers before making or withdrawing a determination of fishing opportunities. This will provide the opportunity for the Welsh Ministers to set out its position, and for the Secretary of State to explain the reasons for the final form of the determination and how UK Government has sought to reach agreement.

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I am mindful of the close link to the coastal state negotiations and the desire to issue the determination as early as possible. I propose the following, which reflects a reasonable consultation approach but am open to suitable alternatives we can discuss and agree as the MoU wording is developed:

- the Welsh Ministers are given sight of the draft determination in writing in advance;
- there is a period of 21 days to respond to the consultation;
- the Welsh Ministers can make written representations within this period:
- the Secretary of State provides a written response to any representations made.

It may be possible to reduce these steps where the determination reflects a decision at Coastal States where Welsh Government formed part of the delegation.

**Dispute avoidance and resolution**

I recognise dispute avoidance processes linked to portfolio level structures are already in place and well established, via the Senior Officials Programme Board and where Ministerial escalation is required, via the Inter-Ministerial Group – Environment, Fisheries and Rural Affairs (IMG-EFRA).

The fisheries administrations and their officials have a strong track record of working closely together to develop fisheries management policy and resolve disputes before using DRM processes. Although, I note the existing DRM is a default position, it would be helpful, to provide the necessary reassurances and certainty, to have acknowledgement the DRM would be available for a clause 24 determination.

**Progress on the Memorandum**

I would be grateful if you could confirm your officials will work with mine to finalise the wording for the MoU by the end of the year, reflecting what we have agreed by this exchange of letters. I would also be grateful if you could make the above commitments on the floor of the House of Commons during the remaining stages.

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Welsh Government

I would be grateful for a response to this letter as soon as possible so we can move ahead with the legislative consent process.

Regards

**Lesley Griffiths AS/MS**
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Minister for Environment, Energy and Rural Affairs

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Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
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18 September 2020

Dear Lesley,

Thank you for your letter of 1 September about the determination of fishing opportunities under clause 23 of the Fisheries Bill.

As I hope Defra Ministers have made clear throughout the passage to the Fisheries Bill, we have very much appreciated the collaborative approach taken both at official and Ministerial level. We have also been careful to explain how the Bill seeks to respect the devolution settlements. This is an approach built on many years of close working, and is one we intend to follow.

As you note, clause 24 provides the Secretary of State with a statutory duty to consult the Devolved Administrations before making or withdrawing a determination. While the precise details will need to be worked out, we intend for these to be meaningful consultations.

Whilst we are committed to providing adequate time for formal consultation (I am sure there will be plenty of engagement at official level prior), it might not always be possible to allow a 21 day consultation period or to commit to a Ministerial exchange of letters as you suggest. However, to provide some further reassurance, we think that the memorandum of understanding (MoU) could usefully set out principles for consultation. In addition, the MoU will set out a fisheries dispute resolution process between the Fisheries Administrations, incorporating and building on existing processes where appropriate. I understand that discussions on the process for determinations are well underway between officials within the Fisheries Management Working Group.

I am grateful for your comments on the need to make rapid progress to draft and finalise the MoU. Defra has a team of officials ready to contribute to that process.

Given the rapid progress of the Bill, and parliamentary procedure in Westminster, there may not now be an opportunity to make the reassurances you suggest on the floor of the House. However, I trust that this letter will be sufficient and that swift progress to deliver legislative consent can be made.

Yours sincerely,

**VICTORIA PRENTIS MP**

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 4)**

**Fisheries Bill**

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.

2. Following completion of the House of Lords scrutiny stages, the Fisheries Bill ("the Bill") was introduced into the House of Commons on 2 July 2020, Second Reading was held on 1 September and Commons Committee stage was completed on 15 September. The latest version of the Bill can be found here**:**

   Bill documents - Fisheries Bill 2019-21 - UK Parliament (post Commons Committee stage)

**Policy Objective**

3. The UK Government's stated position is the Bill will provide the legal framework for the UK to operate as an independent coastal state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS) after the UK has left the European Union and the Common Fisheries Policy.

**Summary of the Bill**

4. The Bill is sponsored by the Department for Environment, Food and Rural Affairs.

5. The Bill makes provision for:
   - policy objectives in relation to fisheries, fishing and aquaculture, fisheries statements and fisheries management plans;
   - access to British fisheries;
   - the licensing of fishing boats;
   - the determination and distribution of fishing opportunities;
   - schemes to be established for charging for unauthorised catches of sea fish;
   - grants in connection with fishing, aquaculture or marine conservation
   - the recovery of costs in respect of the exercise of public functions relating to fish or fishing;
   - to confer powers to make further provision in connection with fisheries, aquaculture or aquatic animals;
   - to make provision about byelaws and orders relating to the exploitation of sea fisheries; and for connected purposes.

**Update on position since the publication of the third Legislative Consent Memorandum**

6. The Welsh Government has laid the following Legislative Consent Memoranda:

    - Legislative Consent Memorandum on 12 February 2020, based on the Bill as introduced into Parliament on 29 January 2020.
    - A Supplementary Legislative Consent Memorandum (Memorandum No. 2) was laid on 8 July, following amendments made to the Bill during House of Lords scrutiny.
    - A Supplementary Legislative Consent Memorandum (Memorandum No. 3) was laid on 16 September, following amendments tabled to the Bill for House of Commons Committee scrutiny.

7. This Supplementary Legislative Consent Memorandum (Memorandum No.4) completes the package of all amendments made to the Bill to date. No further amendments will be made before the Legislative Consent Motion debate on 6 October.

