Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:
Video conference via Zoom
Meeting date: 19 October 2020
Meeting time: 10.00

For further information contact:
Gareth Williams
Committee Clerk
0300 200 6565
SeneddLJC@senedd.wales

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

Informal pre-meeting (09.30-10.00)

1 Introduction, apologies, substitutions and declarations of interest

10.00

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

10.00-10.10

Negative Resolution Instruments

2.1 **SL(5)630 – The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020**

(Pages 1 – 16)

CLA(5)-30-20 – Paper 1 – Report

CLA(5)-30-20 – Paper 2 – Regulations

CLA(5)-30-20 – Paper 3 – Explanatory Memorandum

2.2 **SL(5)632 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020**

(Pages 17 – 29)

CLA(5)-30-20 – Paper 4 – Report

CLA(5)-30-20 – Paper 5 – Regulations

CLA(5)-30-20 – Paper 6 – Explanatory Memorandum

CLA(5)-30-20 – Paper 7 – Letter from the Minister for Finance and Trefnydd, 9 October 2020

CLA(5)-30-20 – Paper 8 – Written statement, 8 October 2020

Affirmative Resolution Instruments

2.3 **SL(5)631 – The Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020**

(Pages 30 – 44)

CLA(5)-30-20 – Paper 9 – Report

CLA(5)-30-20 – Paper 10 – Order

CLA(5)-30-20 – Paper 11 – Explanatory Memorandum

Made Affirmative Resolution Instruments

2.4 **SL(5)633 – The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) (Amendment) Regulations 2020**

(Pages 45 – 60)

CLA(5)-30-20 – Paper 12 – Report

CLA(5)-30-20 – Paper 13 – Regulations

CLA(5)-30-20 – Paper 14 – Explanatory Memorandum

CLA(5)-30-20 – Paper 15 – Letter from the First Minister, 9 October 2020

2.5 **SL(5)634 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 18) (Bangor) Regulations 2020**

(Pages 61 – 78)

CLA(5)-30-20 – Paper 16 – Report

CLA(5)-30-20 – Paper 17 – Regulations

CLA(5)-30-20 – Paper 18 – Explanatory Memorandum

CLA(5)-30-20 – Paper 19 – Letter from the First Minister, 9 October 2020

CLA(5)-30-20 – Paper 20 – Written statement, 9 October 2020

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

10.10–10.15

3.1 **SL(5)625 - The Smoke-free Premises and Vehicles (Wales) Regulations 2020**

(Pages 79 - 84)

CLA(5)-30-20 - Paper 21 - Report

CLA(5)-30-20 - Paper 22 - Welsh Government response

3.2 **SL(5)627 - The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) Regulations 2020**

(Pages 85 - 89)

CLA(5)-30-20 - Paper 23 - Report

CLA(5)-30-20 - Paper 24 - Welsh Government response

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

10.15-10.20

4.1 **SICM(5)30 - The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020**

(Pages 90 - 120)

CLA(5)-30-20 - Paper 25 - Statutory Instrument Consent Memorandum

CLA(5)-30-20 - Paper 26 - Regulations

CLA(5)-30-20 - Paper 27 - Explanatory Memorandum

CLA(5)-30-20 - Paper 28 - Letter from the Minister for Health and Social Services, 2 October 2020

CLA(5)-30-20 - Paper 29 - Written statement

CLA(5)-30-20 - Paper 30 - Commentary

5 Standing Order 30B Report: The European Union (Withdrawal) Act and Common Frameworks

10.20-10.25 (Pages 121 - 191)

CLA(5)-30-20 - Paper 31 - Written statement

CLA(5)-30-20 - Paper 32 - Report

CLA(5)-30-20 - Paper 33 - Frameworks Analysis 2020

6 Written statements under Standing Order 30C

10.25-10.30

6.1 WS-30C(5)170 - The Agriculture (Payments) (Amendments etc.) (EU Exit) Regulations 2020

(Pages 192 - 198)

CLA(5)-30-20 - Paper 34 - Written statement

CLA(5)-30-20 - Paper 35 - Commentary

6.2 WS-30C(5)171 - The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020

(Pages 199 - 205)

CLA(5)-30-20 - Paper 36 - Written statement

CLA(5)-30-20 - Paper 37 - Commentary

6.3 WS-30C(5)172 - The Food (Amendment) (EU Exit) Regulations 2020

(Pages 206 - 209)

CLA(5)-30-20 - Paper 38 - Written statement

CLA(5)-30-20 - Paper 39 - Commentary

7 Papers to note

10.30-10.35

7.1 Letter from the Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Wales: UK Internal Market Bill

(Pages 210 - 211)

CLA(5)-30-20 - Paper 40 - Letter from the Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Wales, 12 October 2020

7.2 Letter from the Counsel General: Breaches of the 21 day rule and other matters concerning Covid-related legislation

(Pages 212 - 213)

CLA(5)-30-20 - Paper 41 - Letter from the Counsel General, 12 October 2020

7.3 **Letter from the Deputy Minister and Chief Whip: Legislative Consent Memorandum on the Domestic Abuse Bill**

(Pages 214 – 215)

CLA(5)-30-20 – Paper 42 – Letter from the Deputy Minister and Chief Whip, 15 October 2020

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

10.35

9 UK Internal Market Bill: Briefing from Welsh Government

10.35-10.50 (Pages 216 – 246)

CLA(5)-30-20 – Paper 43 – Welsh Government briefing

CLA(5)-30-20 – Paper 44 – Written statement, 15 October 2020

10 Brexit update – common frameworks

10.50-10.55 (Pages 247 – 256)

CLA(5)-30-20 – Paper 45 – Research Service briefing

11 The Greenhouse Gas Emissions Trading Scheme Order 2020: Consideration of draft report

10.55-11.05 (Pages 257 – 269)

CLA(5)-30-20 – Paper 46 – Draft report

12 Legislative Consent Memorandum on the Medicines and Medical Devices Bill: Consideration of draft report

11.05-11.15 (Pages 270 – 273)

CLA(5)-30-20 – Paper 47 – Draft report

13 Legislative Consent Memorandum on the Non-Domestic Rating (Lists) (No. 2) Bill: Consideration of draft report

11.15-11.25 (Pages 274 – 278)

CLA(5)-30-20 – Paper 48 – Draft report

14 Covid-19 regulations: Consideration of correspondence

11.25-11.30 (Pages 279 - 288)

CLA(5)-30-20 - Paper 49 - Letter from the Llywydd, 8 October 2020

CLA(5)-30-20 - Paper 50 - Background briefing

Date of the next meeting - 2 November 2020

SL(5)630 – The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

Background and Purpose

The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 ("the Regulations") are made under the powers conferred upon the Welsh Ministers by sections 9(1)(a), 140(7) and (8) and 142(5) of the Adoption and Children Act 2002 and sections 87 and 196(2) of the Social Services and Well-being (Wales) Act 2014.

The Regulations make amendments to two sets of Regulations to relax and amend requirements imposed under them:

1. Adoption Agencies (Wales) Regulations 2005 (S.I. 2005/1313 (W. 95)) ("the 2005 Regulations")

The 2005 Regulations set out the process for assessing the suitability of people to adopt a child and the suitability of children to be adopted.

Regulations 3 to 8 of the Regulations make amendments to the 2005 Regulations; the changes made are as follows:

- Amendments to the approval process for prospective adopters to enable stage 1 and stage 2 of the assessment process to run concurrently. This means that information that must currently be collected during stage 1 of the approval process may be collected during stage 2.
- Relaxation of the timescale during which certain actions must be undertaken. Timescales for stage one and stage two of the process from 2 months (stage 1) and 4 months (stage 2) remain in place but agencies are only required to meet the timescales where reasonably practicable.
- The 6 month limit on the length of time a prospective adopter may leave between stage 1 and stage 2 remains in place, but adopters are only required to adhere to the time limit where it is reasonably practicable.

2. Care Planning, Placement and Case Review (Wales) Regulations 2015 (S.I. 2015/1818 (W. 261)) ("the 2015 Regulations")

The 2015 Regulations make provision about a local authority's obligations in respect of the planning, placement and review of the care and support provided to a child who is looked after by that authority in accordance with Part 6 of the Social Services and Well-being (Wales) Act 2014.

Regulation 8 of the Regulations amends the 2015 Regulations to extend the period (from 16 to 24 weeks) during which a person related to or otherwise connected with a child may receive temporary approval to act as a local authority foster parent for that child.

Subject to regulations 9 and 10, the amendments made by the Regulations cease to have effect on 31 March 2021.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

The Explanatory Memorandum states in relation to children's rights:

> *"No conflict with UNCRC has been identified and there are no negative impacts on children and young people; the majority of provisions impact wholly or mainly on services for adults. A Children's Rights Impact Assessment (CRIA) was produced at the time the temporary easement to the Adoption Agencies (Wales) Regulations 2005 was approved at the start of the pandemic."*

The Children's Rights Impact Assessment referred to above appears not to be available publicly and, whilst the Welsh Government's comments above are noted, it is not possible to identify therefore whether the assessment established fully that there is no interference with the rights of children and young people under the Convention. It would be desirable that the assessment is published as soon as practicable.

Further, both to meet the obligations imposed by section 1 of the Rights of Children and Young Persons (Wales) Measure 2011, and because the revised process has been running informally since the temporary easement, it would be appropriate to conduct and publish a further assessment specific to these Regulations to establish that the relevant rights remain unaffected.

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

Section 5 of the Explanatory Memorandum sets out the details of the four week consultation on these Regulations that was undertaken between 27 July and 24 August 2020. However, it is noted that the consultation results have not yet been published and, as such, it is unclear

how those results, if available, were considered when developing the policy underlying these Regulations. The Committee would welcome clarification on this point and suggests the results should be published as soon as practicable.

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

The amendment to the 2015 Regulations serves to increase the maximum time, from 16 to 24 weeks, a child can be placed with a relative or connected person for foster care under a temporary approval. It is not clear whether the Children's Rights Impact Assessment referred to in point 1. above considered the increased risk posed to a child of being in an extended period of foster care in such a situation. It is noted the consultation (see point 2. above) references the increased time limit but does not otherwise address the issue of risk. As the results of the consultation are not currently available, it is not possible to assess whether any relevant responses were considered when developing the Regulations. The Committee notes however, the safeguards contained in regulation 26(2) of the 2015 Regulations. The consultation results should be published as soon as practicable.

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

There has been no regulatory impact assessment prepared in relation to these Regulations. However, the Welsh Government's following explanation, set out in the Explanatory Memorandum, is noted:

> *"The need for the Regulations has been identified as part of the contingency planning for issues that may arise from the spread of Covid-19. Due to the limited time available to prepare the proposed Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 and the changes made are temporary (less than 6 months duration), a Regulatory Impact Assessment has not been produced.*
>
> *Whilst local authorities are responsible for the children's social care system the proposed changes are not anticipated to result in any extensive additional costs or significant changes to working practices.*
>
> *The needs of businesses in the social care sector at this time have been considered in the preparation of the Regulations; the amendments will reduce or eliminate burdens on agencies and are intended to support children's social care services to meet their statutory obligations more flexibly during the pandemic."*

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required to Merits points 1, 2 and 3 above.

Legal Advisers
Legislation, Justice and Constitution Committee
14 October 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 1082 (W. 244)

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to two sets of Regulations to relax and amend requirements imposed under them. The amendments are being made in order to assist the children's social care sector in response to the outbreak and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales and cease to have effect on 31 March 2021.

Regulations 3 to **6** make amendments to the Adoption Agencies (Wales) Regulations 2005 (S.I. 2005/1313 (W. 95)), which set out the process for assessing the suitability of people to adopt a child and the suitability of children to be adopted. They make amendments to the approval process for prospective adopters to enable information that must currently be collected during stage 1 of the approval process to be collected during stage 2 and relax the timescale during which certain actions must be undertaken. **Regulation 5** corrects typographical errors.

Regulation 8 amends the Care Planning, Placement and Case Review (Wales) Regulations 2015 (S.I. 2015/1818 (W. 261)) to extend the period (from 16 to 24 weeks) during which a person related to or otherwise connected with a child may receive temporary approval to act as a local authority foster parent for that child.

Regulation 10 makes savings provision to ensure that some of the amendments made by these Regulations continue to apply in certain circumstances

after the expiry of the amendments on 31 March 2021 in accordance with **regulation 9**.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2020 No. 1082 (W. 244)

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

Made	*5 October 2020*
Laid before Senedd Cymru	*7 October 2020*
Coming into force	*1 November 2020*

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 9(1)(a), 140(7) and (8) and 142(5) of the Adoption and Children Act 2002(**1**) and sections 87 and 196(2) of the Social Services and Well-being (Wales) Act 2014(**2**).

Title and commencement

1.—(1) The title of these Regulations is the Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020.

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

(**1**) 2002 c. 38 ("the 2002 Act"). *See* the definitions of "regulations", "appropriate Minister", and "the Assembly" in section 144(1) of the 2002 Act. The power conferred on the National Assembly for Wales to make regulations under the 2002 Act was transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(**2**) 2014 anaw 4. *See* section 197(1) for the definition of "regulations" and "specified".

Amendment of the Adoption Agencies (Wales) Regulations 2005

2. The Adoption Agencies (Wales) Regulations 2005(**1**) are amended in accordance with regulations 3 to 6.

3. In regulation 27 (pre-assessment decision)—

(a) after paragraph (1) insert—

"(1A) If the information required under regulations 25 and 26 has yet to be obtained the adoption agency may decide to proceed as if it has made a decision under paragraph (1)(a).";

(b) in paragraph (2), after "agency must" insert ", where reasonably practicable,";

(c) in paragraph (4)—

(i) in the opening words, after "adopt a child," insert "or where paragraph (1A) applies,";

(ii) in sub-paragraph (b), after "they must" insert ", where reasonably practicable,".

4. In regulation 28 (stage 2 assessment)—

(a) in paragraph (1)—

(i) for "within six months from the date on which the agency notified the prospective adopter" substitute "following notification";

(ii) after "regulation 27(4)" insert "or where regulation 27(1A) applies";

(b) omit paragraphs (2) and (3).

5. In regulation 30 (prospective adopter's report)—

(a) in paragraph (2)(c), for "26(e)" substitute "26(e) or (f)";

(b) in paragraph (6)(b), for "26(b) to (e)" substitute "26(b) to (f)".

6. In regulation 30B (adoption agency decision and notification)—

(a) in paragraph (1), after "agency must" insert ", where reasonably practicable,";

(b) after paragraph (1) insert—

"(1A) The adoption agency must not make a decision under paragraph (1) until it has obtained the information required under regulations 25 and 26.";

(**1**) S.I. 2005/1313 (W. 95) ("the 2005 Regulations"), amended by S.I. 2020/163 (W. 31) ("the 2020 Regulations"). The 2020 Regulations substituted a new Part 4 into the 2005 Regulations. There are other amendments not relevant to these Regulations.

(c) in paragraph (2), omit sub-paragraph (a) and the "or" immediately following it;

(d) in paragraph (5)(c)(ii), at the beginning insert "subject to paragraph (5A),";

(e) after paragraph (5) insert—

"(5A) Where regulation 27(1A) applies and the adoption agency considers that the prospective adopter is not suitable to adopt a child because of information obtained under regulation 25 or regulation 26, the prospective adopter may not apply to the Welsh Ministers for a review by an independent review panel of the qualifying determination."

Amendment of the Care Planning, Placement and Case Review (Wales) Regulations 2015

7. The Care Planning, Placement and Case Review (Wales) Regulations 2015(**1**) are amended in accordance with regulation 8.

8. In regulation 26(1) (temporary approval of a relative, friend or other person connected with C), for "16 weeks" substitute "24 weeks".

Expiry

9.—(1) Subject to regulation 10, the amendments made by these Regulations cease to have effect on 31 March 2021.

(2) This regulation does not affect the validity of anything done pursuant to the amendments made by these Regulations before they cease to have effect.

Savings: suitability assessments

10. In a case where, on 31 March 2021, an adoption agency is in the process of assessing the suitability of a prospective adopter in accordance with Part 4 of the Adoption Agencies (Wales) Regulations 2005, that assessment must continue as if the amendments made by these Regulations remain in force.

Julie Morgan
Deputy Minister for Health and Social Services under the authority of the Minister for Health and Social Services, one of the Welsh Ministers

5 October 2020

(**1**) S.I. 2015/1818 (W. 261), to which there are amendments not relevant to these Regulations.

The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

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

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020

Julie Morgan
Deputy Minister for Health and Social Services

07 October 2020

PART 1

1. Description

The Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 ("the Regulations") amend:

- The Adoption Agencies (Wales) Regulations 2005; and
- The Care Planning, Placement and Case Review (Wales) Regulations 2015

The Regulations make amendments which are intended to assist the children's social care sector to manage the effects of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) ("the coronavirus pandemic") in Wales. The changes prioritise the needs of children, relaxing some administrative and procedural obligations to support delivery of children's services but maintaining appropriate safeguards in such extraordinary circumstances and they come into force on 1 November 2020.

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

A consultation exercise was undertaken over a four week period which commenced on the 27 July and ended on 24 August 2020. Details concerning this period of engagement are at section 5 below.

Due to the urgency of the situation associated with COVID-19 pandemic, temporary easements were approved in relation to some administrative and procedural obligations associated with the prospective adopter assessment and approval process.

The instrument will give these easements legislative effect for a specified period and will provide additional flexibility for local authorities, providers and services to meet statutory duties whilst maintaining appropriate safeguards. These are low risk changes to ease administrative and procedural duties and are required to ensure stability of children's social care during the outbreak.

Welsh Government has shared proposed changes to be made by the Regulations widely with the children's social care sector via key stakeholders to consult and give notice that changes are coming into force.

The Regulations will come into force on 1 November 2020 to ensure that vulnerable children are appropriately safeguarded during the COVID-19 pandemic. The Regulations will cease to have effect on the 31st March 2021. This date can be brought forward if the situation improves.

3 Legislative background

The Regulations are made under the powers conferred upon the Welsh Ministers by sections 9(1)(a), 140(7) and (8) and 142(5) of the Adoption and Children Act 2002 and sections 87 and 196(2) of the Social Services and Well-being (Wales) Act 2014.

These Regulations will follow the negative procedure.

4. Purpose & intended effect of the legislation

The Regulations make amendments to two sets of Regulations to relax and amend requirements imposed under them.

4.1 Adoption Agencies (Wales) Regulations 2005 (S.I. 2005/1313 (W. 95) ("the 2005 Regulations")

The 2005 Regulations set out the process for assessing the suitability of people to adopt a child and the suitability of children to be adopted.
Regulations 3 to 8 of the Regulations make amendments to the 2005 Regulations; the changes made are as follows:

- Amendments to the approval process for prospective adopters to enable stage 1 and stage 2 of the assessment process to run concurrently. This means that information that must currently be collected during stage 1 of the approval process may be collected during stage 2.

- Relaxation of the timescale during which certain actions must be undertaken. Timescales for stage one and stage two of the process from 2 months (stage 1) and 4 months (stage 2) remain in place but agencies are only required to meet the timescales where reasonably practicable.

- The 6 month limit on the length of time a prospective adopter may leave between stage 1 and stage 2 remains in place but adopters are only required to adhere to the time limit where it is reasonably practicable.

4.2 Care Planning, Placement and Case Review (Wales) Regulations 2015 (S.I. 2015/1818 (W. 261) ("the 2015 Regulations")

The 2015 Regulations make provision about a local authority's obligations in respect of the planning, placement and review of the care and support provided to a child who is looked after by that authority in accordance with Part 6 of the Social Services and Well-being (Wales) Act 2014.

Regulation 8 of the Regulations amends the 2015 Regulations to extend the period (from 16 to 24 weeks) during which a person related to or otherwise connected with a child may receive temporary approval to act as a local authority foster parent for that child.

4.3 Expiry

Subject to regulations 9 and 10, the amendments made by the Regulations cease to have effect on 31 March 2021.

4.4 Savings: suitability assessments

Regulation 10 of the Regulations contains a saving provision so that in any case where, on 31 March 2021, an adoption agency is in the process of assessing the suitability of a prospective adopter in accordance with Part 4 of the 2005 Regulations, that assessment must continue as if the amendments made by the Regulations remain in force.