8. The Welsh Government remains supportive of the Bill, as it continues to progress through Parliament. Clause 43 secures a significant extension of legislative competence for the Senedd in relation to fishing, fisheries and fish health matters beyond Wales, into the Welsh zone and aligns the Senedd's competence with the Welsh Ministers' executive powers.

9. The Welsh Government will take powers for the Welsh Ministers in this Bill as an interim measure until a Welsh Fisheries Bill is brought forward to the Senedd.

**Amendments to note since the publication of the Supplementary Legislative Consent Memorandum (Memorandum No 3), for which consent is required.**

10. Commons Committee stage has now concluded and the following amendments which relate to the legislative competence of the Senedd were agreed, and have been incorporated into the Bill: 1, 2, 5 – 9, 22 – 23, 27, 29 - 35, 48 – 50, 52, 53, 55 and new clause 1, 57, 59 – 60, and new schedule 1. Supplementary Legislative Consent Memorandum (No. 3) sets out our position on these amendments and I can confirm again, we support their inclusion in the Bill.

11. Government amendments 144, 145, 146 were also made at Commons Committee stage but were not covered in the Supplementary Legislative Consent Memorandum (Memorandum No.3) due to the date on which they were tabled.

12. Clause numbers below relate to the latest version of the Bill:

13. Clause 39 (Amendment 144) ensures the scope of the Secretary of State's regulation making power in clauses 38 and 40 excludes provision which is within the legislative competence of the Senedd with the consent of a Minister of the Crown.

14. Clause 49 (Amendment 145) inserts into the Bill a definition of "Minister of the Crown".

15. Schedule 8 (Amendment 146) enables the Welsh Ministers, with the consent of the Secretary of State, to include in regulations under paragraph 6 or 8 (of Schedule 8) provision that is within the legislative competence of the Senedd if consent has been given by a Minister of the Crown.

16. Three amendments made to the Bill during Lords Report stage were unintentionally omitted from Supplementary Legislative Consent Memorandum (Memorandum No.2), so are included here. The clause numbers relate to the current numbering in the Bill:

17. Clause 2 – an amendment was made to include subsection (2) to require the joint fisheries statement to set out the policies of the fisheries policy authorities relating to the distribution of catch and effort quotas for use by fishing boats.

18. Clause 23 - a further amendment was made at Lords Report stage which inserted sub section 11 to clause 23. The amendment clarifies the meaning of fishing opportunities under the clause in relation to retained direct EU legislation.

19. Clause 26 – an amendment was made to include subsection (2) which applies rules in retained direct EU legislation about when catches are or are not to be counted against quotas for the purposes of the duty in subsection (1) of this Clause, to ensure consistent application of those rules.

20. Paragraph 19 of Supplementary Legislative Consent Memorandum (Memorandum No.2) relates to Schedule 10 (Common Fisheries Policy Regulation: Minor and consequential amendments) which includes amendments made to retained EU law in relation to quota flexibilities, to which the amendment to clause 26 relates.

21. Clause 52 – at Lords Third Reading, the short title provisions were amended to include a privilege amendment. This has now been removed following Commons Committee consideration.

**Welsh Government position on the amendments made to the Bill**

22. Amendments made at Commons Committee stage, detailed above and within Supplementary Legislative Consent Memorandum (Memorandum No.3), are supported by Welsh Government.

23. Amendments to clauses 39 and 49 and schedule 8, made at Commons Committee stage, were sought by Welsh Government to ensure the scope of the Welsh Ministers' powers under Schedule 8 aligned with the competence of the Senedd.

24. The amendment to clause 2, made at Lords Report stage, to include the requirement to set out policies relating to quota distribution, is supported. We would expect the Joint Fisheries Statement to set out policies in this respect.

25. The amendment to clause 23, made at Lords Report stage, clarifies the meaning of fishing opportunities under the clause.

26. The amendment to clause 26, made at Lords Report stage, is necessary for a workable statute book at the end of the Implementation Period.

27. The privilege amendments to clause 52 reflect standard procedures for Bills containing charging provisions which begin in the House of Lords. These provisions are inserted by the House of Lords and removed by Commons by convention.

**Financial implications**

28. There are no direct financial implications for Wales as a result of taking these provisions in this Bill.

**Conclusion**

29. We remain committed to the UK wide approach to create the Fisheries Framework which can only be done in a UK bill. For the non-framework powers in the Bill, it is important the Welsh Ministers are able to act quickly and decisively in Wales, until we can bring forward a comprehensive Welsh Fisheries Bill.

30. We support all the amendments made to the Bill, as detailed above.

31. The Legislative Consent Motion has been laid, in advance of the plenary debate, recommending the Senedd Cymru consent to the making of this Bill.

**Lesley Griffiths AS/MS**
**Minister for Environment, Energy and Rural Affairs**
**October 2020**

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# The Constitutional Implications of the UK Internal Market Proposals

29 September 2020

## Introduction

This paper has been produced by Professor Dan Wincott and Professor Jo Hunt of the Wales Governance Centre for this Committee and the External Affairs and Additional Legislation Committee.

It considers the constitutional implications of the UK Internal Market Bill and associated work on intergovernmental relations and common frameworks. It sets out the history of the proposals; considers the key provisions of the Bill and their interaction with the devolution settlements; how the Bill interacts with the EU Withdrawal Act 2018 and wider intergovernmental work on constitutional issues post-Brexit.

# THE CONSTITUTIONAL IMPLICATIONS OF THE UK INTERNAL MARKET PROPOSALS

**Professors Jo Hunt and Dan Wincott,**

**Wales Governance Centre, Cardiff University School of Law and Politics**

In this briefing paper we consider the significance of the Internal Market Bill[1] for devolution. We do not cover the Ireland/Northern Ireland Protocol and the international law dimensions in any detail, but instead focus on the constitutional implications of the proposals as they affect powers held by the Senedd and Welsh Government.

## 1. Constitutional framing

Although it has explicitly constitutional aspects, as first published the UK Internal Market Bill was not presented as legislation designed to make basic changes to the UK's constitutional arrangements. The Bill is presented as a means of maintaining a *status quo* – defined as an already established or pre-existing UK Internal Market.

The Bill defines itself as a 'protected statute', one that cannot be amended or overwritten by devolved legislation including in areas that otherwise fall within devolved legislative competence. This provision is the Bill's explicitly constitutional aspect.

[1] *United Kingdom Internal Market Bill* 177 58/1
**https://publications.parliament.uk/pa/bills/cbill/58-01/0177/20177.pdf**

There are, however, reasons to believe that the Bill has potential to make significant changes to the UK's territorial constitution. Although presented in the White Paper[2] as a venerable concept dating back to the origins of the Anglo-Scottish Union, the 'UK Internal Market' term is of relatively recent provenance. Until this Bill, no clear legal definition of a domestic Internal Market existed. The Bill provides a new legal framework for it, one which is likely to place significant practical constraints on devolved policy competence. The choice to putting legislation in place for the UK Internal Market which does not contain explicit constitutional protections for devolution and before developing a clear structure for other Common Frameworks or a new framework for intergovernmental relations (IGR) has constitutional implications. As well as very broadly defined concepts of Mutual Recognition and Non-Discrimination, the UK Internal Market Bill also reserves State Aid policy to the UK Government and gives it new financial powers including for matters for which policy competence is devolved.

More broadly, in itself, Brexit has constitutional implications for the operation of devolution.[3] Although the UK formally left the EU at the end of January 2020, until the end of the 'Transition Period' it remains within the broad framework of EU rules. EU membership is written through the statutory framework for devolution. The framework of EU rules has also provided a kind of internalised scaffold holding the UK together through economic regulation and in a range of other EU policy areas. The UK's domestic IGR framework, principally the Joint Ministerial Councils (JMCs), is notoriously underdeveloped, underused and ramshackle. The EU framework allowed the UK to multi-level operate despite the limited and weak quality of its IGR.

How should the balance be struck between UK-wide and devolved policy competences after Brexit? The UK Government has not yet addressed this central territorial constitution question directly. UK Government communications have described Brexit as a 'power surge' for devolution, since some EU powers 'returning' to the UK will come to devolved governments and legislatures. However, this Bill does not make those

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[2] *UK Internal Market* CP278 July 2020 **https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901225/uk-internal-market-white-paper.pdf**

[3] Daniel Wincott *Brexit is re-making the UK's Constitution under our noses* https://blogs.lse.ac.uk/brexit/2018/09/17/brexit-is-re-making-the-uks-constitution-under-our-noses/

changes. The UK Internal Market Bill is the Johnson administration's first major piece of legislation that governs devolution. If passed into law in its current form it will have a significant, largely centralising, impact on the balance of the UK territorial constitution.

## 2. The Internal Market Concept

The concept of an Internal Market is primarily associated with the European Union and the process of European integration. It is a framework developed to prevent rules and regulations from creating unnecessary barriers to trade within a territory. Developed to facilitate integration within the (then) European Economic Community, the Internal Market proved to be a powerful policy tool to facilitate closer economic integration among political units that enjoyed high levels of mutual trust, while putting protections in place to prevent the policy capacity of the participating units from being undercut. The concept was taken up in a number of other multi-level systems, both federal states and multi-state organisations.

At the heart of the Internal Market concept is the idea that a product or service that is lawfully marketed in any one of its parts can, without any additional requirements, also be marketed across the Internal Market. Mutual Recognition of each other's rules and regulations – trusting that they are effective and serve similar purposes – is critical to the idea of an Internal Market. Equally, Internal Markets typically include a clear set of public policy objectives that can justify exceptions to Mutual Recognition. Moreover, Internal Markets typically also involve the harmonisation of some rules – sometimes for minimum or maximum regulatory standards.

An Internal Market is best understood as a framework of rules that govern economic activity across jurisdictions or territorial policy regimes, rather than the condition of a friction-free economy (or an economy market by minimal friction). Typically, the aim of an Internal Market is to minimise economic friction, subject to other valued policy objectives. It is also sometimes used in a much looser, non-technical way, to describe an economically integrated territory. There is potential for confusion if these two uses are not distinguished clearly from one another.

The UK Internal Market proposals aim to prevent the emergence of a hypothetical threat to UK economic prosperity – new regulatory frictions that could undermine economic

performance. The threat is hypothetical or counterfactual[4] in the sense that its possible future realisation is dependent on actions that have not yet taken place. New devolved regulation is presented as the main potential source of this new friction. Since the devolved economies are also described as bearing a disproportionate brunt of the costs of new friction, it is hard to see why the devolved governments would introduce it, without good reasons for doing so.

For the economy, less is usually regarded as better than more friction. Frictionlessness does not, however, necessarily equate to economic success. The UK Government's UK Internal Market White Paper provides us with an illustration of the difference. For illustrative purposes, it models the impact of increasing internal frictions within the UK to the levels that currently exist in Germany,[5] and finds a change of this kind would have significant costs. Several points might be made here. If EU law allows for greater economic friction within a member state than exists currently in the UK, that might suggest the devolved governments have relatively little appetite for friction of that kind. On the other hand, German performance might suggest that internal friction is not necessarily inimical to economic success in the way the White Paper argues.