5. Consultation

A four week consultation was published on the Welsh Government's website between 27th July and 24th August 2020. Separate emails which included the consultation's web link were also shared separately with key stakeholders across the children's social care sector including:

- Directors of Social Services
- Heads Of Children Services
- Public Health Wales
- National Adoption Service
- Lead Heads of Adoption Regions
- Children's Commissioner for Wales
- WLGA
- Adoption UK Cymru
- The Fostering Network
- Adoption and Fostering Association Cymru
- St David's Children's Society
- Children's Commissioning Consortium in Wales (4C's)
- Care Inspectorate Wales
- Children in Wales

The consultation will be published on the Welsh Government's website in due course and can be accessed via https://gov.wales/adoption-and-fostering-wales-miscellaneous-amendments-coronavirus-regulations-2020

6. Regulatory Impact Assessment

The need for the Regulations has been identified as part of the contingency planning for issues that may arise from the spread of Covid-19. Due to the limited time available to prepare the proposed Adoption and Fostering (Wales) (Miscellaneous Amendments) (Coronavirus) Regulations 2020 and the changes

made are temporary (less than 6 months duration), a Regulatory Impact Assessment has not been produced.

Whilst local authorities are responsible for the children's social care system the proposed changes are not anticipated to result in any extensive additional costs or significant changes to working practices.

The needs of businesses in the social care sector at this time have been considered in the preparation of the Regulations; the amendments will reduce or eliminate burdens on agencies and are intended to support children's social care services to meet their statutory obligations more flexibly during the pandemic.

Specific impact tests

Welsh Language

There are no positive or adverse impact implications on the Welsh Language.

Children's Rights

No conflict with UNCRC has been identified and there are no negative impacts on children and young people; the majority of provisions impact wholly or mainly on services for adults. A Children's Rights Impact Assessment (CRIA) was produced at the time the temporary easement to the Adoption Agencies (Wales) Regulations 2005 was approved at the start of the pandemic.

Privacy

There are no impact implications on privacy matters.

Competition Assessment

The competition filter test	
Question	**Answer yes or no**
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No

Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector categorised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

SL(5)632 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) 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 entry for Greece in the list of exempt countries and territories so that the Greek islands of Antiparos, Lesvos, Paros, Santorini, Serifos, Tinos and Zakynthos will no longer be excepted from the exemption for Greece. The islands of Crete and Mykonos will continue to be excepted from the exemption.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative 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 9 October 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."*

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 formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

> "*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."*

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
13 October 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 1098 (W. 249)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) 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 Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 (S.I. 2020/1042) (W. 231);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243).

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 International Travel 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. These exempt countries and territories are the countries and territories listed in Schedule 3 to the International Travel Regulations, but some of the entries in Schedule 3 are subject to exceptions in respect of particular territories. So, for example, in relation to Greece, which is an exempt country for the purposes of the International Travel

Regulations, certain Greek islands are excepted from the exemption.

Part 2 of these Regulations amends the list of exempt countries and territories in relation to Greece; and it makes transitional provision in relation to the amendment.

Regulation 2 of these Regulations amends Schedule 3 to the International Travel Regulations so that from 4.00 a.m. on 10 October 2020 the Greek islands of Antiparos, Lesvos, Paros, Santorini, Serifos, Tinos and Zakynthos will no longer be excepted from the exemption for Greece. The islands of Crete and Mykonos will continue to be excepted from the exemption for Greece.

Regulation 3 of these Regulations makes transitional provision relating to these 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 amendment made by regulation 2 of these Regulations.

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

WELSH STATUTORY INSTRUMENTS

2020 No. 1098 (W. 249)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020

Made	*at 2.24 p.m. on 9 October 2020*
Laid before Senedd Cymru	*at 6.00 p.m. on 9 October 2020*
Coming into force	*at 4.00 a.m. on 10 October 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. 14) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 10 October 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

Amendment to Schedule 3 to the International Travel Regulations

Amendment to the list of exempt countries and territories

2. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), in the entry for Greece, for the words from "Antiparos" to the end substitute "Crete and Mykonos".

Transitional provision in connection with regulation 2

3.—(1) This regulation applies in relation to the Greek territories of Antiparos, Lesvos, Paros, Santorini, Serifos, Tinos and Zakynthos.

(2) Paragraph (3) applies where, immediately before 4.00 a.m. on 10 October 2020—

(a) a person ("P") was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in a territory to which this regulation applies, and

(b) P's last day of isolation is 10 October 2020 or a day after that day.

(3) The omission by regulation 2 of the territories from Part 1 of Schedule 3 to the International Travel Regulations does not affect the isolation requirement as it applies to P, nor affect how P's last day of isolation is determined under the International Travel Regulations.

(4) Paragraph (5) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 10 October 2020, and

(b) was in a territory to which this regulation applies within the period of 14 days ending with the day of P's arrival in Wales.

(**1**) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), 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), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231) and S.I. 2020/1080 (W. 243).

(5) For the purposes of regulations 7(1) and 8(1) of the International Travel Regulations, the question of whether P has arrived in Wales from, or having been in, a non-exempt country or territory is, in relation to a territory to which this regulation applies, to be determined by reference to whether the territory was a non-exempt territory when P was last there (and not by reference to the territory's status upon P's arrival in Wales).

(6) In this regulation, "isolation requirement" has the meaning given by regulation 10(2) of the International Travel Regulations; and references to P's last day of isolation are to be interpreted in accordance with regulation 12 of those Regulations.

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
At 2.24 p.m. on 9 October 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) 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. 14) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

9 October 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.

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 3 October 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 the Greek islands of Paros and Antiparos, Lesvos, Santorini, Serifos, Tinos and Zakynthos has decreased. On the basis of this advice the Welsh Government considers that the Greek islands of Paros and Antiparos, Lesvos, Santorini, Serifos, Tinos and Zakynthos should no longer be excluded from the exemption for Greece. The islands of Crete and Mykonos will however continue to be excepted from the exemption for Greece.

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 10 October 2020. None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

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

5. Consultation

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

6. Regulatory Impact Assessment (RIA)

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

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/3347/20

Elin Jones, MS
Llywydd
Senedd Cymru

9 October 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) 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 so the Greek islands of Antiparos, Lesvos, Paros, Santorini, Serifos, Tinos and Zakynthos will no longer be excluded from the current exemption for Greece. The islands of Crete and Mykonos will continue to be excepted from the exemption for Greece and travellers from those islands will continue to be required to isolate on arriving in Wales. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these territories.

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

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

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

Yours sincerely,

Rebecca Evans.

Rebecca Evans AS/MS
Minister for Finance and Trefnydd

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Health Protection (Coronavirus, International Travel) (Wales) Amendments**
DATE	**8 October 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 the Greek islands of Paros and Antiparos, Lesvos, Santorini, Milos (including the island of Serifos), Tinos and Zakynthos will be added to the list of exempted countries and territories.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Saturday 10 October.

SL(5)631 – The Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020

Background and Purpose

This Order amends:

- The National Assembly for Wales (Representation of the People) Order 2007 (SI 20072007/236)
- The Representation of the People Act 1983
- The Political Parties, Elections and Referendums Act 1983

Currently, for Senedd elections and elections to local government in Wales, where a disabled candidate requires specially adapted measures or reasonable adjustments to participate in campaigning on a level basis with a non-disabled candidate, then such additional expenses are included either within their own or a political party's spending limits, as appropriate.

Further, for Senedd elections and elections to local government in Wales, where translation to or from Welsh is required this expense is also included within either a candidate's expenses, or a political party's campaign expenditure spending limits.

This Order makes amendments to the above-mentioned legislation to exclude the costs incurred or attributable to the translation of anything from English to or from Welsh form both a candidate's expenses and a political party's campaign expenditure limits, in accordance with the principle that Welsh should be treated no less favourably than English as provided by the Welsh Language Act 1993.

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

The following one 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 range of both the informal and formal consultation by the Welsh Government on these Regulations as referred to in paragraphs 5.1-5.4 of the Explanatory Memorandum. In particular, we note the Welsh Government approach in relation to their consultation with the Electoral Commission and the development of the drafting of this Order as set out below in the Explanatory Memorandum.

> *The Electoral Commission has provided advice and points for consideration in the creation of an exemption from disability related expenses based on their assessment of the UK Government's legislation and most of those comments have been incorporated into the drafting of this Order. However, the Electoral Commission's recommendation that a reasonableness test be applied to the exemption for translation expenses was not included as this would introduce a disparity in relation to the approach taken with non-party campaigners.*

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
12 October 2020

Draft Order laid before Senedd Cymru under section 13(7) of the Government of Wales Act 2006, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY INSTRUMENTS

2020 No. (W. XX)

CONSTITUTIONAL LAW

REPRESENTATION OF THE PEOPLE, WALES

The Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the National Assembly for Wales (Representation of the People) Order 2007 ("the 2007 Order") which contains provisions in relation to Senedd elections, the Representation of the People Act 1983 ("the 1983 Act") which contains provisions in relation to local government elections and the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act") which contains provisions in relation to both Senedd and local government elections.

The 2007 Order and subsequent amendment Orders were made by the Secretary of State, but the enabling powers were transferred to the Welsh Ministers by the Wales Act 2017.

Part 2 of this Order amends Part 2 of Schedule 7 to the 2007 Order.

The 2007 Order sets out certain requirements in relation to "election expenses" as defined in article 63 of that Order. These include a limitation on the permitted amount of such expenses, as set out in article 47 of that Order.

Part 2 of Schedule 7 to the 2007 Order sets out a list of matters which are "excluded" from being "election expenses" within the meaning of article 63 of that Order. Those matters are not subject to the

requirements described above, including those that limit the amount of permitted expenses.

Article 3 of this Order adds to that list, matters of expenditure incurred by or on behalf of a disabled candidate that are reasonably attributable to the candidate's disability. That expenditure must itself, be reasonably incurred.

Article 3 of this Order also adds to that list, matters of expenditure incurred by or on behalf of a candidate that are attributable to, or a consequence of, translating anything from English into Welsh or from Welsh into English.

Part 3 of this Order amends Part 2 of Schedule 4A to the 1983 Act.

The 1983 Act sets out certain requirements in relation to "election expenses" as defined in section 90ZA of that Act. These include a limitation on the permitted amount of such expenses, as set out in section 76 of that Act.

Part 2 of Schedule 4A to the 1983 Act sets out a list of matters which are "excluded" from being "election expenses" within the meaning of section 90ZA of that Act. Those matters are not subject to the requirements set out above, including those that limit the amount of permitted expenses.

Article 5 of this Order adds to that list, matters of expenditure incurred by or on behalf of a disabled candidate that are reasonably attributable to the candidate's disability. That expenditure must itself, be reasonably incurred.

Article 5 of this Order also adds to that list, matters of expenditure incurred by or on behalf of a candidate that are attributable to, or a consequence of, translating anything from English into Welsh or from Welsh into English.

Part 4 of this Order amends Part 1 of Schedule 8 to the 2000 Act as it applies to party candidates at both Senedd and local government elections.

The 2000 Act sets out certain requirements in relation to "campaign expenditure" as defined in section 72 of that Act. These include a limitation on the permitted amount of such expenses, as set out in section 79 of that Act.

Part 1 of Schedule 8 to the 2000 Act sets out a list of matters which are "excluded" from being "campaign expenditure" within the meaning of section 72 of that Act. Those matters are not subject to the requirements set out above, including those that limit the amount of permitted campaign expenditure.

Article 7 of this Order adds to that list, matters of expenditure incurred by or on behalf of a disabled candidate that are reasonably attributable to the candidate's disability. That expenditure must itself, be reasonably incurred.

Article 7 of this Order also adds to that list, matters of expenditure incurred by or on behalf of a candidate that are attributable to, or a consequence of, translating anything from English into Welsh or from Welsh into English.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order as it implements routine technical amendments which have no impact, or no significant, impact on the private, voluntary or public sectors.

Draft Order laid before Senedd Cymru under section 13(7) of the Government of Wales Act 2006, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY INSTRUMENTS

2020 No. (W. XX)

CONSTITUTIONAL LAW

REPRESENTATION OF THE PEOPLE, WALES

The Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020

Made	***
Coming into force	*19 November 2020*

The Welsh Ministers make this Order in exercise of the powers conferred on them by sections 13(1) and 157(2)(b) of the Government of Wales Act 2006(**1**) and in exercise of the powers conferred on the Secretary of State by paragraph 15(1) of Part 3 of Schedule 4A to the Representation of the People Act 1983(**2**) and paragraph 4 of Part 2 of Schedule 8 to the Political Parties, Elections and Referendums Act 2000(**3**) and now exercisable by them(**4**).

The Welsh Ministers have consulted the Electoral Commission in accordance with section 7(1), (2)(e) and (2)(f) of the Political Parties, Elections and Referendums Act 2000.

(**1**) 2006 c. 32. Section 13 was substituted by section 5(1) of the Wales Act 2017 (c. 4) and subsequently amended by the Senedd and Elections (Wales) Act 2020 (anaw 1).
(**2**) 1983 c. 2. Schedule 4A was inserted by section 27(1) and (5) of the Electoral Administration Act 2006 (c. 22).
(**3**) 2000 c. 41.
(**4**) The powers of the Secretary of State were transferred, in relation to Wales, to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644).

A draft of this Order was laid before, and approved by resolution of Senedd Cymru in accordance with section 13(7) of the Government of Wales Act 2006, paragraph 15(2) of Part 3 of Schedule 4A(**1**) of the Representation of the People Act 1983 and section 156(4)(j) of the Political Parties, Elections and Referendums Act 2000(**2**).

PART 1

General

Title, commencement and interpretation

1.—(1) The title of this Order is the Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020.

(2) This Order comes into force on 19 November 2020 but—

(a) articles 2 and 3 only have effect for the purposes of a Senedd Cymru election at which the poll is held on or after 5 April 2021;

(b) articles 4 and 5 only have effect for the purposes of a local government election in Wales at which the poll is held on or after 5 April 2021;

(c) articles 6 and 7 have effect for the purposes of a Senedd Cymru election or a local government election in Wales at which the poll is held on or after 5 April 2021.

(3) In this Order—

(a) "the 2007 Order" means the National Assembly for Wales (Representation of the People) Order 2007(**3**),

(b) "the 1983 Act" means the Representation of the People Act 1983, and

(c) "the 2000 Act" means the Political Parties, Elections and Referendums Act 2000.

(**1**) The reference to each House of Parliament in paragraph 15(2) of Part 3 of Schedule 4A to the Representation of the People Act 1983 is to be read as a reference to the National Assembly for Wales by virtue of paragraph 9(2)(b) of Schedule 3 to the Government of Wales Act 2006 (c. 32). The National Assembly for Wales was renamed Senedd Cymru by virtue of section 2 of the Senedd and Elections (Wales) Act 2020 (anaw 1).

(**2**) The reference to each House of Parliament in section 156(4) of the Political Parties, Elections and Referendums Act 2000 is to be read as a reference to the National Assembly for Wales by virtue of paragraph 9(2)(b) of Schedule 3 to the Government of Wales Act 2006 (c. 32). The National Assembly for Wales was renamed Senedd Cymru by virtue of section 2 of the Senedd and Elections (Wales) Act 2020 (anaw 1).

(**3**) S.I. 2007/236.

PART 2

New general exclusions from the definition of election expenses: Senedd Cymru elections

Amendment of the 2007 Order

2. The 2007 Order is amended in accordance with article 3.

3. In Part 2 of Schedule 7 to the National Assembly for Wales (Representation of the People) Order 2007 (General exclusions) after paragraph 13 insert the following—

"**13A.**—(1) Any matter that is reasonably attributable to the candidate's disability, to the extent that the expenses in respect of the matter are reasonably incurred.

(2) In this paragraph "disability", has the same meaning as in section 6 of the Equality Act 2010(**1**).

13B. Expenses incurred in respect of, or in consequence of, the translation of anything from Welsh into English or from English into Welsh."

PART 3

New general exclusions from the definition of election expenses: local government elections in Wales

Amendment of the 1983 Act

4. The 1983 Act is amended in accordance with article 5.

5. In Part 2 of Schedule 4A to the Representation of the People Act 1983 (election expenses: general exclusions)—

(a) in paragraph 7A omit sub-paragraph (3);

(b) after paragraph 8 insert the following—

"**8A.** In relation to a local government election in Wales, expenses incurred in respect of, or in consequence of, the translation of anything from Welsh into English or from English into Welsh."

(**1**) 2010 c. 15.

Part 4

New general exclusions from the definition of campaign expenditure: Senedd Cymru and local government elections in Wales

Amendment of the 2000 Act

6. The 2000 Act is amended in accordance with article 7.

7. In Part 1 of Schedule 8 to the Political Parties, Elections and Referendums Act 2000 (exclusions)—

(a) in paragraph 2(1)(d) at the end of the sub-paragraph, omit the word "or";

(b) in paragraph 2(1)(e) at the end of the sub-paragraph, omit the word "him." and insert "him; or";

(c) after paragraph 2(1)(e) insert the following—

"(f) any expenses incurred in respect of a Senedd Cymru election or a local government election in Wales:

(i) relating to any matter that is reasonably attributable to the candidate's disability, to the extent that the expenses in respect of the matter are reasonably incurred; and

(ii) in respect of, or in consequence of, the translation of anything from Welsh into English or from English into Welsh."

(d) after paragraph 2(2) insert the following—

"(3) In relation to sub-paragraph 2(1)(f)(i) "disability", has the same meaning as in section 6 of the Equality Act 2010."

Name
Minister for Housing and Local Government, one of the Welsh Ministers
Date

Explanatory Memorandum to the Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020.

This Explanatory Memorandum has been prepared by the Local Government Department 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 Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020.

Julie James MS
Minister for Housing and Local Government
07 October 2020

PART 1

1. Description

1.1 This Order amends Part 2 of Schedule 4A to the Representation of the People Act 1983 ("the 1983 Act"), exempting expenses relating to a candidate's disability and those relating to the costs incurred or attributable to translating English to or from Welsh from a candidate's election expenses for local government elections. This Order also amends Part 1 of Schedule 8 to the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act"), exempting from inclusion in the campaign expenditure of political parties, expenses relating to a candidate's disability and those costs incurred or attributable to translating English to or from Welsh at both Senedd and local government elections. The Order further amends the National Assembly for Wales (Representation of the People) Order 2007 ("the 2007 Order") exempting expenses relating to a candidate's disability and those costs incurred or attributable to translating English to or from Welsh from a party candidate's or independent candidate's election expenses at Senedd constituency elections.

1.2 Currently, any expenses incurred by a candidate or a political party as a result of reasonable adjustments relating to a candidate's impairment to enable them to stand for election, such as the need for braille documentation or the provision of a British Sign Language interpreter are included in either the candidate's expenses or the political party's overall campaign expenditure limits. Likewise, the costs incurred or attributable to translating anything from English to or from Welsh for candidates campaigning in Wales are also included within a candidate's expenses or a political party's campaign expenditure limits.

1.3 Matters of expenditure that would be common to both disabled and non-disabled candidates, such as the normal printing of campaign leaflets for distribution to the public, would not fall within the scope of this exemption. However, where a disabled candidate requires specially adapted measures to participate in campaigning on a level basis with a non-disabled candidate, then the additional expenses incurred in the provision of such measures, are likely to fall within the scope of this Order.

1.4 This Order will also exclude the costs incurred or attributable to the translation of anything from English to or from Welsh from both a candidate's expenses and a political party's campaign expenditure limits, in accordance with the principle that Welsh should be treated no less favourably than English as provided by the Welsh Language Act 1993.

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

2.1 There are no matters of special interest to bring to the attention of the Committee.

3. Legislative background

Election expenses

3.1. Legislative competence in respect of electoral matters in Wales was devolved to the National Assembly for Wales, now Senedd Cymru, by the Wales Act 2017. The Welsh Ministers (Transfer of Functions) Order 2018 as modified by the Government of Wales Act 2006 (Amendment) Order 2019, also transferred to the Welsh Ministers, functions exercisable by a Minister of the Crown in respect of local government elections in Wales, so far as those functions are exercisable within the Senedd's legislative competence.

3.2. The matters which are excluded from the definition of "election expenses" are listed in Part 2 of Schedule 4A to the 1983 Act, Part 1 of Schedule 8 to the 2000 Act and Part 2 of Schedule 7 to the 2007 Order. Under the current legislative framework, disability-related and translation expenses are not excluded from the definition of "election expenses" in section 90ZA of the 1983 Act, section 72 of the 2000 Act or article 63 of the 2007 Order. Consequently, such expenses count towards a candidate's expenses or a political party's campaign expenditure spending limits respectively.

Disability Related Expenses and Translation Costs

3.3. Pursuant to Schedule 8A of the 2000 Act, the expenses of non-party campaigners (as opposed to candidates) that are reasonably attributable to an individual's impairment are excluded from electoral spending limits as are the costs of translating anything from English into Welsh or from Welsh into English.

3.4. Disability-related expenses are exempt from election spending limits in both UK Parliament elections[1] and Scottish Parliament elections[2] and Scottish[3] and English local council elections and subsequent by-elections.

3.5. Except as set out in paragraph 3.3 above, there are currently no existing provisions concerning the exemption of translation expenses from a candidate's expenses or a political party's campaign expenditure in Wales.