There is little doubt that the Anglo-Scottish Union was motivated, in significant part, by the aim of closer economic integration between Scotland and England. Not all processes of economic integration, however, have taken the form of an Internal Market. To date the UK Internal Market back to 1707 and the Anglo-Scottish Union is to use a loosely informal definition of an internal market, not a legally precise one. It is implausible to describe the creation or operation of the United Kingdom of Great Britain and Northern Ireland before Brexit as driven by an Internal Market logic of integration.

[4] *Impact Assessment, UK Internal Market Bill* September 2020 p. 2 **https://publications.parliament.uk/pa/bills/cbill/58-01/0177/UK%20Internal%20Market%20Bill%20Impact%20Assessment%2008092020.pdf**

[5] *UK Internal Market* CP278 July 2020, p. 36 para 85 **https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901225/uk-internal-market-white-paper.pdf**

## 3. UK Government activity on a UK Internal Market 2016-2020

The issue of the UK internal market became a focus of UK government activity in early 2017. The first official reference to the impact of withdrawal on internal domestic trade came in the White Paper preceding the EU (Withdrawal) Act. The White Paper did not yet use the language of the UK's single or internal market. It references the 'importance of trade within the UK to all parts of the Union' and sets out that the government's 'guiding principle will be to ensure that – as we leave the EU – no new barriers to living and doing business within our own Union are created'.[6] The White Paper outlined that this would involve 'maintain[ing] the necessary common standards and frameworks for our own domestic market'[7] but didn't go further in detailing how these standards and frameworks would be created and maintained. It did though reiterate a commitment that 'no decisions currently taken by the devolved administrations will be removed from them and we will use the opportunity of bringing decision making back to the UK to ensure that more decisions are devolved'.[8]

Though the language of the internal or single market was not used in the White Paper, these terms had, on occasion, appeared in earlier official documents- including in legislation. The 1998 Northern Ireland Act provides at section 14 that the Secretary of State may decide not to submit for assent NI Assembly Bills which s/he considers 'would have an adverse effect on the operation of the single market in goods and services within the United Kingdom'. No comparable provision appears in either the Scottish or Welsh devolution statutes. The rationale for the inclusion of NI provision was that EU legislation 'enforces a single market between EU member states, but not necessarily within each member state', and there were concerns expressed that goods from England, Wales and Scotland may be treated less favourably than those from other member states[9] (presumably, though not expressly mentioned, the Republic of Ireland). No use of this provision has ever been made, nor has it been officially raised as an option for inclusion in devolution legislation generally as a means to manage the

[6] *Legislating for the United Kingdom's Withdrawal from the European Union* Cm 9446, March 2017, at para. 3.6

[7] Ibid.

[8] Ibid, at para. 3.5

[9] Hansard, 18 November 1998, Adam Ingram, Minister of State NI Office.

post-EU internal market. Instead, the approach envisaged under the initial draft of the Bill[10] that was to become the EU (Withdrawal) Act was a holding position – with powers within devolved competence effectively returned to Westminster until such a time as a decision was made to introduce UK wide measures in that space, or to release the powers back.

In June 2018, almost a year after the Bill's introduction in the House of Commons, the final version of the legislation became law. There had been some significant movement from the Bill's starting position, following extensive opposition to the proposals and an effectively coordinated response from governments and parliamentarians in Edinburgh, Cardiff and Westminster. The Act provides UK Government ministers with the power to issue regulations to maintain restrictions on devolved legislatures' ability to modify or repeal EU-derived law (retained law) which falls with devolved competence. Devolved Parliaments, whilst not being able to block any regulations, would be asked to give consent, and their response aired before the Westminster Parliament, which would have to approve any use of the power in the regulations. The Welsh Assembly gave legislative consent to the Act following an intergovernmental agreement reached between Welsh and UK Government in April 2018, though consent was refused by the Scottish Parliament.[11]

This IGA established a set of principles and commitments about the use of the Act's freezing powers, and about the introduction of cross-UK common frameworks. These principles had first been agreed in October 2017 under the auspices of the Joint Ministerial Committee (EU Negotiations),[12] and identify the factors that implicate UK-wide cooperation. Frameworks were identified as being necessary to: enable the functioning of the UK internal market, while acknowledging policy divergence; ensure compliance with international obligations; ensure the UK can negotiate, enter into and implement new trade agreements and international treaties; enable the management of

[10] First Reading in July 2017.

[11] The IGA also led to the repeal of Welsh continuity legislation (Law Derived from the European Union (Wales) Act). The comparable (though not strictly equivalent) Scottish Bill was maintained, and was subject to a partially successful legal challenge

[12] JMC (EU Negotiations) Communique, 16 October 2017

common resources; administer and provide access to justice in cases with a cross-border element; safeguard the security of the UK.

In the interim, between the October 2017 JMC and the conclusion of the IGA, work had continued on identifying the areas where common frameworks were going to be required, and the governance principles that would underpin them. A first assessment of the affected areas was published in March 2018, and this identified issues where a legislative response may be required, as well as non-legislative cooperation, and areas where no co-operative framework, legislative or non-legislative was needed.[13] This was subsequently updated in April 2019.[14] Under that assessment, some 21 areas were identified as requiring a legislative framework, a common theme here being their close connection to the trade (including matters such as mutual recognition of professional qualifications, agricultural support and food labelling). Amongst the 78 areas identified for a non-legislative framework, are matters related to environment protection, (such as air quality, and waste management), but also trade related issues including public procurement and aspects of the regulation of tobacco products. Four areas were identified as being of disputed competence – the UK Government considering them reserved (including state aid, and geographical indications). The common frameworks workstream has been led by the Cabinet Office, with oversight from the JMC(EN). Under the EU (Withdrawal) Act, reporting on progress with the Frameworks is required every three months. Effective and extensive collaboration involving officials across the governments of the UK had been taking place over 2018 and 2019, though progress had slowed during 2020, meaning frameworks would not be in place by the end of the transition period.

Running alongside this work on common frameworks have been strands of work across associated areas. One is work on broader intergovernmental relations, where progress has been limited. Another is work on the internal market beyond the common frameworks. According to an update in 2019,[15] the UK Government reported that it was

[13] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686991/20180307_FINAL__Frameworks_analysis_for_publication_on_9_March_2018.pdf

[14] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792738/20190404-FrameworksAnalysis.pdf

[15] An Update on Progress in Common Frameworks, July 2019.

continuing to seek 'development of a shared approach to the UK Internal Market with the devolved administrations, and, alongside the work being undertaken by policy teams, we are considering how to manage internal market issues across framework areas'. Work on the internal market has been led from the Department of Business, Energy and Industrial Strategy. This has proved more controversial, with disagreement over the necessity of further interventions to support a domestic internal market, beyond common frameworks. The Scottish Government withdrew from engagement on the internal market in early 2019, though it has continued to cooperate on common frameworks.

Though Welsh Government maintained engagement, the introduction of the Internal Market White paper in July, followed swiftly[16] by the Bill has been marked by unilateral action by UK Government. The Bill's timetable envisages it leaving the Commons by the end of September/early October, and the Lords at the latest in November. The intention is clearly for the legislation to be in place by the time the transition period out of EU membership ends on 31 December 2020. Legislative consent is being sought for the whole Act.

## 4. Market Access: Mutual Recognition and the Non-Discrimination Principle

The Bill introduces two principles which together are intended to create a market access guarantee for goods and services across the UK. Both mutual recognition and non-discrimination are concepts which operate within EU free movement law, and which UK courts are familiar with applying. However, they are re-defined in the Bill's proposals in ways which introduce additional complexities and a lack clarity. They are also rather more centralising, limiting the capacity for divergence and differentiation currently permitted under EU law. The implications for legislative competence will be addressed

[16] Following a four-week consultation process, from 16 July to 13 August 2020. Individual submissions have not been published, though an account is provided in the Government response.

in section 5. In this section, the scope of the principles will be outlined, and their legal enforceability considered.

Under the terms of the Bill, once products meet their local regulatory requirements, they are deemed to satisfy the requirements for the rest of the UK. They then have access to all other parts of the UK market, regardless of any more stringent regulation than might otherwise apply there. More demanding regulatory standards may only be maintained against incoming products on the narrow grounds identified in the Bill – for goods, this is the prevention or reduction of the spread of pest, disease, and unsafe food and feed.[17] This mutual recognition principle operates in respect of product requirements – rules that go to the nature of the product being regulated. In addition, the principle of non-discrimination applies to rules which deal with the conditions under which something is sold – these rules must not discriminate, whether directly (by imposing different requirements) or indirectly (by imposing requirements applicable to all but which puts incoming goods at a disadvantage, and have adverse market effects). In the case of indirect discrimination, local rules may be applied to incoming products where this fulfils a legitimate aim – defined as the protection of the life or health of humans, animals or plants, and the protection of public safety or security.

Comparable market access principles operate in relation to services in part two of the Bill (with Schedule 2 detailing those services excluded from the Bill's scope). Part three covers professional qualifications, and establishes that (with the exception of the legal profession), residents authorised to practice a profession or trade in one part of the UK, shall also be recognised as qualified to practice anywhere else in the UK (either automatically or through a process of individual assessment established by the relevant regulatory body). In all cases, for goods, services, and qualification requirements, existing measures are protected from challenge under the market access principles. These only begin to bite on new, or substantially revised regulations.

Existing measures of course have themselves had to comply with the EU free movement principle, which requires states remove quantitative restrictions on trade, and all measures having equivalent effect. This has been interpreted broadly to capture

[17] Schedule 1.

measures which (actually or potentially) hinder market access, which moves beyond the elimination of discrimination. A presumption of regulatory equivalence exists, as contained in the mutual recognition principle. In the case of devolved governments and legislatures, measures which do not comply with EU law are 'not law', and challenge may be brought in accordance with the legislative checks provided for under the devolution acts. Additionally, as directly enforceable EU rights, these EU law principles have been enforceable by individuals and businesses against regulatory requirements adopted by governments and legislatures – including Westminster Parliament. While the EU regime is directed at inter-state trade, the review of compatibility of measures against a standard of unjustified hindrances to free movement has internal consequences too for trade within the UK.

In this way, there have in the past been challenges variously to Welsh regulations banning the use of electronic training collars for dogs, to Scottish regulations banning vending machines as a means for the sale of tobacco products, and to minimum pricing regulations for alcohol sales to the public. In all these cases, the regulation itself fell within the EU law test of a measure having an equivalent effect to a quantitative restriction, but were able to be successfully justified, as a proportionate means of achieving a public policy objective.