The Welsh Language Act 1993 and the Welsh Language Measure (Wales) 2011

3.6. The Welsh Language Act 1993 legislated for the Welsh and English languages to be treated on the basis of equality in the course of public business so far as is reasonably practicable and the following Welsh Language (Wales) Measure 2011 modernised the existing legal framework regarding the use of the Welsh language in the delivery of public services and confirms the official

[1] The Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019
[2] Scottish Parliament (Elections etc.) Order 2015 (S.I. 2015/425)
[3] Scottish Local Government Elections Amendment (No. 2) Order 2016 (S.I. 2016/354)

status of Welsh in Wales alongside the English language.

3.7. On that basis, the cost of translation (English to Welsh or Welsh to English) should be exempt from both candidate expenses and political party campaign expenditure limits to promote the equal treatment of both languages.

4. Purpose and intended effect of the legislation

4.1 There are limits set out in legislation as to the amounts candidates and political parties at elections can spend on their respective election campaigns. Candidates are required to submit details of their election expenses to the Electoral Commission which is required by section 145 of the 2000 Act to monitor the compliance of candidates and agents with rules on candidates' election spending and donations.

4.2 A candidate's expenses and a political party's campaign expenditure can cover such things as:

- Advertising – newspapers, on-line, posters, etc.
- Unsolicited communications - Letters, leaflets and emails
- Transport costs
- Staff and administration costs - telephone, stationery, etc.

4.3 Currently, for Senedd elections and elections to local government in Wales, where a disabled candidate requires specially adapted measures or reasonable adjustments to participate in campaigning on a level basis with a non-disabled candidate, then such additional expenses are included either within their own or a political party's spending limits, as appropriate.

4.4 Further, for Senedd elections and elections to local government in Wales, where translation to or from Welsh is required this expense is also included within either a candidate's expenses, or a political party's campaign expenditure spending limits.

4.5 The UK Government introduced the Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019 to create a new category of disability-related expenses which are exempt from electoral spending limits. It did not apply to devolved elections. In January 2020, the UK Government also introduced an Order so that disability-related campaign expenses would be excluded from Police and Crime Commissioner candidates' spending limits. There are similar exemptions in force introduced by the Scottish Parliament for Scottish Parliamentary and local government elections in Scotland.

4.6 By introducing this Order for Senedd and local government elections in Wales, this will bring Wales into alignment with England and Scotland with regards to disability-related expenses and support existing Welsh legislation in ensuring that the English and Welsh languages are treated equally.

4.7 If the Order is not made, disabled people who are standing as candidates at Senedd or local government elections could be at a financial disadvantage compared to non-disabled candidates at those elections in Wales, as some of the expenses they incur will be directly related to enabling them to overcome barriers they face as a disabled person who wishes to stand for election. Under current legislation those costs must be declared and will count towards the limit for their candidate spending. Many of these disability related expenses can run into hundreds or thousands of pounds. Evidence of this was seen in applications for financial support made by disabled people to the UK and Scottish Government's Access to Elected Office funds[4].

Translation Costs

4.8 With regard to translation costs not being exempt, it could be argued that English and Welsh are not being treated equally if a candidate or a political party is required to account for the costs of translation to or from Welsh within their respective spending limits. If Welsh is to be treated no less favourably than English, it should not be seen as a financial disadvantage to a candidate or a political party to provide campaign materials in Welsh for the electorate. By exempting translation costs from candidate expenses and political party campaign expenditure limits, this creates a more positive and enabling attitude towards the Welsh language in public life.

5. Consultation

5.1 Welsh Government has consulted informally and formally with the Electoral Commission and the Wales Electoral Co-ordination Board concerning exempting disability expenses and translation expenses with regard to local government elections in Wales. With respect to exempting such expenses from the spending limits for candidates to Senedd elections, all that is required is a recommendation from the Electoral Commission that it be done, which they confirm they have made. Ministers could also exercise the order making power after a consultation exercise, independent of an Electoral Commission recommendation. The Electoral Commission has provided advice and points for consideration in the creation of an exemption from disability related expenses based on their assessment of the UK Government's legislation and most of those comments have been incorporated into the drafting of this Order. However, the Electoral Commission's recommendation that a reasonableness

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722039/Access_to_elected_office_evaluation_report.pdf

https://inclusionscotland.org/wp-content/uploads/2018/05/Access-to-Elected-Office-Fund-Scotland-2017-Evaluation-Report.pdf

test be applied to the exemption for translation expenses was not included as this would introduce a disparity in relation to the approach taken with non-party campaigners.

5.2 In 2016, Welsh Government also carried out research into the barriers facing disabled people as part of its Diversity in Democracy Programme and the types of support required by disabled people when running for elected office. Welsh Government has also taken into account the evaluation reports of the UK Government EnAble Scheme and Scottish Government's Access to Elected Office Scheme which provide grant funding to assist disabled people running for elected office.

5.3 Welsh Government has also taken account of responses to Question 20 of the Senedd Commission's consultation paper *Creating a Parliament for Wales* which asked respondents whether disability related and translation expenses should not count towards expenditure limits for political parties and candidates in relation to Senedd elections as they already are for non-party campaigners. 71 per cent of respondents to the consultation felt that costs relating to translation between Welsh and English should not count towards expenditure limits and 86 per cent felt that an individual's disability costs should not count towards expenditure limits, so there was strong support for both areas.

5.4 Welsh Government officials have also engaged with their colleagues within Welsh Government's Welsh Language Unit and Equalities departments to seek their views and advice when developing this policy. Welsh Government officials have also informed the Welsh Language Commissioner and the Disability Equality Forum of this policy intention.

6. Regulatory Impact Assessment

6.1 The need for a Regulatory Impact Assessment has been considered with reference to the Welsh Ministers' RIA Code for Subordinate Legislation. It was not considered necessary to carry out an RIA on this Order as it implements technical amendments which have no impact, or no significant, impact on the private, voluntary or public sectors.

SL(5)633 – The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 to expand the powers of local authorities to issue public places directions so that the directions may prohibit or regulate specified activities in a public place, including the consumption of alcohol.

Procedure

Made Affirmative.

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

Technical Scrutiny

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

Merits Scrutiny

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

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

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

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

We also note the following paragraph elsewhere in the Explanatory Memorandum:

In relation to the consumption of alcohol specifically, the broadened public place direction power complements the restrictions on the sale of alcohol introduced in Wales on 24 September as it will help local authorities stop gatherings of people consuming alcohol in designated areas as a result of the earlier closure of licensed premises. Such behaviours increase the risk of coronavirus transmission as the consumption of alcohol leads to decreasing observance of social distancing and makes enforcement more difficult.

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 formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations. As outlined when the original Regulations were made, throughout the pandemic, the Welsh Government has been in close contact with local authority enforcement officers who have reported these powers are needed where a serious and imminent threat to health exists and existing powers are insufficient.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the regulatory framework in place to respond to the ongoing threat arising from coronavirus.

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
14 October 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. 1100 (W. 250)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) (Amendment) 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) (Functions of Local Authorities etc.) (Wales) Regulations 2020. The Regulations—

(a) expand the power conferred on local authorities to issue public place directions such that a direction may prohibit specified activities in a public place as well as restrict access to it;

(b) make minor and consequential amendments.

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. 1100 (W. 250)

PUBLIC HEALTH, WALES

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

Made	*at 3.50 p.m. on 9 October 2020*
Laid before Senedd Cymru	*at 6.00 p.m. on 9 October 2020*
Coming into force	*12 October 2020*

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

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

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

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency,

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

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

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) (Amendment) Regulations 2020 and they come into force on 12 October 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020(**1**) are amended as follows.

(2) For regulation 7 substitute—

"**Public place directions**

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

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

(a) land laid out as a public garden or used for the purpose of recreation by members of the public;

(b) land which is "open country" as defined in section 59(2) of the National Parks and Access to the Countryside Act 1949(**2**), as read with section 16 of the Countryside Act 1968(**3**);

(c) any highway to which the public has access;

(d) a public path;

(e) access land.

(3) A public place direction may impose prohibitions, requirements or restrictions in relation to—

(**1**) S.I. 2020/1011 (W. 225).
(**2**) 1949 c. 97.
(**3**) 1968 c. 41. Section 16 has been amended by section 111 of the Transport Act 1968 (c. 73), Schedule 27 to the Water Act 1989 (c. 15) and S.I. 2012/1659. There are other amendments to section 16 which are not relevant to these Regulations.

(a) access to the public place (including, in particular, prohibiting access at specified times);

(b) activities carried on in the public place (including, in particular, prohibiting or restricting the consumption of alcohol).

(4) But a public place direction may not—

(a) impose prohibitions, requirements or restrictions—

(i) in relation to access to a public path or access land (see instead regulation 14);

(ii) on the consumption of alcohol in premises in the public place which are authorised for the sale or supply of alcohol;

(b) impose prohibitions or requirements in relation to access to the public place or an activity carried on in the place if such a prohibition or requirement has effect in relation to the place by virtue of a public spaces protection order made under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014(**1**).

(5) Where—

(a) a byelaw imposes a prohibition, requirement or restriction relating to access to, or an activity carried on in, a public place, and

(b) access to, or the carrying on of that activity in, the public place is prohibited or restricted by, or subject to a requirement in, a public place direction,

the prohibition, requirement or restriction imposed by the bylaw is of no effect in relation to the public place for so long as the public place direction has effect.

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

(7) A local authority which gives a public place direction must take such steps as are reasonably practicable—

(a) where the direction prohibits or restricts access to the public place, to prevent or restrict such access (including by erecting and maintaining

(**1**) 2014 c. 12.

notices in prominent places informing the public of the direction);

(b) where the direction prohibits, restricts or imposes requirements on the carrying on of an activity in the public place, to bring the direction to the attention of members of the public who may be in the public place (including by erecting and maintaining notices in prominent places informing the public of the direction);

(c) to give prior notice of the direction to persons carrying on a business from premises within the public place;

(d) to ensure that the direction is brought to the attention of any person who owns, occupies or is responsible for premises in the public place.

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

(9) No person may, without reasonable excuse—

(a) enter or remain in a public place;

(b) carry on an activity in a public place,

in contravention of a prohibition, requirement or restriction imposed by a public place direction.

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

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

(a) section 45C of the same Act, and

(b) these Regulations,

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

(12) For the purposes of this regulation—

(a) "access land" has the meaning given in regulation 14(7)(c),

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

(b) "alcohol" has the meaning given by section 191 of the Licensing Act 2003(**1**);

(c) "public path" has the meaning given in regulation 14(7)(b), and

(d) 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, and "authorisation" has the meaning given by section 136(5) of that Act."

(3) In regulation 10(b), for "regulation 7(5)" substitute "regulation 7(6)".

(4) In regulation 16—

(a) in paragraph (1)(b), for "7(7)" substitute "7(8)";

(b) in paragraph (5), after "direction" insert "imposing a prohibition, requirement or restriction in relation to access to the place";

(c) after paragraph (5) insert—

"(5A) Where a constable has reasonable grounds for suspecting that a person in a public place is acting in contravention of a public place direction imposing a prohibition, requirement or restriction in relation to the carrying on of an activity in the place, the constable may take such action as the constable considers necessary to prevent the person from continuing to act in contravention of the direction (including removing the person from the place).";

(d) in paragraph (6)—

(i) in sub-paragraph (a), for "or (5)" substitute ", (5) or (5A)";

(ii) in sub-paragraph (b), for "or (5)(b)" substitute ", (5)(b) or (5A)";

(e) in paragraph (7), for "or (5)" substitute ", (5) or (5A)".

(5) In regulation 18(1)—

(a) in sub-paragraph (a), for "7(8)" substitute "7(9)";

(b) in sub-paragraph (b), for "7(7)" substitute "7(8)".

(6) In each place it occurs in the provisions listed in paragraph (7)—

(a) for "revoking" substitute "withdrawing";

(b) for "revocation" substitute "withdrawal";

(**1**) 2003 c. 17. Section 191 has been amended by section 135 of the Policing and Crime Act 2017 (c. 3) and S.I. 2006/2407.

(c) for “revoke” substitute “withdraw”;

(d) for “revoked” substitute “withdrawn”.

(7) The provisions are—

(a) regulations 8, 9 and 13 including, where relevant, their headings;

(b) the headings to Chapters 1 and 3 of Part 2.

Mark Drakeford
First Minister, one of the Welsh Ministers
At 3.50 p.m. on 9 October 2020

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

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

Minister's Declaration

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

Mark Drakeford
First Minister
9 October 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 to expand the powers of local authorities to issue public places directions so that the directions may prohibit or regulate specified activities in a public place, including the consumption of alcohol.

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

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

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

<u>European Convention on Human Rights</u>
The provisions allow local authorities to issue directions which could regulate the use of, or access to, public places. These powers would be exercisable even where those responsible for premises in the public places otherwise complying with the requirements under the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 to take reasonable measures to minimise the risk of exposure to, or spread of, coronavirus, but where other factors meant that the ongoing opening of premises or places could lead to an increased risk of transmission of the virus.

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

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

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

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

3. Legislative background

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

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

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

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

3. Purpose and intended effect of the legislation

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 provide local authorities with powers to:

- close premises, or impose restrictions or requirements in respect of the use of, access to, or number of people on the premises;

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

Following concerns expressed by some local authorities, these Regulations broaden local authorities' powers to make public place directions to enable them to impose prohibitions, requirements or restrictions in relation to activities carried on in a public place, including the consumption of alcohol.

In certain circumstances, existing powers under the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') permit local authorities to impose some of the requirements that may be imposed by the enhanced public places directions, but it is considered that certain procedural requirements relating to those powers are too onerous to provide an effective public health response to problems caused by particular behaviours, including the consumption of alcohol. This will enable faster action to be taken, therefore increasing the effectiveness of the public health response during the current pandemic.

In relation to the consumption of alcohol specifically, the broadened public place direction power complements the restrictions on the sale of alcohol introduced in Wales on 24 September as it will help local authorities stop gatherings of people consuming alcohol in designated areas as a result of the earlier closure of licensed premises. Such behaviours increase the risk of coronavirus transmission as the consumption of alcohol leads to decreasing observance of social distancing and makes enforcement more difficult.

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

These Regulations come into force at the beginning of 12 October 2020.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations. As outlined when the original Regulations were made, throughout the pandemic, the Welsh Government has been in close contact with local authority enforcement officers who have reported these powers are needed where a serious and imminent threat to health exists and existing powers are insufficient.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the regulatory framework in place to respond to the ongoing threat arising from coronavirus.

6. Regulatory and other impact assessments

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

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

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

9 October 2020

Dear Elin

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

I have today made the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) (Amendment) Regulations 2020, which come into force at the beginning of 12 October 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 12 November 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 Plenary on 20 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
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

SL(5)634 – The Health Protection (Coronavirus Restrictions) (No. 2) (Amendment) (No. 18) (Bangor) 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 Regulations designate an area comprising 8 electoral wards in the Bangor area of Gwynedd as a local health protection area under the Principal Regulations. This means that:

- no household within that area will be treated as being part of an extended household and the formation of an extended household by such a household is prohibited, save where one household comprises of no more than one adult and any number of children;
- persons living in that area must not leave or remain away from the area without reasonable excuse;
- residents of that area are required to work from home, unless it is not reasonably practicable for them to do so;
- people outside of that area are prohibited from 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 came into force at 6.00 p.m. on 10 October 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 15 October, and at least once every seven days thereafter.

Procedure

Made Affirmative

Technical Scrutiny

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

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

Regulation 2(2) refers to the electoral division of "Menai" to be inserted as paragraph (q)(viii) in paragraph 1 of Schedule 4A to the Principal Regulations.

The second footnote to Regulation 2 provides that these names were specified by the County of Gwynedd (Electoral Changes) Order 2002 (S.I. 2002/3274) ("the 2002 Order"). The Schedule to the 2002 Order refers to "Menai (Bangor)" and "Menai (Caernarfon)". Whilst it may appear obvious when reading the Regulations that the electoral division to be taken into account here is Menai (Bangor), as the name "Bangor" is included in the title of the Regulations, it may be less obvious when considering the Principal Regulations in isolation. In the interests of clarity, and consistency with the names given to electoral divisions in the 2002 Order, the Welsh Government is asked to confirm whether the reference in paragraph (q)(viii) in paragraph 1 of Schedule 4A to the Principal Regulations should be to "Menai (Bangor)". This may also avoid potential confusion and duplication should the "Menai (Caernarfon)" electoral division be subject to restrictions in future. The same issue arises in the Welsh version of the Regulations.

Merits Scrutiny

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

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

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

> *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 8 electoral wards in the Bangor 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.*

We believe that there is an error which requires correction in the Explanatory Memorandum as extracted above, as Article 11 of the European Convention on Human Rights protects the

right to freedom of assembly and association, not freedom of information. The Welsh Government is asked to confirm that this correction will be made.

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 formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

> *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 Bangor, 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.*
>
> *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 Mental Health, Wellbeing and the Welsh Language explained on the television news on Friday, 9 October 2020 the intention to impose the restrictions and requirements achieved through these Regulations; and the proposed changes will be 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 note that there is no equality impact assessment for these Regulations and ask the Welsh Government to explain what arrangements it has made, in respect of these Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

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

We note that these Regulations introduce a tightening of coronavirus restrictions in 8 electoral wards in the Bangor area of Gwynedd.

The Explanatory Memorandum states that the Regulations are a response "to the threat to human health from coronavirus" and "to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely".

We believe that, where coronavirus restrictions are being tightened in any significant way, Explanatory Memorandums should set out the evidence on which the Welsh Government relies in deciding that such tightening is necessary and proportionate. We believe the same principle should apply where restrictions are being lifted.

With regard to these Regulations, we would be grateful if the Welsh Government could set out evidence which showed that:

a) the 8 electoral wards in the Bangor area of Gwynedd should go into local lockdown in the way that they did;
b) the need for local lockdown in those areas was so urgent that there was no time for the Senedd to approve a draft of the Regulations in advance;
c) other areas of Wales did not need to go into local lockdown.

Providing this evidence will aid transparency as well as the Committee's scrutiny of coronavirus restrictions, in particular in the event that areas of Wales will go into a series of 'rolling lockdowns' in the coming months.

We also believe that including evidence in Explanatory Memorandums will help raise public awareness of Explanatory Memorandums and the statutory instruments themselves.

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

We note that these Regulations came into effect before they were laid before the Senedd. In particular, we note the following from the letter from the First Minister to the Llywydd dated 9 October 2020:

> *Under section 4(1) of the Statutory Instruments Act 1946, I wish to inform you that that these come into force before they will be laid before the Senedd. This is considered necessary and justifiable in this case in view of the changing evidence on risk in relation to this disease. The Regulations will be available on both the Welsh Government Coronavirus pages on gov.wales and at legislation.gov.uk before they come into force.*

We ask the Welsh Government to provide further details of the evidence which is referred to in the letter extracted above and to provide a detailed explanation as to why it was necessary to bring these Regulations into force before they were laid before the Senedd.

Implications arising from exiting the European Union

None

Welsh Government response

A Welsh Government response is required in relation to the technical reporting point and merit reporting points 1, 3, 4 and 5 only.

Legal Advisers

Legislation, Justice and Constitution Committee
13 October 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. 1102 (W. 251)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 18) (Bangor) 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 8 electoral wards (referred to in legislation as electoral "divisions") in the Bangor area as a local health protection area that is 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. 1102 (W. 251)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 18) (Bangor) Regulations 2020

Made	*9 October 2020*
Coming into force	
at	*6.00 p.m. on 10 October 2020*
Laid before Senedd Cymru	*12 October 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. 18) (Bangor) Regulations 2020 and they come into force at 6pm on 10 October 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 (p) insert—

"(q) the area comprising the following electoral divisions(**2**) in the county of Gwynedd—

(i) Deiniol;

(ii) Dewi;

(iii) Garth;

(iv) Glyder;

(v) Hendre;

(vi) Hirael;

(vii) Marchog;

(viii) Menai."

Mark Drakeford
First Minister, one of the Welsh Ministers
9 October 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), S.I. 2020/1043 (W. 232), S.I. 2020/1049 (W. 235), S.I. 2020/1066 (W. 240) and S.I. 2020/1079 (W. 242).

(**2**) The names and areas of which were specified (among other electoral divisions) by the County of Gwynedd (Electoral Changes) Order 2002 (S.I. 2002/3274).

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 18) (Bangor) 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. 18) (Bangor) Regulations 2020.

Mark Drakeford
First Minister

12 October 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 8 electoral wards in the Bangor area are necessary and proportionate as a public health response to the current threat posed by coronavirus.

Gwynedd as a whole, as of 1p.m. on 8 October had a rolling 7 day average rate of 89.1 cases per 100,000 people and a positivity rate of 8.0%. Proportionately a large majority of these cases is focused in Bangor. There is a rapidly rising trend in rolling 7 day incidence rates and test positivity for COVID-19 in Gwynedd centred on Bangor.