Were those measures to be adopted from scratch under the Bill's proposed system (or substantially revised), would they survive any potential challenge? The first stage is to consider whether they would fall within the scope of the Bill's market access principle, either under the mutual recognition or discrimination element, and then to consider possible justification. Were the pet collars to be banned from sale in Wales, the mutual recognition obligation would be engaged, on the basis that this would be a rule which is directed to the intrinsic nature of the product itself – the 'characteristics of the goods themselves' (clause 3 (4) (a)). There are no available justifications available under the proposed legislation that would support the choice of the legislature in Wales – justifications being limited to measures to prevent/reduce the spread of pest, disease, and unsafe food and feed. The situation where the product may be sold, but its lawful *use* is restricted is less clear, reflecting the difficulties in the partial reading over of EU law here. EU law has recognised categories of measures which are neither product requirements nor selling arrangements, and notably these include product use rules. Under the Bill's schema, a measure is either categorised as bearing on the nature of the product, or arrangements around its sale. As already highlighted, rules relating to the products characteristics are only able to be maintained on exceedingly narrow grounds. If it is a rule seen as relating to the arrangements on sale, then it will only fall within scope if it is shown to discriminate, directly or indirectly, with an adverse market impact on products originating in other parts of the UK. Available justifications, though broader than those when mutual recognition is applied, remain very restricted when compared to the EU rules.

Similarly, dispute may arise over the proper characterisation of rules on minimum alcohol pricing, and the applicable regime. Whilst the UK Government indicated in its response to the consultation[18] that it did not intend to prevent this policy, there are no guarantees on the face of the Bill as to how these provisions will be interpreted. In the example of restrictions on where and how tobacco products may be sold, this is clearly a measure which would engage the discrimination test, and would require a consideration of whether products from outside the destination market are disadvantaged compared to those from within the local market. The justifications available, whilst broader than those available in relation to mutual recognition fall far shorter than those available under EU law, which, outside direct discrimination, recognise an open list of grounds including environmental, consumer, and worker protection. There is also a lack of clarity around how the assessment will be undertaken of whether in any particular case, a justification will be accepted as legitimate. EU law uses a test of proportionality – though that language does not appear in the Bill. Instead the Bill provides that exclusions are available where measures can 'reasonably be justified as necessary' to achieve a legitimate aim.[19]

The Bill does not clarify who will be making these assessments and interpretations, as the scheme of enforcement is not set out. It is unclear whether its provisions create legally enforceable rights to market access and non-discrimination that can form the basis of legal actions, whether by individuals, businesses, or indeed by prospective consumers of those businesses' products and services. The role of the proposed Office for the Internal Market in relation to individuals and businesses is not expressly made out. From the Bill's Impact Assessment, it is suggested that 'businesses and individuals might choose to enforce their rights in court if a UKIM matter remains unresolved, potentially incurring substantial legal costs, time and effort. These instances would only

[18] BEIS, Government response to the consultation on the UK Internal Market, at p. 13. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916154/ukim-consultation-government-response.pdf

[19] Schedule 1(2)(6).

occur in the event of directly or indirectly discriminatory measures'.[20] It is unclear why only discriminatory measures are identified as potentially forming the basis of an action, or whether there might be the basis of court action in relation to mutual recognition.

## 5. Legislative competence

The Bill proposes explicit changes to devolved competence in two ways. First, it designates state aid as a reserved area of competence, removing it from devolved competence (see section 6 below). Second, it adds the Internal Market legislation to the list of protected enactments in each of the devolution statutes (clause 49). This has the consequence of pre-empting subsequent devolved legislation (primary and secondary) to the extent that it amends, modifies, or repeals (expressly or in substance) the protected provisions. The Bill removes any power under any other Act of Parliament for secondary legislation to be used to amend, modify or repeal the Act which might be used for England or more broadly.

Beyond this, the UK Government maintains that there is no restriction on devolved competence introduced by the Bill. The position is that the governments and legislatures can continue to regulate economic activity for their territories and within their field of competence. However, the effects of the Bill's provisions are to prevent the application of those regulations to products, service providers and workers from outside their local territory. The Impact Assessment acknowledges the cost of this for public policy objectives : as the 'scale of the intended public benefit of local measures might not be fully realised due to the more limited number of goods and services to which the policy applies'.[21] Thus, whilst the Senedd could[22] introduce rules banning in Wales the sale of chlorinated chicken, or GMO containing products, this may only apply to Welsh producers/importers. If regulations in any other part of the UK recognised these products as lawful, they would have access to the Welsh market. The system under the Bill does not foresee the use of the same legislative competence tests which would

[20] BEIS, Impact Assessment of UK Internal Market Bill, at p. 3.

[21] Ibid, at p. 29.

[22] Assuming there are no common frameworks operating in this area committing Wales to a different course.

render rules that do not comply as 'not law' (as has been the case with rules conflicting with ECHR and EU commitments). Instead it provides that the local laws 'do not apply' to products and services from other parts of the UK. The proposed Office of the Internal Market may be called on by governments to review their own or others' regulations, though the OIM has no legal powers to disapply the law. As noted above, enforcement issues remain unclear.

The UK Government is seeking legislative consent from the devolved parliaments for the Bill in its entirety. The Bill itself contains a number of provisions giving power to the Secretary of State to amend aspects of the legislation – including the definition of what falls within the mutual recognition principle, and what falls within the non-discrimination principle; the scope of potential grounds for justification; and, very significantly, exclusions of policy areas from coverage of the market access principle. The list of services in Schedule 2 – including healthcare services and social services – which are currently excluded from the Bill's scope could be changed by the Secretary of State without any input from the devolved administrations. Only in respect of the mutual recognition/non-discrimination provisions is any consultation with the devolved administrations foreseen by the Bill. There is no consent requirement at all throughout the Bill. Comparison may be drawn with the EU (Withdrawal) Act's provisions which included the consent decision procedure for the use of ministerial powers under the Act.

## 6. Spending Powers and State Aid

As proposed UK Internal Market is basically structured around an economic regulation system based on Mutual Recognition and Non-Discrimination. The Bill also has other significant provisions. As drafted it reserves State Aid policy as a UK-wide competence and creates new financial powers that give scope for new UK Government public spending in the devolved nations, including in areas of devolved policy competence.