<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 8 electoral wards in the Bangor 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 15 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 sixteen local health protection areas[2], and these Regulations now extend restrictions to a further local health protection area comprising 8 electoral wards in the Bangor area of Gwynedd[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;

[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, Neath Port Talbot, Rhondda Cynon Taf, Torfaen and the Vale of Glamorgan; the City and County Borough of Newport; 13 electoral wards in the Llanelli area; and the City and County of Cardiff and of Swansea, County Boroughs of Conwy and Wrexham and the Counties of Denbighshire and Flintshire.

[3] As set out in paragraph 1(q) of Schedule 4A to the principal Regulations, these are: Deiniol, Dewi, Garth, Glyder, Hendre, Hirael, Marchog , Menai.

- 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 come into force at 6.00 p.m. on 10 October 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 15 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 Bangor, 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.

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 Mental Health, Wellbeing and the Welsh Language explained on the television news on Friday, 9 October 2020 the intention to impose the restrictions and requirements achieved through these Regulations; and the proposed changes will be 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

9 October 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 18) (Bangor) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 18) (Bangor) 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. 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. Under section 4(1) of the Statutory Instruments Act 1946, I wish to inform you that that these come into force before they will be laid before the Senedd. This is considered necessary and justifiable in this case in view of the changing evidence on risk in relation to this disease. The Regulations will be available on both the Welsh Government Coronavirus pages on gov.wales and at legislation.gov.uk before they come into force.

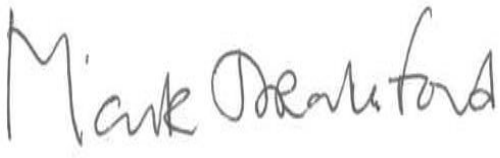
In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 12 November 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business 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 20 October 2020.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Local coronavirus restrictions**
DATE	**9 October 2020**
BY	**Mark Drakeford MS, First Minister**

We have introduced local restrictions in 15 local authority areas and in Llanelli to control rapid and sharp increases in coronavirus cases. These restrictions are formally reviewed every week and we did so again yesterday.

The first restrictions came into force in Caerphilly borough almost a month ago, with the most recent in North Wales a week ago.

The general trend in Wales is a worsening situation and most areas where local restrictions are in place have reported a seven-day trend where covid-19 cases have increased. However, there are some encouraging signs of stabilisation in the local authorities in the Gwent region, in Llanelli and the Vale of Glamorgan.

Working closely with local authorities and public health experts, we have concluded the public health context means it is too soon to lift the restrictions, and they will be in place for at least another seven days.

However, I am mindful that our cautious approach must also be proportionate. It is vital that whenever we place restrictions on the liberty of people to meet family and friends we think carefully about the conditions we would need to see – and the approach – for easing those restrictions.

Following meetings with local government, the police and colleagues from the NHS yesterday, a range of potential measures were discussed, through which local

restrictions could begin to be eased in areas where circulation of the virus is consistently falling. These must now be taken forward with other local authorities and public health leaders. We must also take into account announcements expected by the UK Government on Monday, which could have a direct impact on those local council areas which lie along the border between Wales and England. I will make a further statement once those discussions and announcements have taken place.

We have been closely monitoring cases of coronavirus in Gwynedd where we have seen a significant cluster of cases develop in the Bangor area – the incidence rate stands at around 400 cases per 100,000 people. Cases appear to be closely associated with young people and the student population.

In the wider local authority area, there is evidence of transmission of coronavirus throughout the county but the incidence rate varies from 152 cases per 100,000 in Arfon, which includes Bangor, 55 cases per 100,000 people in Dwyfor and 18 cases per 100,000 people in Meirionydd.

The Health Minister, Minister for Housing and Local Government and myself met the local authority, the university, the police, NHS and public health experts to discuss the situation in Bangor and Gwynedd and whether local restrictions are needed to control the spread of coronavirus and protect people’s health.

Following extensive discussions, we have concluded based on the source of the transmission and fact that the majority of the cases are currently clustered around Bangor, we will be introducing local restrictions – similar to those in place in other parts of Wales – in Bangor initially.

These restrictions will come into force at 6pm on Saturday October 10.

We will have further discussions with the local authority and the incident management team on Saturday about the wider situation in Arfon and Dwyfor.

By making the right choices and following the rules, we can reduce the prevalence of the virus. For now we must ask that residents of these areas continue to show the resilience that has characterised our efforts to date.

I continue to be very grateful to the people of Wales for all the efforts they have made and continue to make.

SL(5)625 – The Smoke-free Premises and Vehicles (Wales) Regulations 2020

Background and Purpose

These Regulations are made under sections 6(5), 10(6), 11(5), 15(1), 16(1), 17(1), 17(3), 18(2), 28(7) and 123(1) of, and paragraphs 5, 6 and 9 of Schedule 1 to the Public Health (Wales) Act 2017 ("the 2017 Act"). Each of these provisions, save for section 123(1)[1], were brought into force on 29 September 2020[2].

The Regulations are due to come into force on 1 March 2021.

The Regulations exempt certain premises from the requirement to be smoke-free under the 2017 Act and set out the circumstances in which vehicles are to be treated as being smoke-free. The Regulations also make provision about displaying signs and provision relating to enforcement. In particular, the Regulations:

- define "enclosed", "substantially enclosed" and "not enclosed or substantially enclosed" – under the 2017 Act, the requirement to be smoke-free is imposed in relation to workplaces and premises open to the public that are enclosed or substantially enclosed;
- state that any premises which are used to any extent as dwellings are not to be treated as smoke-free, unless they are also used as places of work;
- state that holiday or temporary accommodation are not required to be smoke-free, though this provision ceases to have effect on 1 March 2022;
- provide that, subject to certain conditions, rooms in adult care homes, adult hospices and research and testing facilities may be designated as rooms in which smoking is permitted;
- provide that, subject to certain conditions, rooms in mental health units may be designated as rooms in which smoking is permitted, though this provision ceases to have effect on 1 September 2022;
- provide that bedrooms in hotels, guesthouses, inns, hostels and members' clubs which meet certain conditions may be designated as rooms in which smoking is permitted, though this provision ceases to have effect on 1 March 2022;
- provide for hospital grounds, school grounds and public playgrounds to be smoke-free and for conditions which must be met before an area in the grounds of a school

[1] Section 123 came into force on 3 July 2017, when the 2017 Act received Royal Assent.
[2] See the Public Health (Wales) Act 2017 (Commencement No. 5) Order 2020.

that provides residential accommodation and in hospital grounds may be designated as an area in which smoking is permitted;

- require a person who controls or is concerned in the management of smoke-free premises to take reasonable steps to cause a person smoking there to stop smoking;
- require signs to be displayed in premises which are workplaces or open to the public, school grounds, hospital grounds and public playgrounds, and specify their content;
- provide that certain vehicles are treated as being smoke-free. Vehicles used wholly or mainly in the course of work by more than one person or to transport members of the public are smoke-free all the time. Other vehicles which are not smoke-free all the time are smoke-free only when a person in the vehicle is receiving goods or services from another person also in the vehicle and when a child is in the vehicle (subject to an exemption for caravans);
- provide that a driver, an operator or a person who is concerned in the management of a smoke-free vehicle has a duty to prevent smoking in that vehicle;
- require signs be displayed in certain smoke-free vehicles and specify their content.
- designate the chief officer of police for a police area as an enforcement authority in relation to vehicles which are smoke-free by virtue of being used for social, domestic or other private purposes where a child is present. Local authorities are already enforcement authorities under section 18 of the 2017 Act in relation to premises, places and vehicles in their areas; and
- provide for fixed and discounted penalty amounts in respect of certain offences.

Procedure

Draft Affirmative.

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 is concerned that the Welsh Government has not provided any assessment, justification or made any reference to human rights in the Explanatory Memorandum for these Regulations. The Committee believes that the Regulations engage Article 8 of the

European Convention on Human Rights ("ECHR"), which is the right to private life. Although this is a qualified right, in that it is a right which may be interfered with in order to protect the rights of another or the wider public interest, e.g. on public health grounds, the Welsh Government must provide details of its assessment or otherwise risk breaching this human right.

Although the law does allow an interference the rights under Article 8, the Welsh Government must set out that the change in the law:

- is justified on the grounds of public interest;
- is proportionate to the public interest aim pursued; and
- is done in accordance with domestic and international law, and with legal certainty.

Section 7 of the 2017 Act provides that premises in Wales are smoke-free if they are workplaces, which includes certain dwellings. The Regulations remove exclusions for certain types of work activities from the assessment of whether a dwelling is a workplace for the purposes of section 7. The effect of removing these exclusions is that all types of work activities will be included in the assessment of whether a dwelling is a workplace and therefore more of these dwellings will be required to be smoke free.

Similarly, the Regulations also provide that privately owned vehicles are to be smoke-free when a child is in the vehicle.

In both of these situations, the Regulations affect how people conduct themselves in their privately owned property, whether this be their own home or their vehicle.

The Welsh Government is asked to set out how it considers that these regulations are compliant with Article 8 of the ECHR.

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

There are cross-references in the Regulations to provisions of the 2017 Act which are not yet in force.

- The Regulations refer to sections 5, 7, 8 and 12 of the 2017 Act. Section 5 makes it an offence to smoke in smoke free premises or vehicles. Section 7 makes workplaces in Wales smoke-free. Section 8 makes premises that are open to the public smoke-free. Section 12 makes playgrounds in Wales smoke-free. None of sections 5, 7, 8 or 12 are as yet in force.
- The Regulations also refer to sections 6, 10, 11 and 17 of the 2017 Act, and certain paragraphs of Schedule 1 to that Act. Sections 6, 10, 11 and 17 and the relevant paragraphs of Schedule 1 were partially brought into force on 29 September 2020, but only to the extent necessary for the Regulations to be made. Substantively, section 6 makes it an offence for those in charge of the relevant premises to fail to

prevent smoking in a smoke free area. Section 10 makes school grounds in Wales smoke free and section 11 makes hospital grounds in Wales smoke free. Section 17 requires the display of signs in smoke free premises. The relevant paragraphs of Schedule 1 deal with fixed penalties. These elements of sections 6, 10, 11 and 17 and Schedule 1 are not yet in force.

- The Explanatory Note confirms that the term "smoking" in the Regulations is to be read in accordance with section 4 (Smoking) of the 2017 Act. Section 4 is not yet in force.

The Committee would be grateful if the Welsh Government would confirm that it intends to bring the provisions referred to above into force on or before 1 March 2021.

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

The Regulations required notification to the EU in line with the requirements of the Technical Standards and Regulations Directive 2015/1535/EC. This is as a result of the technical requirements in the Regulations as to the lay-out and form of no-smoking signs (Regulations 13, 14 and 18). This process required a three-month standstill period during which the Regulations remained in draft form and were not laid before the Senedd. The standstill period commenced on 23 June 2020 and ended on 24 September 2020. No objections were made by Member States to the draft 2020 Regulations.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required in relation to the first and second merit reporting points.

Committee Consideration

The Committee considered the instrument at its meeting on 12 October 2020 and reports to the Senedd in line with the reporting points above.

Government Response: ***The Smoke-free Premises and Vehicles (Wales) Regulations 2020***

Merit Scrutiny point 1: The Welsh Government is asked to set out how it considers that these regulations are compliant with Article 8 of the ECHR.

1. The Committee has asked the Welsh Government to set out how the change in law is justified on the grounds of public interest, proportionate to the public interest aim pursued and done in accordance with domestic and international law and with legal certainty. In particular the Committee has identified the following:

    - *The Regulations remove exclusions for certain types of work activities from the assessment of whether a dwelling is a workplace for the purposes of section 7 of the Public Health (Wales) Act 2017 ("the 2017 Act"). The effect of removing these exclusions is that all types of work activities will be included in the assessment of whether a dwelling is a workplace and therefore more dwellings will be required to be smoke free.*

    - *The Regulations provide that privately owned vehicles are to be smoke-free when a child is in the vehicle.*

    - *In both of these situations, the Regulations affect how people conduct themselves in their privately owned property, whether this be their own home or their vehicle.*

2. A very thorough assessment of provisions contained within these Regulations has taken place to ensure they are compatible with the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC). In view of the Committee's comments, the Welsh Government will amend the Explanatory Memorandum to reflect this.

Merit Scrutiny point 2: The Committee would be grateful if the Welsh Government would confirm that it intends to bring the provisions referred to above into force on or before 1 March 2021.

3. As noted by the Committee, a Commencement Order was made on 25 September 2020. This Order commenced the regulation making provisions within the Public Health (Wales) Act 2017 (“the 2017 Act”) which enabled the Regulations to be laid. These provisions came into force on 29 September 2020.

4. Subject to the outcome of the Plenary debate (scheduled to be held on 20 October 2020), it is intended that a second Commencement Order will be made. This Order will commence the remaining provisions in Chapter 1 of Part 3 (and related Schedules) of the 2017 Act on 1 March 2021. This would mean that the provisions around the new smoke-free regime within the 2017 Act could operate substantively from 1 March 2021, alongside the Regulations.

SL(5)627 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 and designate the county boroughs of Conwy and Wrexham and the counties of Denbighshire and Flintshire as local health protection areas subject to local restrictions and requirements.

The effect 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;

- 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 must be reviewed before the end of 7 October 2020 and then at least once every 7 days.

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

We note that these Regulations introduce a tightening of coronavirus restrictions in Conwy, Denbighshire, Flintshire and Wrexham.

The Explanatory Memorandum states that the Regulations are a response "to the threat to human health from coronavirus" and "to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely".

We believe that, where coronavirus restrictions are being tightened in any significant way, Explanatory Memorandums should set out the evidence on which the Welsh Government relies in deciding that such tightening is necessary and proportionate. We believe the same principle should apply where restrictions are being lifted.

With regard to these Regulations, we would be grateful if the Welsh Government could set out evidence which showed that:

(a) Conwy, Denbighshire, Flintshire and Wrexham should go into local lockdown in the way they did;

(b) the need for local lockdown in those areas was so urgent that there was no time for the Senedd to approve a draft of the Regulations in advance;

(c) other areas of Wales did not need to go into local lockdown.

Providing this evidence will aid transparency as well as the Committee's scrutiny of coronavirus restrictions, in particular in the event that areas of Wales will go into a series of 'rolling lockdowns' in the coming months.

We also believe that including evidence in Explanatory Memorandums will help raise public awareness of Explanatory Memorandums and the statutory instruments themselves.

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

As noted above, these Regulations introduce a tightening of coronavirus restrictions in Conwy, Denbighshire, Flintshire and Wrexham.

We note the Welsh Government's view in the Explanatory Memorandum that any interference with human rights arising from these new restrictions is justified in pursuing the legitimate aim of responding to the coronavirus pandemic.

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 note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs from the Explanatory Memorandum:

> *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 Conwy, Denbighshire, Flintshire and Wrexham 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 to Members in the Senedd yesterday [29 September 2020] the intention to impose the restrictions and requirements achieved through these Regulations; the proposed changes have been widely reported by the media.*

Implications arising from exiting the European Union

None.

Welsh Government response

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

Committee Consideration

The Committee considered the instrument at its meeting on 12 October 2020 and reports to the Senedd in line with the reporting points above.

Government Response: The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 16) (Conwy, Denbighshire, Flintshire and Wrexham) Regulations 2020

This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated 7 October 2020.

Merit Scrutiny point 1(a):

The data on 28 September showed a rising trend in rolling 7-day incidence rates of COVID-19 across local authority areas in North Wales. A summary of all confirmed cases of COVID-19 between 20 and 27 September 2020, by Local Authority, is provided below.

This table summarises cases and testing, where samples were collected during the 7 day period above.

For the 7 day period ending at 23:59 on 27-09-2020	n	% of All Wales Total	7-day incidence
Blaenau Gwent	192	8.3%	274.8
Caerphilly	93	4.0%	51.4
Monmouthshire	18	0.8%	19.0
Newport	90	3.9%	58.2
Torfaen	48	2.1%	51.1
Aneurin Bevan	441	19.1%	74.2
Conwy	54	2.3%	46.1
Denbighshire	36	1.6%	37.6
Flintshire	84	3.6%	53.8
Gwynedd	18	0.8%	14.5
Isle of Anglesey	7	0.3%	10.0
Wrexham	59	2.6%	43.4
Betsi Cadwaladr	258	11.2%	36.9
Cardiff	319	13.8%	86.9
Vale of Glamorgan	55	2.4%	41.2
Cardiff and Vale	374	16.2%	74.7
Bridgend	157	6.8%	106.8
Merthyr Tydfil	129	5.6%	213.8
Rhondda Cynon Taf	444	19.2%	184.0
Cwm Taf Morgannwg	730	31.6%	162.7
Carmarthenshire	126	5.5%	66.7
Ceredigion	17	0.7%	23.4
Pembrokeshire	11	0.5%	8.7
Hywel Dda	154	6.7%	39.8
Powys	29	1.3%	21.9
Powys	29	1.3%	21.9
Neath Port Talbot	76	3.3%	53.0
Swansea	247	10.7%	100.0
Swansea Bay	323	14.0%	82.8
Total	2309	100.0%	73.2

Our decisions are informed by local intelligence. The restrictions were introduced at the request of the Betsi Cadwaladr Health Board Incident Management Team (IMT) who, on 29 September, raised concern about the rising trend in rolling 7-day incidence rates of COVID-19 across four local authority areas in North Wales, including Conwy County Borough. The IMT recommended a proactive and preventative approach be taken. The request from the IMT was for the Welsh Government to introduce restrictions equivalent to those for Local Health Protection Areas in South Wales. Following a call with local authority leaders and public authorities, the Welsh Government accepted their recommendation to put in place Local Health Protection Areas in Conwy, Denbighshire, Flintshire and Wrexham.

At the time of writing, all of these areas have subsequently seen rises in incidence and positivity rates according to the Public Health Wales data. In Conwy the 7 day incidence rate (up to 5 October) is at 63.1 people per 100,000, an increase of nearly 20 points since the decision was made to introduce restrictions. In Denbighshire, Flintshire and Wrexham the incidence rates now exceed 100, with some of the highest prevalence in Wales.

Merit Scrutiny point 1(b):

The trajectory of increases in cases above demonstrates and justifies the need for regulations to come into force as quickly as possible.

Merit Scrutiny point 1(c):

At the time, the data above and the Incident Management Teams in the six local authorities not under LHPAs did not support going into local lockdown as this would have been disproportionate.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A that prescribes a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.

2. The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020 were laid before Parliament on 30 September 2020 and are now being laid before the Senedd. The Regulations can be found at:

   http://www.legislation.gov.uk/id/ukdsi/2020/9780348212594

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to correct deficiencies in legislation arising from the UK leaving the European Union relating to reciprocal healthcare elements of social security coordination.

4. The SI will amend three reciprocal healthcare SIs that were made on an England and Wales basis, with the consent of the Welsh Ministers, as part of the corrections exercise for a no-deal EU Exit to ensure the statute book continued to function correctly.

5. The amendments will ensure the three SIs will be functional at the end of the Implementation Period (31 Dec 2020) and in line with the European Union (Withdrawal Agreement) Act 2020.

Relevant provision to be made by the SI

6. The SI amends the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 ("the 2019 Regulations"). The 2019 Regulations amend the NHS (Wales) Act 2006. The effect of the provision therefore is that the NHS (Wales) Act 2006 ("the 2006 Act") is consequently amended.

7. The 2019 Regulations removed those sections of the 2006 Act (6A to 6BB) which provide that the Welsh Ministers will reimburse costs to Welsh residents for pre-planned treatment in an EEA state. Those sections however were retained, with modifications, for cases that arise before exit day (regulation 15 and Schedule 1 of the 2019 Regulations). The SI make further amendments to those retained provisions of the 2006 Act to reflect changes made by the European Union (Withdrawal Agreement) Act 2020.

8. It is the view of the Welsh Government that the provisions described in paragraph 6 above fall within the legislative competence of the Welsh Parliament in so far as they relate to the provision of healthcare.

Why it is appropriate for the SI to make this provision

9. There is no divergence between the Welsh Government and the UK Government (Department of Health and Social Care) on the policy for the corrections. Although healthcare is devolved, the scope for Wales to implement different policy is limited by a requirement to meet any international obligations entered into by the UK. These would include international healthcare agreements. The Regulations amend three reciprocal healthcare SIs that were made on an England and Wales basis, with the consent of the Welsh Ministers, as part of the corrections exercise for a no-deal EU Exit to ensure the statute book continued to function correctly. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting once again to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility for patients and providers. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Vaughan Gething AS
Minister for Health and Social Services

5 October 2020

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

EXITING THE EUROPEAN UNION

HEALTH SERVICES

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

NATIONAL HEALTH SERVICE, SCOTLAND

HEALTH AND PERSONAL SOCIAL SERVICES, NORTHERN IRELAND

SOCIAL SECURITY

HUMAN TISSUE, ENGLAND AND WALES

HUMAN TISSUE, NORTHERN IRELAND

The Reciprocal and Cross-Border Healthcare (Amendment etc.) (EU Exit) Regulations 2020

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**), and sections 2(1) and (2)(f) and (h) and 7(2) and (3) of the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019(**b**).

(**a**) 2018 c. 16. Paragraph 21 was amended by paragraphs 38 and 53 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(**b**) 2019 c. 14.

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

In accordance with section 5 of the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019, the Secretary of State has consulted the Scottish Ministers, the Welsh Ministers and the Department of Health in Northern Ireland before making these Regulations.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Reciprocal and Cross-Border Healthcare (Amendment etc.) (EU Exit) Regulations 2020 and come into force immediately before IP completion day.

PART 2

Amendment of Reciprocal Healthcare Regulations

Amendment of the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019

2. The Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019(**a**) are amended as follows.

Substitution of regulation 6

3. For regulation 6 substitute—

> **"The Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006**
>
> **6.** In the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006(**b**), in Schedule 2 (receipt of transplantable material), in paragraph 10, in the text following "case) that—"—
>
> (a) for sub-paragraph (a) (including the "or" at the end) substitute—
>
> "(a) the treatment of the recipient was provided under a listed healthcare arrangement as defined in regulation 1(3) of the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019(**c**), or";
>
> (b) omit sub-paragraph (b).".

Substitution of regulation 8

4. For regulation 8 substitute—

(**a**) S.I. 2019/776.
(**b**) S.I. 2006/1260; relevant amendments were made by S.I. 2011/1043 and 2012/1809.
(**c**) S.I. 2019/1293.

"The National Health Service (General Medical Services Contracts) Regulations 2015

8. In regulation 74F (information relating to overseas visitors) of the National Health Service (General Medical Services Contracts) Regulations 2015(**a**)—

(a) for paragraph (1)(b) (but not the words following that paragraph) substitute—

"(b) where applicable in the case of a patient, record the fact that the patient is the holder of a document—

(i) which is—

(aa) a European Health Insurance Card;

(bb) an S1 Healthcare Certificate; or

(cc) a document which, for the purposes of a listed healthcare arrangement as defined in regulation 1(3) of the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019, is treated as equivalent to a document referred to in sub-paragraph (aa) ("EHIC equivalent document") or (bb) ("S1 equivalent document"); and

(ii) which has not been issued to or in respect of the patient by the United Kingdom,";

(b) in paragraph (2)(a)—

(i) after "European Health Insurance Card" insert "or EHIC equivalent document";

(ii) after "that card" insert "or document";

(c) in paragraph (4)—

(i) after "S1 Healthcare Certificate" insert "or S1 equivalent document";

(ii) after the remaining references to "certificate" (in both places), insert "or document".".

Substitution of regulation 9

5. For regulation 9 substitute—

"The National Health Service (Personal Medical Services Agreements) Regulations 2015

9. In regulation 67F (information relating to overseas visitors) of the National Health Service (Personal Medical Services Agreements) Regulations 2015(**b**)—

(a) for paragraph (1)(b) (but not the words following that paragraph) substitute—

"(b) where applicable in the case of a patient, record the fact that the patient is the holder of a document—

(i) which is—

(aa) a European Health Insurance Card;

(bb) an S1 Healthcare Certificate; or

(cc) a document which, for the purposes of a listed healthcare arrangement as defined in regulation 1(3) of the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019, is treated as equivalent to a document referred to in sub-paragraph (aa) ("EHIC equivalent document") or (bb) ("S1 equivalent document"); and

(**a**) S.I. 2015/1862; relevant amendments were made by S.I. 2017/908 and 2020/226.
(**b**) S.I. 2015/1879; relevant amendments were made by S.I. 2017/908 and 2020/226.

(ii) which has not been issued to or in respect of the patient by the United Kingdom,";

(b) in paragraph (2)(a)—

(i) after "European Health Insurance Card" insert "or EHIC equivalent document";

(ii) after "that card" insert "or document";

(c) in paragraph (4)—

(i) after "S1 Healthcare Certificate" insert "or S1 equivalent document";

(ii) after the remaining references to "certificate" (in both places), insert "or document".".

Revocation of regulation 17 and Schedule 5

6. Omit regulation 17 and Schedule 5 (savings and transitional provision).

PART 3

Amendment of Cross-Border Healthcare Regulations

Amendment of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019

7. The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019(**a**) are amended as follows.

Substitution of regulation 9

8. For regulation 9 substitute—

"The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) Regulations 2004

9.—(1) The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) Regulations 2004(**b**) are amended as follows.

(2) In Schedule 2 (drugs, medicines and other substances that may be ordered only in certain circumstances), in the entry in column 2 of the table that corresponds to the entry in column 1 relating to drugs for the treatment of erectile dysfunction—

(a) for sub-paragraph (b) (including the "or" at the end) substitute—

"(b) a man who is a national of an EEA State who—

(i) immediately before IP completion day was entitled to treatment by virtue of Article 7(2) of Council Regulation 1612/68 as extended by the EEA Agreement or was entitled to treatment by virtue of any other enforceable EU right;

(ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment under a national health insurance system of an EEA State for that condition with any of the drugs listed in sub-paragraph (a); and

(iii) immediately before IP completion day was receiving a course of treatment as part of the health service for the condition mentioned in

(**a**) S.I. 2019/777.
(**b**) S.I. 2004/629; relevant amendments were made by S.I. 2011/1043, 2013/2194 and 2014/1625.

paragraph (ii) of this sub-paragraph with any of the drugs listed in sub-paragraph (a); or";

(b) for sub-paragraph (c) (including the "or" at the end) substitute—

"(c) a man who is not a national of an EEA State but who is the member of the family of such a national and who—

(i) immediately before IP completion day had an enforceable EU right to be treated no less favourably than the national in the provision of medical treatment;

(ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment for that condition with any of the drugs listed in sub-paragraph (a); and

(iii) immediately before IP completion day was receiving a course of treatment as part of the health service for the condition mentioned in paragraph (ii) of this sub-paragraph with any of the drugs listed in sub-paragraph (a); or".".

Revocation of regulation 10

9. Omit regulation 10 (amendment of the National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) Regulations 2004).

Amendment of regulation 15

10. In regulation 15 (cross-border cases arising before exit day), for the words "exit day" wherever they occur (including the heading) substitute "IP completion day".

Revocation of regulations 16 and 17 and Schedules 2 and 3

11. Omit regulations 16 (cases arising during cross-border arrangements) and 17 (savings provision for cases arising during cross-border arrangements) and Schedules 2 (modifications in relation to regulation 16) and 3 (modifications in relation to regulation 17).

Amendment of Schedule 1

12. In Schedule 1 (cross-border cases – modifications in relation to regulation 15)—

(a) for the words "exit day" wherever they occur (including the heading) substitute "IP completion day";

(b) after paragraph 1(b) insert—

"(ba) in section 6A(6), after the second reference to "apply" there were inserted "by virtue of Title III of Part 2 of the withdrawal agreement (co-ordination of social security systems), Title III of Part 2 of the EEA EFTA separation agreement or social security co-ordination provisions of the Swiss citizens' rights agreement (co-ordination of social security systems)";

(bb) after section 6A(11), there were inserted—

"(12) In subsection (6), expressions which are defined in the European Union (Withdrawal Agreement) Act 2020 have the same meaning as they have in that Act."
;

(bc) in section 6BA(9), after "applies" there were inserted "by virtue of Title III of Part 2 of the withdrawal agreement (co-ordination of social security systems), Title III of Part 2 of the EEA EFTA separation agreement or social security co-ordination provisions of the Swiss citizens' rights agreement (co-ordination of social security systems)";

(bd) after section 6BA(15), there were inserted—

"(16) In subsection (9), expressions which are defined in the European Union (Withdrawal Agreement) Act 2020 have the same meaning as they have in that Act." ;";

(c) omit paragraph 1(e);

(d) after paragraph 2(b) insert—

"(ba) in section 6A(6), after the second reference to "apply" there were inserted "by virtue of Title III of Part 2 of the withdrawal agreement (co-ordination of social security systems), Title III of Part 2 of the EEA EFTA separation agreement or social security co-ordination provisions of the Swiss citizens' rights agreement (co-ordination of social security systems)";

(bb) after section 6A(11), there were inserted—

"(12) In subsection (6), expressions which are defined in the European Union (Withdrawal Agreement) Act 2020 have the same meaning as they have in that Act." ;

(bc) in section 6BA(9), after "applies" there were inserted "by virtue of Title III of Part 2 of the withdrawal agreement (co-ordination of social security systems), Title III of Part 2 of the EEA EFTA separation agreement or social security co-ordination provisions of the Swiss citizens' rights agreement (co-ordination of social security systems)";

(bd) after section 6BA(15), there were inserted—

"(16) In subsection (9), expressions which are defined in the European Union (Withdrawal Agreement) Act 2020 have the same meaning as they have in that Act." ;";

(e) omit paragraph 2(c);

(f) after paragraph 5(j) insert—

"(ja) in regulation 13(2) (NHS charges), in paragraph (a) of the definition of "cross-border healthcare service", after "visiting patient", there were inserted "which insofar as it was provided before IP completion day was provided";";

(g) for paragraph 5(l)(iv) substitute—

"(iv) in paragraph (3)(b), for "it is not provided" there were substituted "insofar as the service was provided before IP completion day it was not provided";";

(h) omit paragraph 5(l)(v);

(i) for paragraph 5(m) substitute—

"(m)regulation 16 (review) were omitted;";

(j) for paragraph 6 substitute—

"Modifications to the National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013

6. The NHS Functions Regulations are to be read as if—

(a) regulation 2(1)(a) (interpretation) were omitted;

(c) in regulation 3 (exercise of functions)—

(i) in paragraph (a), for references to "another EEA state" (in both places) there were substituted "an EEA state";

(ii) paragraph (b) were omitted;

(c) in regulation 4 (procedure for applications)—

(i) after paragraph (1)(a) there were inserted "and";

(ii) paragraph (1)(c) and the "and" before it were omitted;

(iii) in paragraph (3)(a), the words "or pursuant to Article 20 or Article 27(3)" were omitted;

(d) in regulation 6(2) (form and content of determination)—

(i) after sub-paragraph (a) there were inserted "or";

(ii) sub-paragraph (c) and the "or" before it were omitted.".

PART 4

Amendment of Northern Ireland Cross-Border Healthcare Regulations

Amendment of the Health Services (Cross-Border Healthcare and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019

13. The Health Services (Cross-Border Healthcare and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019(**a**) are amended as follows.

Amendment of regulations 11, 12 and 16

14. In regulations 11 (saving of Article 14B of the Order of 1972 for pre-exit day cases), 12 (saving of Articles 14D and 14E of the Order of 1972 for pre-exit day cases) and 16 (saving of the 2013 Regulations for pre-exit day cases), for the words "exit day" wherever they occur (including the heading) substitute "IP completion day".

Amendment of Schedule 1

15. In Schedule 1 (modifications to the 2013 Regulations for pre-exit day cases)—

(a) for the words "exit day" wherever they occur (including the heading) substitute "IP completion day";

(b) omit paragraph 1(e).

Revocation of regulations 13 to 15, 17 and 18 and Schedule 2

16. Omit regulations 13 (further saving of Articles 14D and 14E of the Order of 1972: cross-border arrangements) to 15 (the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004), 17 (further saving of the 2013 Regulations: cross-border arrangements) and 18 (Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015) and Schedule 2 (modifications to the 2013 Regulations for cross-border arrangements).

Substitution of regulation 19

17. For regulation 19 substitute—

"The Health and Personal Social Services (General Medical Services Contracts) (Prescription of Drugs Etc) Regulations (Northern Ireland) 2004

19.—(1) The Health and Personal Social Services (General Medical Services Contracts) (Prescription of Drugs Etc) Regulations (Northern Ireland) 2004(**b**) are amended as follows.

(**a**) S.I. 2019/784.

(**b**) S.R. 2004 No. 142; relevant amendments were made by S.R. 2011 No. 327 and 2014 No. 215.

(2) In Schedule 2 (drugs, medicines and other substances that may be ordered only in certain circumstances), in the entry in column 2 of the table relating to patients with erectile dysfunction—

(a) for sub-paragraph (b) (including the "or" at the end) substitute—

"(b) a man who is a national of an EEA State who—

(i) immediately before IP completion day was entitled to treatment by virtue of Article 7(2) of Council Regulation 1612/68 as extended by the EEA Agreement or was entitled to treatment by virtue of any other enforceable EU right;

(ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment under a national health insurance system of an EEA State for that condition with any of the drugs listed in sub-paragraph (a); and

(iii) immediately before IP completion day was receiving a course of treatment for the condition mentioned in paragraph (ii) of this sub-paragraph with any of the drugs listed in sub-paragraph (a); or";

(b) for sub-paragraph (c) (including the "or" at the end) substitute—

"(c) a man who is not a national of an EEA State but who is the member of the family of such a national and who—

(i) immediately before IP completion day had an enforceable EU right to be treated no less favourably than the national in the provision of medical treatment;

(ii) has erectile dysfunction and was on 14th September 1998 receiving a course of treatment for that condition with any of the drugs listed in sub-paragraph (a); and

(iii) immediately before IP completion day was receiving a course of treatment for the condition mentioned in paragraph (ii) of this sub-paragraph with any of the drugs listed in sub-paragraph (a); or".".

PART 5

Consequential amendment

Amendment of the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019

18. In the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019(**a**), omit regulation 3 (functions relating to transitional reciprocal arrangements).

Name
Minister of State
Department of Health and Social Care

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the

(**a**) S.I. 2019/1293.

United Kingdom from the European Union including deficiencies arising from the end of the implementation period and other effects of the withdrawal agreement.

These Regulations are also made in exercise of the powers in the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 (c. 14).

Part 2 amends the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/776) to reflect certain healthcare entitlements in the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement. Regulation 6 omits provisions which would continue on a transitional basis, until 31st December 2020, EU-derived healthcare legislation, namely Regulation (EC) No 883/2004, Regulation (EC) No 987/2009, Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 (as extended by Regulation (EC) No 859/2003).

Part 3 amends the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 (S.I. 2019/777). It substitutes references to exit day with references to IP completion day (which is 11 pm on 31st December 2020). Regulation 11 omits provisions which would continue on a transitional basis, until 31st December 2020, legislation relating to cross-border healthcare in England.

Part 4 amends the Health Services (Cross-Border Healthcare and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/784). It substitutes references to exit day with references to IP completion day, and regulation 16 omits provisions which would continue on a transitional basis, until 31st December 2020, legislation relating to cross-border healthcare in Northern Ireland.

Part 5 makes a miscellaneous consequential amendment.

An impact assessment has not been produced in relation to this instrument. An explanatory memorandum has been published alongside this instrument at www.legislation.gov.uk.

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EXPLANATORY MEMORANDUM TO

THE RECIPROCAL AND CROSS-BORDER HEALTHCARE (AMENDMENT ETC) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care ('DHSC') and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to address deficiencies in retained EU law relating to reciprocal healthcare in the UK and to make related provision.

2.2 This instrument will ensure that the UK statute book will function correctly after the Implementation Period ('IP') and will make savings provisions to protect, so far as possible, certain patients in a transitional situation at the end of the Implementation Period.

2.3 This instrument is made under powers in the European Union (Withdrawal) Act 2018 and the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019.

Explanations

What did any relevant EU law do before exit day?

Reciprocal Healthcare Social Security Coordination

2.4 EU reciprocal healthcare arrangements which will apply until the end of the IP enable people for whose state healthcare costs the UK has responsibility (known as 'UK-insured') to have access to healthcare when they live, study, work, or travel in the EU, EEA and Switzerland (and vice versa for people for whose state healthcare costs those states have responsibility (the 'EU-insured') when in the UK). This includes healthcare for UK state pensioners, posted workers and disabled people living in those states (the 'S1 scheme'), emergency and needs arising healthcare for UK-insured temporary visitors to those states such as tourists and students (the European Healthcare Insurance Card Scheme ('EHIC')) and UK-insured individuals travelling to those states to receive planned treatment (the 'S2 scheme').

2.5 The legal framework for EU reciprocal healthcare arrangements is predominantly set out in wider social security coordination regulations (the 'EU SSC Regulations'):

- Regulation (EC) 883/2004 of the European Parliament and of the Council of 29th April 2004 on the coordination of social security systems;
- Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16th September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems;

- Council Regulation (EEC) No 1408/71 of 14th June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community; and
- Council Regulation (EEC) No 574/724 of 21st March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community.

2.6 The EU SSC Regulations define the UK's and Member States' responsibilities to reimburse healthcare costs when individuals for whom each state is responsible live, work, retire in or visit the EU, EEA and Switzerland. This includes the S1 scheme, EHIC and the S2 scheme.

2.7 The EU SSC Regulations provide that UK nationals working as employed or self-employed persons in the EU, EEA or Switzerland are 'insured' by that state, which is also responsible for their healthcare costs when they visit other countries including the UK. The same applies to EU, EEA and Swiss workers or self-employed persons living in the UK. The legislation generally provides for state-to-state reimbursement and, in some circumstances, direct reimbursement of healthcare costs to individuals.

2.8 The EU SSC Regulations also impose an obligation of equal treatment, which means that individuals visiting or residing in a state of which they are not a national are able to access local state healthcare on the same terms as domestic nationals. Under the EU SSC Regulations, family members are covered in the same way as the insured individual.

Cross-Border Healthcare

2.9 Directive 2011/24/EU of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare (the 'Directive') came into force on 24th April 2011 with a transposition deadline of 25th October 2013. It clarified patients' rights to obtain qualifying healthcare in another European Economic Area ('EEA') Member State and to receive reimbursement from their home healthcare system.

2.10 Reimbursement can be capped at the cost of state-provided treatment in a patient's home healthcare system. Eligible patients can receive reimbursement for qualifying private or state-provided treatments. The obligation to reimburse is limited to treatment which is the same as, or equivalent to, a treatment that would be made available to the person in their home healthcare system i.e. the NHS in relation to the UK. However, this route provides a broader discretion for relevant UK authorities to pre-authorise treatments which may not be available in the UK.

2.11 The Directive rights are separate from reciprocal healthcare arrangements under the EU SSC Regulations. Reimbursement rights under the Directive relate to the fundamental EU principle of the freedom to provide and avail of services, whereas the rights under the EU SSC Regulations relate to the free movement of people. Payments for reciprocal healthcare under the EU SSC Regulations are normally made state-to-state, whereas reimbursements under the Directive route are made to the individual.

2.12 In 2013, the UK Government and Devolved Administrations transposed the Directive into domestic legislation. The National Health Service (Cross-Border Healthcare) Regulations 2013 implemented the majority of the Directive's provisions in England and Wales. Those implementing Regulations made amendments to the National

Health Service Act 2006 and the National Health Service (Wales) Act 2006, as well as secondary legislation. Scotland and Northern Ireland each made equivalent implementing regulations. Gibraltar also made its own arrangements to transpose the Directive.

Why is it being changed?

2.13 The EU SSC Regulations and the domestic legislation transposing the Directive continue to apply in UK law during the IP by virtue of Part 4 of the UK's Withdrawal Agreement with the EU ('the Withdrawal Agreement'), as implemented by the European Union (Withdrawal Agreement) Act 2020. At the end of the IP the EU SSC Regulations and the domestic legislation transposing the Directive will become retained EU law under the European Union (Withdrawal) Act 2018 and will contain deficiencies.

2.14 The Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/776) ('the SSC SI'), the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/777) and the Health Services (Cross-Border Healthcare and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/784) ('the CBD SIs') made changes necessary to remove deficiencies ("deficiency fixes") in, respectively, the EU SSC Regulations and the domestic legislation transposing the Directive in relation to England, Wales and Northern Ireland ('the CBD legislation') as they stood in March 2019. Those changes were prepared as part of the UK Government's preparations for leaving the EU without a deal.

2.15 The SSC SI revokes the reciprocal healthcare aspects of the EU SSC Regulations effective from the end of the IP. The EU SSC Regulations are predicated on membership of the EU. Further, they provide for reciprocal healthcare rights and obligations which cannot operate without the agreement and cooperation of the other state involved.

2.16 The CBD SIs retire current cross-border healthcare rights under the CBD legislation, as maintaining effective access to cross-border healthcare abroad is inoperable without reciprocity.

2.17 The UK left the EU on 31st January 2020 and entered the IP that will last until 31st December 2020. The SSC SI and the CBD SIs will come into force at 11 pm on 31st December 2020.