Leaving the EU legal framework made some decision about the regulatory control of State Aids unavoidable. There was some disagreement between the devolved and UK governments over where State Aids policy would 'land' naturally once outside the EU. The UK Internal Market Bill proposes to resolve that matter by reserving the policy to the UK level. This provision may be intended to prevent devolved governments developing policies that redistribute economic activity across territorial boundaries, more than enhancing overall levels of production. The implication of that reservation is that the scope for devolved governments to support economic activity within, say, Scotland or Wales, might be restricted. In principle, additional provision could be made explicitly to allow devolved governments a margin of discretion within a new UK State Aid/industrial policy regime. This matter is not one considered in the UK Internal Market Bill.

The issue of State Aids is deeply tangled up with questions about the position of Northern Ireland. These issues are dominating debate about the UK Internal Market Bill at Westminster. The UK-EU Withdrawal Agreement – particularly its Protocol –set out key aspects of the position of Northern Ireland after the end of the transition period. In principle, Northern Ireland fell within both the UK and the EU customs territories. The EU is concerned to avoid the possibility of businesses in either Northern Ireland or Great Britain enjoying an unfair advantage over those in EU member states. Among other things, the Withdrawal Agreement is structured to minimise that risk. Despite being party to it, the UK Internal Market Bill and the resulting debates reveal UK Government concerns about the Withdrawal Agreement's State Aids provision, particularly their potential reach into Great Britain.

This is one of the issues over which the UK Internal Market Bill is controversial in relation to the question of the UK Government breaking international law in its commitment to the Withdrawal Agreement.

Over the past 30 years or so, the UK has generally made less use of discretionary interventions to support industry than other EU member states. The UK Internal Market Bill's reservation of State Aids may be intended to prevent devolved governments pursuing expansive discretionary industrial policies and/or herald a new discretionary interventionism by the UK Government itself.

The UK Internal Market Bill proposes new financial powers for the UK Government. There does not seem to be any close mechanical relationship between these new powers and the basic operation of the proposed Internal Market. Some discussion around the Bill suggests that these powers are seen as replacing EU funding streams. The UK Government has long promised a discussion of a replacement for those funds in the form of a so-called 'Shared Prosperity Fund'. It is not clear whether the financial powers in the Bill replace that strategy, implement it or are entirely separate from it. It is important to note that proportionately, Wales has received much higher levels of EU structural funding than any other part of the UK. A good deal of that funding has flowed through the voluntary sector in Wales. Its objectives are often social cohesion as much as economic development. Should the replacement funds be associated with the UK Internal Market, rather than these historic objectives, that could trigger major structural change for the voluntary sector in Wales.

The UK Government already has significant scope for public spending in devolved parts of the UK. Many major infrastructure projects and 'City Deals' involve cooperation between different levels of government in the devolved nations. Clues about how the new powers might be used can be found more in UK Government messaging around

the UK Internal Market, rather than in the legislation itself. Reports that the UK Government might seek to revive the M4 relief road and fund it directly suggest it may be taking an increasingly combative approach to devolution. Without other significant changes, it is hard to see how the UK Government could implement a policy of this kind against Welsh Government opposition. Planning rules would, for example, stand in the way.

Equally, the absence of any proposals to entrench and protect devolved policy competences within the UK Internal Market structure together with no suggestions for new forms of intergovernmental cooperation seem to point towards political competition more than policy collaboration between levels of government. Areas of shared competence are a feature of most other multi-level systems. The UK Internal Market Bill does little or nothing to develop ways of working of that kind.

Major infrastructure projects tend to redistribute economic activity as well as generating new capacity. For example, modelling suggests that HS2 will divert economic activity away from South Wales, at a cost of some £200 million per annum, while enhancing the economy of North East Wales by roughly £50 million.[23] Leaving aside questions of its overall costs and benefits, then, a particular major infrastructure investment also has the scope reshape the economy. Enhancing the connectivity between South East Wales and England could well bring a net economic benefit to Wales. A similar scale of investment could be used to enhance connectivity within Wales itself. Their relative benefits might look different to the UK and Welsh governments. There is an unavoidably territorial-political element in choices of this kind.

## 7. Relationship with common frameworks and broader IGR considerations

As outlined in section 3, a considerable amount of work has been undertaken creating common frameworks in areas where EU law has previously provided a degree of policy

[23] https://www.bbc.co.uk/news/uk-wales-51460737

coordination across the legislatures of the UK. The unfinished state of many of these frameworks has been given as one reason for legislation to introduce the market access principle ahead of the end of the Transition Period. The EU (Withdrawal) Act provides an alternative route to providing regulatory stability and consistency across the UK ahead of the agreement of common frameworks, with the freezing of devolved competence (along with a political commitment from the UK Parliament not to legislate contrary to existing EU law). That course may be seen as not giving the UK government sufficient flexibility to revise regulations in view of new international trade deals that the UK may be negotiating. The deregulatory Internal Market Bill approach has become its preferred option.

Notably, the reach of the market access commitment in the Bill appears to go beyond simply those areas where EU law is falling away, and across devolved powers more generally. Given the significance of these proposals for devolution, especially the restrictions on the practical effect of legislation, the process under which the Bill is being introduced is particularly unsatisfactory. This is a hurried piece of law which has lacked the degree of consultation and cooperation running up to its introduction that one would expect from a major piece of constitutional legislation.