2.18 The terms of the UK's exit from the EU are set out in the Withdrawal Agreement. Title III of the Withdrawal Agreement provides for the continuation of the reciprocal healthcare aspects of EU SSC Regulations for those who are in scope of the Agreement. It also contains provisions to protect the rights of those who are not in scope of the Withdrawal Agreement in special situations, for example, people who are in a cross-border situation at the end of the IP. These rights derive from the SSC Regulations; they do not include arrangements for transitional access to healthcare under the Directive.

2.19 The deficiency fixes in the SSC SI and the CBD SIs now need to be further amended to reflect the IP and the Withdrawal Agreement.

What will it now do?

2.20 This instrument will amend the deficiency fixes in the SSC SI and the CBD SIs by removing provisions which are redundant in light of the IP and subsequent legislation, updating references to "exit day", and making appropriate transitional provision. It will also update references in NHS legislation to EU forms, to entitlements under EU Treaties and to concepts such as "EU rights".

2.21 This instrument will amend the savings provisions in the CBD SIs which, so far as possible unilaterally, protect patients accessing healthcare under the Directive who are in a transitional situation on exit day. This instrument will update those provisions so that they apply to protect patients who are in a transitional situation at the end of the IP.

2.22 This instrument is intended to support other preparations the UK Government is making with regard to reciprocal healthcare arrangements, and to remedy flaws in the statute book that would exist following the end of the IP.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 The Minister of State for Health considers it appropriate for this instrument to be subject to the affirmative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument varies between provisions.

4. Extent and Territorial Application

4.1 The territorial extent and application of Parts 2, 3, 4 and 5 of this instrument is the same as the territorial extent and application of each enactment being amended. The territorial extent and application of Part 1 is all of the UK.

5. European Convention on Human Rights

5.1 The Minister of State for has made the following statement regarding Human Rights:

"In my view the provisions of the Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The SSC SI and the CBD SIs were made under section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 to fix deficiencies in retained EU law consisting of the EU SSC Regulations and the CBD legislation. Section 8 of the European Union (Withdrawal) Act 2018 gives Ministers the power to remedy any deficiency or mitigate any failure of retained EU law arising from the withdrawal of the UK from the EU.

6.2 The SSC SI and the CBD SIs were prepared for a possible 'no deal' exit and fixed deficiencies in the EU SSC Regulations and the CBD legislation by:

- extinguishing reciprocal health aspects of the EU SSC Regulations and retiring current cross-border healthcare rights under the CBD legislation;

- transitionally preserving the EU SSC Regulations and the CBD legislation in relation to states who agreed to maintain the current arrangements on a reciprocal basis for an interim period until 31st December 2020; and
- transitionally preserving the EU SSC Regulations and the CBD legislation in relation to patients who were in the course of treatment as at exit day or who had applied for authorisation for treatment in the EU/EEA prior to exit day.

6.3 The Government also made the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019 (S.I. 2019/1293) which made provision to implement healthcare arrangements between the UK and EU/EEA Member States/Switzerland ("EU/EFTA") or an international organisation (for example, the EU), after the UK has left the EU.

7. Policy background

What is being done and why?

7.1 Current EU reciprocal healthcare arrangements enable people for whose state healthcare costs the UK has responsibility (known as 'UK-insured') to have access to healthcare when they live, study, work, or travel in the EU, EEA and Switzerland (and vice versa for people for whose state healthcare costs those states have responsibility (the 'EU-insured') when in the UK).

7.2 Under the Withdrawal Agreement, during the IP (until 31st December 2020) there are no changes to reciprocal healthcare access for state pensioners, workers, students, tourists and other visitors, the EHIC scheme, or planned treatment.

7.3 After 31st December 2020, some people will retain full entitlements to reciprocal healthcare. Broadly these groups are:

- UK nationals living and working in the EU/EFTA on 31st December 2020, who will continue to be entitled to Member State-funded healthcare under their domestic rules and a Member State issued EHIC;
- S1 holders (UK state pensioners or people exporting certain UK benefits), resident in the EU/EFTA on 31st December 2020, who will continue to be entitled to UK-funded healthcare, including a UK-issued EHIC;
- EU/EFTA nationals resident in the UK on 31st December 2020, who will continue to be entitled to access the NHS and a UK-issued EHIC.

7.4 The Withdrawal Agreement also protects UK and EU nationals (including UK insured individuals) who find themselves in a 'cross-border situation' over 31st December 2020 (for example someone whose holiday begins before but ends after 31st December 2020). These people will be able to continue to use their EHIC to access 'needs-arising treatment' until they leave that country by travelling to another EU Member State or returning to the UK.

7.5 The Withdrawal Agreement also protects the rights of people visiting the UK or the EU for planned medical treatment (S2 route), where authorisation was requested before or on 31 December 2020. These people are able to commence or complete their treatment. This guarantees that patients will be able to complete a course of treatment and provides certainty to patients.

7.6 The Withdrawal Agreement also provides for protections in a number of other circumstances, such as where a UK national, although not living in the EU on 31st

December 2020, has paid social security contributions in a Member State in the past. The rights that flow from those contributions such as benefits, pension and reciprocal healthcare rights will also be protected. This means someone who has previously worked in an EU/EFTA Member State can apply for a UK S1 (as well as EHIC / S2) once they reach state pension age on the same terms as now.

7.7 This instrument will maintain the provisions of the SSC SI and the CBD SIs that extinguish reciprocal health aspects of the EU SSC Regulations and retire current cross-border healthcare rights under the CBD legislation. These arrangements remain inoperable without reciprocity.

7.8 This instrument will revoke the provisions of the SSC SI and the CBD SIs which transitionally preserve the EU SSC Regulations and the CBD legislation in relation to states who agree to maintain the current arrangements on a reciprocal basis until 31st December 2020. These arrangements will largely become redundant as a consequence of the Withdrawal Agreement which provided for the continuation of the EU SSC Regulations and the CBD legislation during the IP (until 11 pm on 31st December 2020).

7.9 Any future healthcare arrangements with EU/EFTA Member States would be capable of being implemented under the Healthcare (European Economic Area and Switzerland) Act 2019.

7.10 This instrument will also revoke the provisions of the SSC SI which transitionally preserve the SSC Regulations in relation to patients accessing healthcare under the EU SSC Regulations (through the S1, S2 and EHIC routes), namely those who are in the course of treatment as at exit day or who had applied for authorisation for treatment in the EU/EFTA under the current reciprocal healthcare arrangements prior to exit day. The Withdrawal Agreement contains savings provisions in relation to the EU SSC Regulations for the purposes of providing transitional protections for cases arising under those Regulations before the end of the IP.

7.11 This instrument amends the provisions of the CBD SIs which transitionally preserve the CBD legislation in relation to patients who are in the course of treatment as at exit day so that they apply instead in relation to patients who are in the course of treatment as at the end of the IP. Similar changes are made in relation to the provisions of the CBD SIs which transitionally preserve the CBD legislation in relation to patients who had applied for authorisation for treatment in the EU/EEA under the current CBD legislation prior to exit day.

7.12 These provisions seek to protect, so far as possible, key groups of patients in a transitional situation at the end of the IP, irrespective of any reciprocity in place. This covers for example those individuals who obtained authorisation for planned treatment under the CBD legislation before the end of theIP, but have not yet received the treatment and those who accessed healthcare in the EU/EEA prior to the end of the IP, but have not yet completed the treatment or sought reimbursement. This time-limited measure aims to prevent, so far as is possible without reciprocity, a sudden loss of overseas healthcare rights for residents in England, Wales and Northern Ireland. Such transitional protections for cases arising under the CBD legislation before the end of the IP were not included in the Withdrawal Agreement.

7.13 This instrument will also amend provisions in the SSC SI and the CBD SIs which amended references in NHS legislation to:

- "enforceable EU rights" and "enforceable Community rights" by substituting references to those rights as they existed prior to Transition Period end;
- EU forms by inserting references to equivalent forms; this is to reflect the possibility of any post-Transition Period reciprocal healthcare arrangements involving new types of forms;
- entitlements under EU Regulations by substituting a reference to entitlements under (post-Transition Period) healthcare arrangements.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers in section 8 of and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Alongside the European Union (Withdrawal) Act 2018 powers the instrument is also being made under sections 2(1) and (2)(f) and (h) and 7(2) and (3) of the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 to insert references in NHS legislation to forms equivalent to EU forms (to reflect the possibility of post-IP healthcare arrangements involving new types of forms) and to substitute references to EU entitlements with a reference to provision of treatment under (post-IP) healthcare arrangements.

9. Consolidation

9.1 This instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 Reciprocal healthcare arrangements are popular and enjoy broad support from the general public. DHSC has not undertaken a consultation on the instrument but has engaged with relevant stakeholders on its approach to the future of EU reciprocal healthcare arrangements and how these will be operationalised.

10.2 DHSC recognises that aspects of reciprocal healthcare arrangements relate to devolved matters and this instrument contains provision which is within devolved competence. The Devolved Administrations have therefore been consulted at official and ministerial level in accordance with the political commitment which accompanied the European Union (Withdrawal) Act 2018 not to use section 8 powers in relation to devolved matters without the agreement of the relevant Ministers in the Devolved Administrations and in accordance with the requirement for consultation under section 5 of the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019. There has further been an exchange of ministerial letters with Scotland, Wales and Northern Ireland confirming agreement to this instrument.

11. Guidance

11.1 No further guidance is published alongside this instrument.

11.2 Specific guidance for UK nationals in the EU/EFTA and EU/EFTA Citizens in the UK on how to access healthcare is available on www.gov.uk and www.nhs.uk .

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it makes amendments of a technical nature to ensure an updated and functioning statute book and it does not introduce new novel or contentious policy. An Impact Assessment which covers the statutory instruments which are being amended can be found on the legislation gov.uk website under the relevant instruments and an Impact Assessment for the Withdrawal Agreement can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841245/EU_Withdrawal_Agreement_Bill_Impact_Assessment.pdf.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause.

14.2 Insofar as the instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Nancy Panagiotopoulou at the Department of Health and Social Care, telephone: 020 7972 5623 or email: nancy.panagiotopoulou@dhsc.gov.uk can be contacted with any queries regarding this instrument.

15.2 Charlotte Bright, Deputy Director for Reciprocal Healthcare, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Edward Argar MP, Minister of State for Health at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under s. 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s. 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. **Appropriateness statement**

1.1 The Minister of State for Health, Edward Argar MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case because the instrument corrects deficiencies in EU retained law by extinguishing reciprocal health aspects of the EU SSC Regulations and retiring current cross-border healthcare rights under the CBD legislation which are no longer appropriate in the absence of reciprocity.

2. **Good reasons**

2.1 The Minister of State for Health, Edward Argar MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are explained in section 2 of the main body of this explanatory memorandum. the EU SSC Regulations and the CBD legislation will become retained EU law at the end of the IP and will contain deficiencies. If we do not legislate further, some of the amendments made to this retained EU law by the SSC SI and the CBD SIs will become redundant. The CBD SIs will also contain gaps in relation to savings provisions for certain transitional situations arising during the IP. This would create lack of clarity and certainty for patients as to their rights and entitlements. Providing transitional protection to individuals who sought authorisation or started treatment under the CBD legislation before the end of the IP will provide a reasonable period within which they can go on to receive and complete their courses of treatment.

3. **Equalities**

3.1 The Minister of State for Health, Edward Argar MP, has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.".

3.2 The Minister of State for Health, Edward Argar MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Edward Argar, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA VG 2969 20

Dai Lloyd MS
Chair, Health, Social Care and Sport Committee

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee

Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

2 October 2020

Dear Dai, Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the Senedd in respect of:

- **Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020**

as required by Standing Order 30A (SO30A).

I am also writing to inform you that I am not minded to table a motion for a debate about this SI in this instance. I have reached this decision on the basis that this SI is restricted to making corrections to the deficiencies in law that will arise as a result of the UK leaving the EU. The provisions of the SI are technical in nature, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

SO30A provides that any Member may table a motion for a debate on this SI. Given the volume of legislation that the Senedd is considering, I will not myself be seeking to initiate such a debate.

Yours sincerely,

Vaughan Gething

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020**
DATE	**05 October 2020**
BY	**Rebecca Evans MS, Minister for Finance and Trefnydd**

Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020

Policy Overview of the SI

The SI amends three reciprocal healthcare SIs that were made on an England and Wales basis, with the consent of the Welsh Ministers, as part of the corrections exercise for a no-deal EU Exit in 2019 to ensure the statute book continued to function correctly.

There is no policy divergence between the Welsh Government and UK Government in relation to this SI.

The Law which is being amended

- the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019
- the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019
- the Health Services (Cross-Border Healthcare and Miscellaneous Amendments etc) (Northern Ireland) (EU Exit) Regulations 2019
- the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019

The purpose of the amendments

The purpose of the amendments is to ensure the three EU Exit SIs are functional at the end of the Implementation Period and in line with and the European Union (Withdrawal Agreement) Act 2020.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: http://www.legislation.gov.uk/id/ukdsi/2020/9780348212594

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

The SI amends EU Exit SIs relating to reciprocal health to reflect certain healthcare entitlements in the Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement and to make technical changes such as substituting references to 'exit day' to 'IP completion day'. The effect of the amendments is that sections 6A to 6BB of the National Health Service (Wales) Act 2006 is amended for the purposes of transitional arrangements relating to the reimbursement of health care costs to Welsh residents for pre-planned treatment in an EEA state authorised before IP completion date.

The SI has no impact on the Welsh Ministers' executive competence or the Senedd legislative competence. The SI does not involve the transfer of any functions nor does it confer any new functions on the Welsh Ministers.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Although healthcare is devolved, the scope for Wales to implement different policy is limited by a requirement to meet any international obligations entered into by the UK. These would include international healthcare agreements. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility for patients and providers. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

169 - The Reciprocal and Cross Border Healthcare (Amendment etc) (EU Exit) Regulations 2020

Laid in the UK Parliament: 30 September 2020

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 29
SICM under SO 30A (because amends primary legislation)	SICM(5)30
Scrutiny procedure	
Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020 “the 2020 Regulations” were laid before Parliament on 30 September 2020 and have now been laid before the Senedd.

The 2020 Regulations amend the following three reciprocal healthcare EU Exit SIs that were made on an England and Wales basis, relating to reciprocal health to reflect certain healthcare entitlements in the Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement and to make technical changes such as substituting references to ‘exit day’ to ‘IP completion day’:

- the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019
- the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019
- the Health Services (Cross-Border Healthcare and Miscellaneous Amendments etc) (Northern Ireland) (EU Exit) Regulations 2019
- the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019

Specifically, the 2020 Regulations amends the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 ("the 2019 Regulations"). The 2019 Regulations amend the NHS (Wales) Act 2006 for the purposes of transitional arrangements relating to the reimbursement of health care costs to Welsh residents for pre-planned treatment in an EEA state authorised before IP completion date

Legal Advisers agree with the statement laid by the Welsh Government dated 5 October 2020 regarding the effect of these Regulations.

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

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

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The European Union (Withdrawal) Act and Common Frameworks**
DATE	**09 October 2020**
BY	**Jeremy Miles MS, Counsel General and Minister for European Transition**

The European Union (Withdrawal) Act requires the UK Government to report to Parliament periodically on matters relating to Common Frameworks and the use if any made by the UK Government of powers under section 12 of the Act (the so-called 'freezing powers') temporarily to maintain existing EU law limits on devolved competence.

I am notifying Members that the eighth such report was laid in Parliament on 24 September, covering the period 26 March – 25 June 2020. Whereas the report outlines continued positive work on the Common Frameworks, and confirms that the UK Government has not used the 'freezing powers', it does not reflect our deep concern about the impact of the UK Government's Internal Market legislation. As I have made clear to the Senedd in recent weeks, not only is this a heavy-handed piece of legislation which severely undermines three years of collaboration via the Common Frameworks programme; it also proposes that UK ministers be able to fund projects and infrastructure, covering almost all devolved areas and which go far wider than the areas currently covered by EU Structural Funds – without the involvement of Welsh Ministers. This is a serious assault on the devolution settlement and our powers in Wales.

I have written to Chloe Smith, Minister of State for Constitution and Devolution, expressing my disappointment that our views on the Internal Market legislation were not reflected in the report, but noting the commitment to covering the issue in a later edition.

The report can be found here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919783/Eighth_EUWA_and_Common_Frameworks_Report.pdf

The third Annual Frameworks Analysis document, which sets out the latest policy positions on whether a framework policy area will be implemented through a non-legislative mechanism, is linked to forthcoming legislation or is not in need of further action, was published at the same time. The Analysis document can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919729/Frameworks-Analysis-2020.pdf

Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 March to 25 June 2020

The European Union (Withdrawal) Act and Common Frameworks

26 March to 25 June 2020

Presented to Parliament pursuant to paragraph 4 of Schedule 3 to the European Union (Withdrawal) Act 2018

This document is available in large print, audio and braille on request. Please call +44 (0)207 276 1234 or email publiccorrespondence@cabinetoffice.gov.uk.

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Chloe Smith MP Minister of State for Constitution and Devolution

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The Rt Hon Alister Jack MP Secretary of State for Scotland

The Rt Hon Simon Hart MP Secretary of State for Wales

Foreword

Following the UK's exit from the European Union, the UK Government is working jointly with the Scottish Government, the Welsh Government and the Northern Ireland Executive to ensure a common approach is taken where needed on policy areas which intersect with devolved competence by developing UK Common Frameworks. Frameworks are being developed guided by the principles for common frameworks agreed at the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) in October 2017 between the UK Government and Scottish and Welsh Governments. Following the formation of the Northern Ireland Executive, its Executive Committee endorsed the JMC(EN) Common Frameworks principles on 15 June 2020.

The UK Government is required to report to the UK Parliament every three months on the progress made to develop UK Common Frameworks, in line with Schedule 3 to the European Union (Withdrawal) Act 2018. This report details the steps that have been taken during the eighth reporting period, from 26 March 2020 to 25 June 2020. During this period, the UK Government and devolved administrations have continued to work jointly to develop UK Common Frameworks, to protect the UK economy and give maximum certainty to businesses, consumers and our international partners. UK Common Frameworks will ensure regulatory coherence across the UK by flexibly managing any potential policy divergence across the four nations.

This eighth report has been published alongside the publication of the Frameworks Analysis 2020. Together, the publications provide a detailed update on the UK Common Frameworks programme. This report focuses on the progress made by the UK Common Frameworks programme and the path that lies ahead, while the analysis provides a detailed breakdown of areas of EU law that intersect with devolved competence and an explanation on the shape that these frameworks are likely to take.

During this reporting period, the COVID-19 outbreak has placed significant capacity pressures on departments involved in the development of UK Common Frameworks. Each individual framework is developed jointly by policy departments in each administration and different departments have been impacted to varying degrees by the COVID-19 outbreak and the scale of the response required. This has resulted in the development of individual frameworks progressing at varying speeds. This report will detail some of the impacts of the COVID-19 outbreak on the frameworks programme.

The UK Government and devolved administrations have remained committed to progressing the UK Common Frameworks programme, albeit with reduced capacity. The recent pressures mean that it will no longer be possible to deliver the frameworks programme fully by the end of the transition period, and the programme of work will continue into 2021. Officials across the UK Government and the devolved administrations have been working to establish which frameworks can be fully developed by the end of the transition period and which frameworks can be delivered in 2021. The conclusion is that a minority of frameworks should be fully developed by the end of the transition period. The remainder of frameworks should, as a minimum, be confirmed as provisional frameworks by the end of 2020, having been provisionally confirmed by JMC(EN) Ministers, allowing them to be minimally operable

ahead of the remaining development stages being completed in 2021. A detailed account of this work is set out in this report.

During this reporting period, considerable steps have been taken to ensure the transparency of the UK Common Frameworks programme. In addition to the existing plans for stakeholder engagement, the Minister for the Constitution and Devolution has engaged with Parliament on a process to enable parliamentary scrutiny of UK Common Frameworks.

Separate to this reporting period, the UK Government published a White Paper on 16th July, which set out a proposal for how the UK Internal Market should operate following the end of the Transition Period, and launched a public consultation on key aspects of the proposed approach which ran for four weeks. The UK Internal Market Bill was then introduced to the UK Parliament on 9th September. The key focus of the proposal is to enshrine in legislation the principles of mutual recognition and non-discrimination to ensure the status quo of frictionless trade between the four nations. There is ongoing discussion between the UK Government and the devolved administrations as to the interactions between the UK Internal Market and common frameworks, and this will be considered in more detail in a future report.

Implementation of Common Frameworks

1.1. Part 2 of Schedule 3 to the European Union (Withdrawal) Act 2018 requires that a Minister of the Crown report to Parliament at three month intervals on various matters pertaining to common frameworks, and the use of the powers in section 12 of, and Schedule 3 to, the 2018 Act to temporarily maintain the existing EU law limits on devolved competence. Reports are shared with the devolved administrations to enable them to maintain a concurrent level of scrutiny. The last report was published on 20 May 2020 and covered the reporting period 26 December 2019 to 25 March 2019.[1]

1.2. The purpose of these reports is to ensure that the process of developing common frameworks, in collaboration with the devolved administrations, is transparent and subject to robust parliamentary scrutiny.