The justifications given for the need for the legislation are not convincing - the problems created by policy divergence are as yet unrealised, and hypothetical. Amongst the examples of where potential divergences may hinder the operation of the UK internal market and create costs are areas which are meant to be covered by common frameworks – including pesticides, food labelling, and nutritional health claims. The extent to which these prospective domestic common frameworks are now overtaken by the provisions of the Internal Market Bill is unclear. It raises the issue of the relationship more generally between specific regulatory regimes and a general horizontal market access commitment. Drawing parallels with the EU regime that currently operates across the UK, the operation of a market access principle to create and sustain the internal market is secondary to reliance on harmonising legislation. These common (though not necessarily uniform) rules are adopted through shared process of governance which demonstrates a commitment to respect for principles of subsidiarity,

and a mainstreaming of environmental and equality concerns.[24] They ensure that there is a minimum floor of regulatory standards in operation, below which no part of the Union can legally fall. In the UK content, the relationship between legislation creating frameworks with minimum standards, and the market access principle seems to be inverted. The prospect for collaborative governance through the common frameworks appears side-lined by the internal market principle.

Both the content of the Bill, and the way it has been introduced are a reflection of the difficult relations between the governments of the UK. Placing IGR on a more stable footing becomes more important under these circumstances, and there should be an effective commitment to taking forward the work of intergovernmental relations begun in 2018.[25]

## 8. Scrutiny and IPR

There has been a tendency throughout the Brexit process to proceed with critical legislation at pace, without ensuring appropriate opportunity for full and effective engagement by the parliaments. The legislative timetable for this Bill is no different. As noted, the UK government has indicated legislative consent is sought for all parts of the Bill. Given the expected refusals of legislative consent, a decision to proceed with the legislation without satisfactory amendment will be a reflection of weakness of the constitutional protections available to devolution.

If the Bill proposes a range of measures which potentially side-line the devolved governments, the consequences for the Parliaments are at least as concerning. The operation of a robust mutual recognition principle raises the prospect of products and

[24] Jo Hunt, 'Subsidiarity, Competence and the UK Territorial Constitution' O. Doyle, A. McHarg and J Murkens, ed. *The Brexit Challenge for Ireland and the United Kingdom: Constitutions under Pressure* (CUP), 2021.

[25] Nicola McEwen, Michael Kenny, Jack Sheldon, and Coree Brown Swan, 'Intergovernmental Relations in the UK: Time for a Radical Overhaul?' (2020) 91 *Political Quarterly* 632-640.

services being in circulation which comply with rules set by other legislatures or governments. The Senedd may have no oversight of, or input into, standards set elsewhere that nevertheless apply within their jurisdiction and fall within devolved competence. The need for an effective system of inter-parliamentary relations becomes particularly acute under these circumstances.

## 9. Responses from Welsh/Scottish/NI Governments

Both the Welsh and Scottish governments responded to the White Paper on the UK Internal Market in robustly negative terms.[26] Each has roundly rejected UK Internal Market Bill. They have focused on the particular definitions of Mutual Recognition and Non-Discrimination within the Bill. In contrast to EU legal principles that also have these names, the UK Internal Market Bill concepts, they argue, cut much more deeply devolved competences. The UK Internal Market approach provides little or no scope for other public policy priorities to justify exceptions to Mutual Recognition or Non-Discrimination. The Bill's provides for a standstill in some areas of regulation. Some existing regulatory divergence is exempt from Mutual Recognition. But any change to regulation within these categories brings them within scope, in ways that limit the scope for devolved governments to keep regulation up to date.

As it returns from the EU, many lawyers regard State Aids policy as naturally a devolved area of policy competence.[27] Mark Drakeford is reported to support a UK-wide State Aid

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***1.*** [26] Michael Russell United Kingdom I*nternal Market White Paper: statement by the Cabinet Secretary for the Constitution, Europe and External Affairs*

**http://www.gov.scot/publications/united-kingdom-internal-market-white-paper-cabinet-secretary-constitution-europe-external-affairs/**

Jeremy Miles *Correspondence from the Counsel General* August 2020 https://business.senedd.wales/documents/s103942/Correspondence%20from%20the%20Counsel%20General%2014%20August%202020.pdf

[27] This is also acknowledged in the Concordat on Financial Assistance to Industry, one of the Supplementary Agreements appended to the main UK intergovernmental Memorandum of Association, October 2013

regime in principle, while arguing that the UK Government Internal Market plans are 'absolutely not the way of going about it'.[28]. Both governments also object to the new UK spending powers.

In Northern Ireland the Executive has been much less vocal on the subject of the UK Internal Market than either the Welsh or Scottish governments. The response to the White Paper on the internal market was muted, perhaps because, until the Bill was published, the position of Northern Ireland seemed to be defined more by the Withdrawal Agreement than the idea of a UK Internal Market.

The UK Internal Market Bill seems to have divided the Executive along party lines. On 22 September, the Northern Ireland Legislative Assembly held a debate on a motion calling on the UK Government to 'honour its commitments' made in the Withdrawal Agreement.[29] The motion passed by 48 votes to 36. Sinn Féin the SDLP, Alliance and smaller parties supported the motion, which was opposed by the DUP and UUP.

At Westminster, attention has focused much more on the implications of the UK Internal Market Bill for Northern Ireland. The main controversy is attached to the issue of the UK Government's appetite to breach its commitments under the Withdrawal Agreement and 'break international law'. The strengths and weaknesses of the Bill as the framework for an Internal Market seem not to have garnered as much attention in the House of Commons as might be expected from a Welsh or Scottish perspective.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

[28] https://www.bbc.co.uk/news/uk-wales-politics-54072660

[29] https://www.irishtimes.com/news/politics/ni-assembly-approves-motion-calling-on-uk-to-honour-brexit-commitments-1.4360836