Principles for common frameworks

1.3. Under the Withdrawal Agreement, EU law will continue to apply to and in the UK during the transition period. Under the devolution settlements, the devolved legislatures and administrations cannot act incompatibly with EU law. The EU laws that are in place create common UK-wide approaches even where those policy areas otherwise fall within devolved competence. The Northern Ireland Executive endorsed the JMC(EN) principles in June 2020, meaning all four administrations across the UK have now agreed that common approaches will continue to be required in some areas now the UK has left the EU.

1.4. In October 2017, the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) agreed upon principles to guide the work to create common frameworks.[2] These principles are set out below:

1. *Common frameworks will be established where they are necessary in order 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 common resources;*
    - *administer and provide access to justice in cases with a cross-border element;*
    - *safeguard the security of the UK.*
2. *Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:*

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886372/TheEuropeanUnion-Withdrawal-ActAndCommonFrameworks.pdf
[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

- *be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;*
- *maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules;*
- *lead to a significant increase in decision-making powers for the devolved administrations.*

3. *Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.*

1.5. These principles continue to guide all discussions between the UK Government and the devolved administrations on common frameworks. Details of how these principles have been taken into account are included in this report, and will be included in future iterations of this publication.

Progress Towards Establishing Future Frameworks

1.6. The following section sets out the steps taken during this reporting period by the UK Government, in collaboration with the devolved administrations, toward implementing long-term common frameworks. It also outlines how the frameworks principles have been taken into account.

1.7. During this reporting period, the COVID-19 outbreak placed significant capacity pressures on officials working across the UK Common Frameworks programme, in both the UK Government and the devolved administrations. While both the UK Government and the devolved administrations remain committed to the programme, it will no longer be possible to deliver all frameworks fully by the end of the transition period, and as a result the programme will be extended into 2021. The UK Government and devolved administrations have conducted significant analysis to determine the priorities and timelines which have been set out in this report.

Frameworks Delivery

1.8. Frameworks will be implemented depending on the requirements of the particular policy area. This may require a combination of legislative and non-legislative measures. The delivery process accounts for the need for frameworks to be implemented in different ways, with some activity undertaken concurrently, to ensure that all of the due process has been completed. As a result, frameworks will be implemented at different points in time, depending on their individual requirements.

1.9. The work to establish common frameworks has five phases. The delivery plan below illustrates how a framework moves through these five phases of development. Each framework moves through this process at a different pace.

- **Phase 1: Principles and proof of concept**: Took place between October 2017 and March 2018 and consisted of engagement between UK Government and devolved administration officials (also referred to as multilateral deep dives) focussing on legislative and key non-legislative frameworks, as well as establishing some of the key interdependencies that affect multiple frameworks.
- **Phase 2: Policy development**: Detailed policy development takes place, including joint work between UK Government and devolved administration officials to agree policy approaches and operational and governance arrangements for each policy area. Initial stakeholder engagement may also take place. This results in a jointly drafted and agreed outline framework. At the end of this phase there is a light-touch, official-level review of the outline framework which has now been streamlined to run in parallel to other steps in Phases 2 and 3.
- **Phase 3: Review and consultation**: Ongoing UK Government and devolved administration collaboration takes place to further develop and finalise policy approaches, explore interactions with cross-cutting workstreams, and agree operational and governance arrangements. Technical engagement takes place with sector-specific stakeholders. Towards the end of Phase 3 an in-depth review and assessment takes place, conducted jointly at official level. This phase results in cross-departmental collective agreement on the policy approach within the UK Government, and provisional confirmation of the framework by members of (JMC(EN)). This in-depth review and joint confirmation ensures that a minimally operable framework, recognised as a 'provisional framework', has been developed.
- **Phase 4: Preparation and implementation**: Upon JMC(EN) ministerial confirmation of a provisional framework, the framework will be shared with all legislatures to enable parliaments to scrutinise should they wish to do so. The provisional framework will be laid before Parliament at this stage of development. UK Government and devolved administration officials will work jointly on any ongoing reappraisals of cross-cutting issues, and review parliamentary recommendations in order to finalise individual frameworks. At the end of this phase, the provisional framework will receive JMC(EN) ministerial approval prior to implementation.
- **Phase 5: Post-implementation**: Post-implementation arrangements will take place. These will vary between frameworks and details continue to be developed as the frameworks programme progresses.

Commitment to transparency

1.10. The UK Government is fully committed to transparency in the UK Common Frameworks programme. The European Union (Withdrawal) Act and Common Frameworks report, detailing programme delivery and individual framework development, will continue to be laid quarterly, as per statutory requirements.

1.11. This eighth report is being published jointly alongside a revised Frameworks Analysis. This third edition of the Analysis provides specific details on the intended

implementation arrangements for each individual framework area, illustrating the ongoing collaborative work between the UK Government and devolved administrations to deliver common frameworks.

1.12. During this reporting period, the Minister for the Constitution and Devolution wrote to senior UK Government Ministers responsible for the delivery of one or more frameworks, and to the Chairs of the UK parliamentary committees, to confirm the arrangements being put in place to allow the UK Parliament to scrutinise provisional frameworks during their development.

Revised delivery plan

1.13. During this reporting period, the COVID-19 outbreak has had an impact on the capacity of the UK Government and devolved administrations to achieve previously anticipated levels of progress within the frameworks programme. Both the UK Government and the devolved administrations remain committed to the development of common frameworks and work has continued where possible, albeit on the basis of reduced capacity overall. These capacity constraints mean that it will no longer be possible to deliver all frameworks fully by the end of the transition period. Recognising these capacity constraints, the process for developing frameworks has been streamlined where appropriate in order to assist with delivery.

1.14. Together with the devolved administrations, the UK Government now expects to deliver, at a minimum, provisional frameworks by the end of the Transition Period. Work will continue during 2020 and into 2021 to further develop frameworks, including undergoing parliamentary scrutiny. A provisional framework is an outline framework and accompanying concordat which has undergone collaborative policy development, testing of policy conclusions, peer review and, where appropriate, external sector-specific engagement. This process will allow frameworks to be provisionally confirmed by JMC(EN) Ministers by the end of December 2020 and therefore ensure they are operational on an interim basis by the end of the transition period.

1.15. Additionally, the UK Government and devolved administrations have jointly assessed the portfolio of frameworks to identify those frameworks which are the highest priority. Particular attention will be given to ensuring the arrangements required for the end of the transition period are established for these priority areas in order to address immediate real world impacts.

Common Frameworks Revised Analysis

1.16. Following on from the publication of the Revised Frameworks Analysis on 4 April 2019, an updated edition of the Frameworks Analysis has been published alongside this report. The Frameworks Analysis 2020 provides an update on the expected implementation arrangements for frameworks, detailing changes that have taken place since the previous analysis. The Frameworks Analysis 2020 publication outlines a reclassification process which has been undertaken by the UK

Government and devolved administrations to reassess implementation arrangements, and details rationales for certain frameworks having moved from non-legislative arrangements to no further action, or from legislative to non-legislative arrangements.

1.17. The publication of the analysis is part of an ongoing dialogue, not a final position. Its conclusions are provisional and discussions with the devolved administrations continue.

1.18. The Frameworks Analysis 2020 can be found online at the following address: https://www.gov.uk/government/publications/frameworks-analysis

Framework Coordination

1.19. Common frameworks are being developed through constructive discussions between the UK Government and devolved administrations. This has continued during the latest reporting period (26 March 2020 to 25 June 2020).

1.20. During this reporting period there were five meetings of the UK Government-Devolved Administrations Frameworks Project Board, involving Cabinet Office senior officials and their counterparts in the devolved administrations. The Project Board provides a forum for monitoring the progress and agreement on the direction of the Frameworks Programme.

1.21. There have been regular Frameworks Project Team meetings between officials in the UK Government and the devolved administrations, where productive collaborative work continues, for example in adapting the frameworks delivery plan for the end of the transition period in response to COVID-19, including establishing minimum requirements for frameworks delivery, streamlining processes for frameworks development; and communications to officials on the delivery plan.

1.22. Multiple meetings have taken place between officials in the Department for Environment, Food and Rural Affairs (DEFRA) and their counterparts in the devolved administrations. These include working group meetings on Animal Health and Welfare, Plant Health, Waste, Chemicals and Pesticides, and Fisheries.

1.23. During this reporting period, Cabinet Office, as programme coordinator, has continued to engage with departments across the UK Government via the monthly Wider Working Group to provide policy leads with updates, discuss barriers and drive progress. The Frameworks Policy Group (FPG) has also met each month to discuss cross cutting issues and barriers. FPG comprises representatives from intergovernmental and devolution teams within Cabinet Office, and also other UK Government departments that handle cross-cutting workstreams such as trade, the UK internal market and the Northern Ireland Protocol.

1.24. In parallel to developing common frameworks, the UK Government has sought to develop a cross-cutting approach to the UK internal market to support the free flow of

goods and services throughout England, Wales, Scotland and Northern Ireland after the end of the Transition Period.

1.25. The UK Government continued during this reporting period to explore the evidence base for the level of economic integration between different nations and across different sectors in the UK, considering relevant international examples.

1.26. Work to establish how frameworks will interact with the negotiation of Free Trade Agreements has also progressed. Discussions have taken place between the UK Government and the devolved administrations and we intend to provide guidance for policy teams so that they can incorporate trade considerations when developing their frameworks.

Framework Development

1.27. The Hazardous Substances (Planning) framework received SG and UKG Ministerial approval for provisional confirmation on 9 and 16 June 2020 respectively, and is proceeding to UKG collective agreement. The Nutrition Labelling, Composition and Standards framework sought UK Government collective agreement and is due to undergo simultaneous agreement by the devolved administrations. Once given JMC(EN) provisional confirmation, these frameworks will proceed to parliamentary scrutiny, for which planning has already begun.

1.28. The Emissions Trading System (ETS) framework continues to make good progress, based on effective UK Government and devolved administration joint working. The ETS framework completed a number of successful joint UK Government and devolved administration workshops during this reporting period to continue to develop the operational and governance aspects of the framework. ETS completed its Phase 3 Review and Assessment panel meeting on 20 May, and UK Government and devolved administration officials are working to ensure that the recommendations following that review are incorporated into the latest version of the ETS outline framework.

1.29. The Radioactive Substances framework has made good progress in recent months, including engaging with sector-specific stakeholders as part of the technical engagement process. Work has begun to prepare for the framework undergoing the review process.

1.30. The Food and Feed Safety and Hygiene (FFSH) framework began preparations for technical stakeholder engagement during this reporting period, taking COVID-19 restrictions into consideration, and supported closely by the Frameworks Project Team. Once stakeholder feedback has been integrated into the outline framework, its Phase 3 Review and Assessment will start.

Programme Development

Review and Consultation

1.31. The UK Government and the devolved administrations had previously agreed a 'Review and Assessment' process for frameworks. This process has been further developed and streamlined to facilitate swift framework progression whilst applying the same amount of rigour and scrutiny.

1.32. The first, streamlined review takes place during Phase 2 and can run in parallel to ongoing policy development. This review is not intended to be a barrier to frameworks moving to Phase 3, but to assess which areas will need further refinement during the next stage.

1.33. Towards the end of Phase 3, a further, more rigorous review will be provided jointly at official level by the UK Government and devolved administrations. Each outline framework, and any associated draft documents such as concordats, will form the basis for a Phase 3 'Review and Assessment' gateway process. This process will address in particular the constitutional and cross-cutting impacts of each framework in order to ensure that the approach taken on these is consistent across the frameworks programme and in line with the principles for common frameworks agreed by JMC(EN).

1.34. Phase 3 Review and Assessment combines a peer review approach, desk based assessment, evidence gathering and interviews, and draws on expertise from both policy and devolution teams.

1.35. The Hazardous Substances (Planning) framework and the Nutrition Labelling, Composition and Standards framework both completed their Phase 3 Review and Assessment process during the previous reporting period. The ETS framework completed its Phase 3 Review and Assessment in May 2020.

Stakeholder engagement

1.36. As part of the commitment to transparency of the common frameworks programme, the UK Government has designed an extensive programme of engagements with legislatures and wider stakeholders. Where appropriate, this engagement is undertaken in collaboration with the devolved administrations. This entails broad engagement on the overall common frameworks programme, as well as technical, sector-specific engagement during the development of each individual framework. The COVID-19 outbreak has impacted heavily on engagement work during this reporting period. Careful consideration of the impact of restrictions on planned engagement took place during this reporting period, and as a result, significantly less engagement took place.

1.37. Further technical engagement for frameworks is being planned to ensure the programme advances. The timing, location and format of engagement will be

arranged in the way most appropriate to the individual framework and group of stakeholders. Engagement opportunities on the overarching programme continue to be scoped.

1.38. In light of restrictions relating to the COVID-19 outbreak, framework policy teams are now encouraged to offer more flexibility in their stakeholder consultations. This is likely to result in reduced in-person consultations, with preference given to both written engagement and/or video conferences. Adjustments to stakeholder engagement should allow for more flexibility in line with current COVID-19 restrictions and guidance, whilst continuing to maintain high quality stakeholder engagement, ensuring transparency of framework development.

1.39. To date, the Hazardous Substances (Planning), Nutrition Health Claims, Emissions Trading System and Radioactive Substances frameworks have completed their technical engagement. Further technical engagement for frameworks is planned and several frameworks are expected to undergo their engagement shortly, in line with the COVID-19 guidance, to ensure the progression of the programme.

Parliamentary engagement

1.40. The UK Government remains committed to transparency of the UK Common Frameworks programme, and keeping the public and Parliament updated. Officials from the UK Government and devolved administrations have previously jointly agreed to a process which enables all legislatures to scrutinise frameworks during their development.

1.41. During this reporting period, the Minister for the Constitution and Devolution (MCD) wrote to UKG senior Ministers responsible for the delivery of one or more frameworks, and to the Chairs of the UK parliamentary committees, to set out details of the process for UK Parliamentary scrutiny of frameworks. Alongside the role of scrutiny in aiding the development of frameworks, the Minister also highlighted that sharing provisional frameworks with parliament is key to the transparency of the frameworks programme. Similar steps have been taken in Scotland and Wales.

1.42. Parliamentary scrutiny will take place after early policy development stages are completed, and JMC(EN) Ministers have approved the provisional framework. The provisional framework will then be shared with legislatures, and formally laid in the UK Parliament. Many frameworks will be shared with committees early next year as the programme continues into 2021. It is likely that the Scottish Parliament and Senedd Cymru elections in 2021 will impact on the overall programme delivery with their committees unable to conduct scrutiny during the pre-election period.

1.43. On 15th June, the Northern Ireland Executive Committee endorsed the UK Common Frameworks principles; as such the Northern Ireland Assembly will scrutinise UK Common Frameworks in line with the UK Parliament, Scottish Parliament and Senedd Cymru.

1.44. Cabinet Office officials attended an official-level meeting of the Interparliamentary Forum on Brexit on 15 June, where parliamentary officials from across the four UK legislatures received updates on the progress of UK Common Frameworks.

Northern Ireland and I/NI Protocol

1.45. The JMC (EN) 16 October 2017 principles for common frameworks state that frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.

1.46. The Protocol on Ireland/Northern Ireland ('the Protocol') to the Withdrawal Agreement, including the Unilateral Declaration on Consent made by the UK Government, avoids a hard border on the island of Ireland, whilst ensuring that the UK, including Northern Ireland, could leave the EU as a whole. As long as the Protocol is in force, special provisions apply in Northern Ireland. These include (but are not exhausted by) Northern Ireland remaining within the UK's customs territory but aligning with the EU on goods (including certain laws for VAT on goods), and EU tariffs applying in Northern Ireland except for movements within the single customs territory of the UK.

1.47. In the absence of the Northern Ireland Executive up to 11 January 2020, the Northern Ireland Civil Service contributed to the common frameworks programme on a strictly analytical and factual basis and without prejudice to the views of future Northern Ireland Executive Ministers.

1.48. The Northern Ireland Executive endorsed the JMC(EN) principles on 15 June 2020, enabling the development of common frameworks where they intersect with the devolved competence of the Northern Ireland Assembly and the Northern Ireland Executive.

Legislation Relating to Retained EU Law Restrictions

2.1. Section 12 of the European Union (Withdrawal) Act 2018 removes the current requirements in each of the devolution statutes that the devolved legislatures can only legislate in ways that are compatible with EU law. The Act then replaces those requirements with powers for the UK Government to apply, by regulations, a temporary 'freeze' on devolved competence in specified areas, subject to the approval of the UK Parliament, via the draft affirmative scrutiny procedure.

2.2. The process for making, agreeing and revoking these regulations can be found in the first European Union (Withdrawal) Act and Common Frameworks report.

Regulations to 'Freeze' Devolved Competence

Retained EU law restrictions applied during reporting period

2.3. No regulations have been made to apply retained EU law restrictions under these powers during the reporting period.

Progress towards removal of retained EU law restrictions

2.4. No retained EU law restrictions made under the powers in sections 30A and 57(4) of the Scotland Act 1998, sections 80(8) and 109A of the Government of Wales Act 2006, or sections 6A and 24(3) of the Northern Ireland Act 1998 had effect at the end the reporting period.

Regulations to Repeal the 'Freezing' Powers

2.5. In addition to the 'freezing' powers inserted into the devolution statutes by the European Union (Withdrawal) Act, section 12(9) confers a power on UK Ministers to repeal, by regulations, the new provisions containing those powers.

Powers to apply retained EU law restrictions repealed during reporting period

2.6. No regulations have been made under section 12(9) of the European Union (Withdrawal) Act to repeal the powers to apply retained EU law restrictions during the reporting period.

Progress required in order to repeal the powers to apply retained EU law restrictions

2.7. The UK Government has not sought to make use of the powers to apply retained EU law restrictions at this juncture. As outlined earlier in this report, significant progress is being made across policy areas to establish common frameworks in collaboration with the devolved administrations.

2.8. The 'freezing' powers provide a mechanism to give certainty across those areas where common rules do need to be maintained, by ensuring that there will not be substantive policy change in different parts of the UK until those future arrangements are in place. In order to remove those powers from the statute book, further progress towards the implementation of common frameworks would be needed. The UK Government will keep this position under review, in line with the statutory duty in section 12(10) of the European Union (Withdrawal) Act.

Frameworks Analysis 2020

Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland

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Contents

A Collaborative Approach to Common Frameworks

When the UK left the EU on 31 January 2020, it entered a transition period in which the UK is no longer a member of the EU but continues to be subject to EU rules and remains a member of the single market and customs union. Once the transition period ends on 31 December 2020, powers previously exercised at EU level that intersect with devolved competence will flow directly to Edinburgh, Cardiff and Belfast. In some areas, outlined in this document, the UK Government and the devolved administrations agree it will be necessary to maintain UK-wide approaches, or common frameworks, now that we have left the EU.

A UK common framework is an agreed common approach to policy areas that are currently governed by EU law (until the end of the transition period), and intersect with areas of devolved competence. Common frameworks will ensure that coherent approaches to regulation are maintained across the UK at the end of the transition period. They will also enable the UK Government and the devolved administrations of Scotland, Wales and Northern Ireland to make different choices on how to implement the rules in some of these policy areas.

A framework may allow for intra-UK policy divergence so that each administration can make decisions on the appropriate approach for its jurisdiction, but may also facilitate consistent approaches among administrations, where administrations have determined that such consistency will be of benefit to citizens and/or businesses.

Principles for Common Frameworks

In October 2017, the Joint Ministerial Committee (European Negotiations) (JMC(EN)) agreed upon principles to guide the work to create common frameworks[1]. These principles are set out below:

1. *Common frameworks will be established where they are necessary in order 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;*

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

- *enable the management of common resources;*
- *administer and provide access to justice in cases with a cross-border element;*
- *safeguard the security of the UK.*

2. *Common frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:*
    - *be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;*
    - *maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules;*
    - *lead to a significant increase in decision-making powers for the devolved administrations.*

3. *Common frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.*

These principles continue to guide all discussions between the UK Government and the devolved administrations on common frameworks. Subsequently, to its restoration, the Northern Ireland Executive has signed up to the common frameworks programme and its principles.

Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland

This analysis sets out each of the 154 areas of EU law that intersect with devolved competence in one or more devolved administration. As the devolution settlements are asymmetrical, a different range of powers is relevant to Scotland, Wales and Northern Ireland.

This analysis is the third iteration of the working documents that were published on 9 March 2018[2] and 4 April 2019[3] and sets out the latest policy positions on whether a framework policy area will be implemented through a non-legislative mechanism, is linked to forthcoming legislation or is not in need of further action. This analysis includes the reclassification of 55 policy areas and further detail on the shape that some of these frameworks might take. The analysis sets out:

115 policy areas where no further action to create a common framework is required, and the UK Government and devolved administrations will continue to cooperate. Policy areas in this category remain open for review. If a requirement for new implementing arrangements is identified, frameworks in the no further action category could be moved to the legislative or non-legislative categories and as such, numbers would be subject to change.

22 policy areas where we consider that common rules or ways of working will be needed, and we expect to implement this through a non-legislative common framework agreement. In some of these areas, consistent fixes to retained EU law (made using secondary legislation) will create a unified body of UK law alongside the non-legislative framework agreement.

18 policy areas where new primary legislation may be required (or has been put in place) in whole or in part, to implement common rules and ways of working, alongside a non-legislative framework agreement and - potentially - a consistent approach to retained EU law.

In total there are 40 active framework areas (18 legislative, and 22 non-legislative).

In some instances, policy areas include a mixture of reserved and devolved competence, including where technical standards that derive from EU law are relevant. These policy areas are marked with an asterisk. The analysis also includes 4 policy areas that the UK Government believes are reserved; which are subject to ongoing discussion with the devolved administrations.

All positions are set out without prejudice to the outcome of negotiations with the European Union. They are also subject to the need to find practical solutions that respect the unique economic, social and political context of the land border between Northern Ireland and Ireland. The Ireland and Northern Ireland Protocol is designed to avoid a hard border on the island of Ireland, with the core aim of preserving and strengthening Northern Ireland's place in our United Kingdom, and of protecting the huge gains from the peace process and the Belfast (Good

[2] 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

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792738/20190404-FrameworksAnalysis.pdf

Friday) Agreement 1998. The Government's approach to frameworks will fully support this solution, and in this regard, it will be designed in full accordance with the 1998 Agreement in all its parts.

Changes since April 2019

Progress since the publication of the Revised Frameworks Analysis 2019 has been set out publicly in five statutory reports to Parliament on the EU (Withdrawal) Act and Common Frameworks, as well as in a publication in June 2019, providing an update on progress in common frameworks, which included an illustration of the delivery process and an example outline framework for Hazardous Substances (Planning).

Ongoing constructive, collaborative work between the UK Government and the devolved administrations has progressed our understanding of where common frameworks will be required and how we think they will be implemented. Accordingly, this third iteration of the Common Frameworks Analysis provides a snapshot of how the categorisation of policy areas is evolving in light of this programme of work. It remains part of an ongoing dialogue that will continue to develop as work continues.

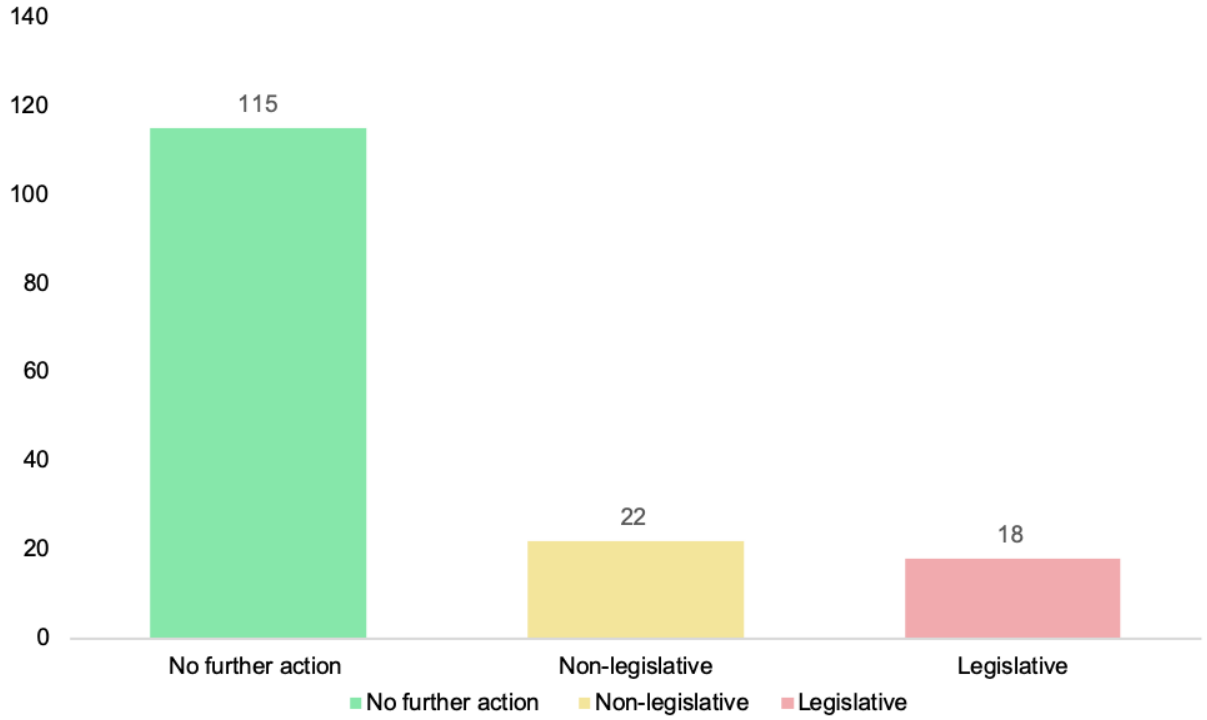
This analysis sets out a number of changes. The descriptors for each category have been refined to provide a more accurate picture of the way in which common frameworks will be implemented. For example, it acknowledges that in some areas, the primary legislation required to implement a framework may already be in place.

The overall number of framework policy areas has decreased from 160 to 154. This is not due to frameworks being removed from the programme, but instead is due to some policy areas being merged into a single framework, for instance, *animal health and traceability* and *animal welfare* have been combined into a single framework covering animal health and welfare. These changes are set out in the table under the section '*Combining frameworks and name changes*' below. These mergers allow the frameworks programme to better reflect the reality of how frameworks will operate.

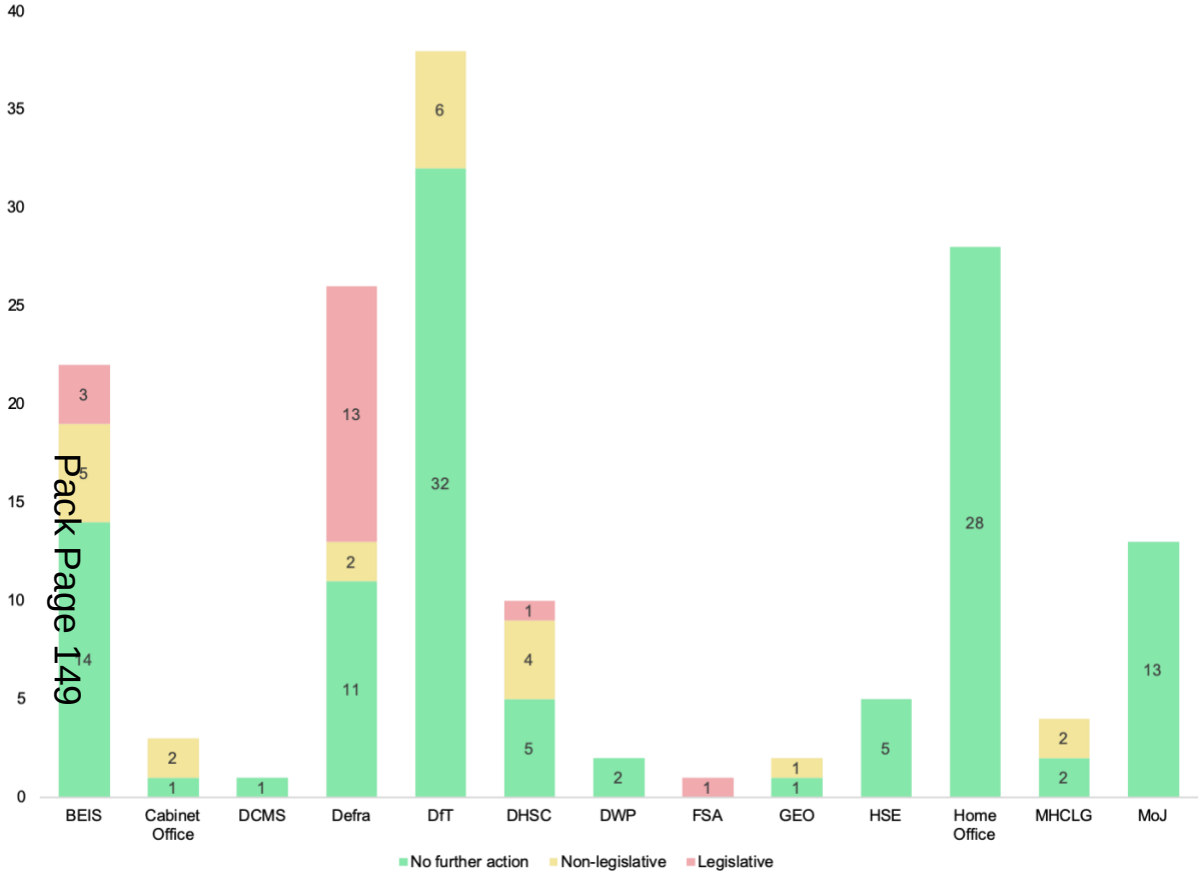
The number of policy areas in category 1 has increased from 63 to 115. These are the policy areas where no further action is required to create a common framework and parties will continue to cooperate.

The number of policy areas in category 2 has decreased from 78 to 22. This is largely due to collaborative work between the UK Government and devolved administrations leading to the shared understanding that no further action is required to create frameworks in several areas.

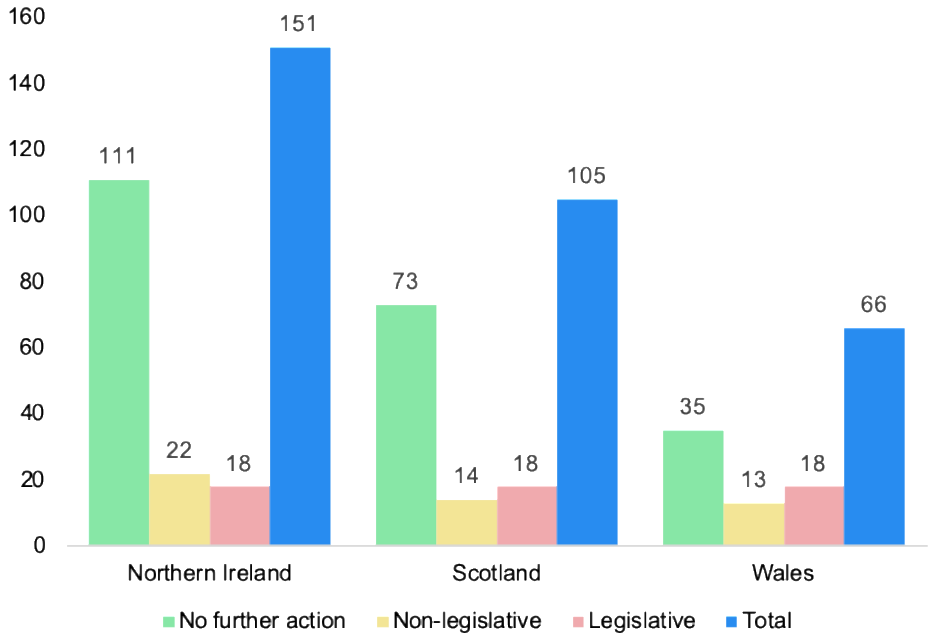
The number of policy areas in category 3 has also decreased from 21 to 18. The reduction in numbers from 21 (in 2019) down to 18 is due to several framework areas in this category being combined (see table on page 12).



Total number of frameworks by categories



Number of frameworks by Department



Devolution intersects with Northern Ireland, Scotland and Wales

Reclassification process and background

Reclassification of frameworks from non-legislative (category 2) to no further action (category 1)

Following their initial policy development between the Revised Frameworks Analysis published in 2019 and the Frameworks Analysis 2020, 55 policy areas were moved from category 2 (non-legislative) to category 1 (no further action). In these cases, it was identified that current working arrangements would be sufficient in the operation of the framework.

Following further policy development and analysis UKG-DA policy teams identified that there was no need to develop a framework for certain policy areas.

Once UK Government and devolved administration policy teams identified that a non-legislative framework was no longer required in their area, a set of 'reclassification review' questions was commissioned in order to test this assumption against the principles for common frameworks agreed at JMC(EN), and against any previous statements or communications made by policy teams. Policy teams' responses to these questions were reviewed and agreed by the joint UK Government-devolved administration Common Frameworks Project Board.

The reclassification rationales returned by policy teams included:

- A brief outline on whether there are any new intergovernmental arrangements required to manage the risks posed by divergence in this policy area.
- A confirmation that the decision not to proceed with a framework has been discussed and jointly agreed by frameworks policy teams in all four administrations.
- An assessment of whether the absence of a framework would pose any risk to any of the JMC(EN) Common Frameworks Principles.
- An explanation of how continued cooperation in the policy area will be monitored and maintained post EU-Exit.

Framework areas were moved to ‘no further action’ in cases where divergence between administrations was not planned or expected, or where pre-existing arrangements for ensuring regulatory coherence were deemed to be sufficient. These include formally agreed bi-annual or quarterly governance meetings with representatives from all relevant countries or Memorandums of Understanding (MoU); for example, for the *Civil Explosives* (HSE) policy area the UK Government continues to work under existing MoUs with the Department of Justice (in the Northern Ireland Executive) and the Northern Ireland Office. In some cases, a framework is not required as continued cooperation between all four administrations is ensured by other means, for example, for the policy area *Medicine Prices* (DHSC) (a framework with a devolution intersect with Northern Ireland only) cooperation continues with governance meetings being held quarterly in which the devolved administrations are involved and contribute.

All policy areas in the no further action category remain open for review. If a requirement for new implementing arrangements is identified, frameworks in the no further action category could be moved to the legislative or non-legislative categories.

Reclassification of frameworks from legislative (category 3) to non-legislative (category 2)

Prior to the publication of the Revised Frameworks Analysis in 2019, three frameworks moved from category 3 (legislative) to category 2 (non-legislative). These were Hazardous Substances, Nutrition and Public Procurement.

Further policy development in the remaining 18 legislative areas is currently being undertaken to identify for which category 3 policy areas new primary legislation will be required to implement the framework. The reduction in numbers from 21 (in 2019) down to 18 is due to several framework areas in this category being combined (see table on page 12).

The individual implementation methods of each framework were decided by policy teams, with portfolio ministerial steers and approval as necessary. Agreement has also been sought by all four administrations’ central framework teams.

Definitions of the legislative and non-legislative categories

Legislative frameworks

In order to determine whether a framework is legislative, policy teams assess whether or not there is a clear link to new primary legislation being developed that is essential to give effect to at least some governance elements of the framework, or the policy environment in which the framework will operate, including determining and supplying the subject matter of the framework.

The primary legislation, which is the mark of the legislative category, is limited to primary legislation currently being developed, or anticipated to be developed, by the end of the Transition Period in December 2020 (for example *Fisheries Management and Support*).

Any decisions to create legislative frameworks would be taken jointly by the UK Government and devolved administrations.

Non-legislative frameworks

A non-legislative framework requires no new primary legislation to give effect to the governance arrangements for the framework or the policy environment in which it operates. Non-legislative frameworks may rely on secondary legislation, including retained EU legislation as amended by fixing SIs, but this does not constitute a legislative framework.

Non-legislative frameworks can be implemented through a number of instruments; this would typically be through the development of a new and bespoke concordat, although for less complex frameworks this could be in the form of an exchange of ministerial letters or an update to an existing concordat.

The reclassification rationales returned by policy teams included;

- A rationale for why a non-legislative approach is more appropriate than using primary legislation in this policy area and which form of non-legislative arrangement is currently envisaged for this framework.
- A confirmation that the decision has been discussed and jointly agreed by the UKG-DA policy team.
- A statement on whether other government departments with a potential interest in this framework have been consulted on this policy change.
- Answers to whether the absence of a legislative framework would pose any risk to any of the JMC(EN) Common Frameworks

Principles.

Framework areas were reclassified as non-legislative in cases where officials from UKG and the devolved administrations agreed that a non-legislative vehicle such as a concordat was sufficient to ensure the framework's operability. In some cases, the framework is intended to put in place shared ways of working between the four administrations and their arms lengths bodies to drive common approaches in policy areas where decision-making powers have flowed back from the EU.

Combining and splitting frameworks and name changes

Since the last publication of the revised Frameworks Analysis 2019 the following framework areas have been combined, split or re-named:

Department	Previous Framework(s)	Current Framework(s)
BEIS	High efficiency cogeneration / Combined Heat and Power (CHP)	Efficiency in energy use and High efficiency cogeneration / Combined Heat and Power (EED/CHP)
	Efficiency in energy use	
DEFRA	Animal health and traceability	Animal health and welfare
	Animal welfare	
DEFRA	Air Quality	Air Quality
		Best Available Techniques
DEFRA	Chemicals	Chemicals and Pesticides
	Chemicals Regulation (including pesticides)	

	Pesticides	
DEFRA	Food compositional standards	Food compositional standards and labelling
	Food labelling	
DEFRA	Plant health, seeds and propagating material	Plant health
		Plant varieties and seeds
DEFRA	Waste packaging and product regulations	Resources and Waste
	Waste management	
DfT	Compulsory (3rd Party) Motor Insurance - as per Part VI Road Traffic Act 1988	Roads - Motor Insurance
DfT	Access for non-UK hauliers and passenger transport operations, plus combined transport.	Commercial Transport
DHSC	Reciprocal Healthcare	Reciprocal and cross-border healthcare
	Implementation of cross-border healthcare rights	
DHSC	Organs	Organs, tissues and cells
	Tissues and cells	

These changes have been decided by the policy teams to ensure that frameworks correctly reflect the reality of relevant policy areas.

Once policy teams identified that framework areas should be merged, they were commissioned to provide a short rationale for these changes in order to test this assumption against the principles for common frameworks agreed at JMC(EN), and against any previous statements or communications made by policy teams. Policy teams' returns were reviewed and agreed by the Common Frameworks Project Board.

Where framework areas have been combined they will be covered by the same concordat and/ or non-legislative or legislative framework.

Frameworks were merged in cases where the policy areas are intertwined and hence managed as a single policy area in practice, and/or where there was no clear benefit in having separate frameworks. Merging these areas will reflect the collaboration that is already taking place and existing governance arrangements. There are also areas where strong commonalities or similar process-flows apply, or where a shared regulator exists.

Framework areas overview

Category 1: "No Further Action" areas

115 Policy areas where no further action is required to create a framework, and the UK Government and devolved administrations will continue to cooperate.

Responsible UK Government Department	Area of EU Law	Devolution Intersect[4]			Additional Information - what the EU law does
		NI	S	W	
BEIS	**Consumer law including protection and enforcement**	x			A body of law providing rights and protections for consumers consisting of principles-based, enforcement and sector-specific legislation, including Unfair Contract Terms (93/13/EC), Consumer Rights (2011/83/EC), Unfair Commercial Practices (2005/29/EC), and a cross-border Consumer Protection Cooperation Regulation (EC 2006/2004).
BEIS	**Carbon capture and storage**	x*	x*	x*	Directive 2009/31/EC on the geological storage of CO2 establishes a legal framework for the environmentally safe geological storage of CO2 to contribute to combating climate change.
BEIS	**Elements of Employment law**	x			Employment law is not an exclusive EU competence but there are a number of directives concerning individual and collective rights implemented in UK law, including the Working Time Directive 2003/88/EC and Pregnant [4]Workers Directive 1992/85/EEC. EU law sets the minimum standards and Member States (and DAs, where competence is devolved) may legislate freely above this level.

[4] Policy areas marked with an asterisk include a mixture of reserved and devolved competence, including where technical standards that derive from EU law are relevant.

BEIS	**Environmental law concerning energy industries**	x*	x*	x*	EU legislation contains rules and environmental standards relevant to offshore oil and gas exploration and production, offshore gas unloading and storage, and offshore carbon dioxide storage activities.
BEIS	**Heat metering and billing information**	x	x*		Energy Efficiency Directive 2012/27/EU sets duties for heat suppliers in respect of installing and maintaining heat metering devices and billing, minimum requirements for billing information, and determination of cost effectiveness and technical feasibility.
BEIS	**Energy Efficiency Directive and High efficiency cogeneration / Combined Heat and Power (EED/CHP)**	x*	x*	x*	The Energy Efficiency Directive (2012/27/EU) sets energy efficiency targets and other requirements to encourage and improve energy efficiency. Measures that promote the use of high-efficiency cogeneration (Combined Heat and Power) in order to increase the energy efficiency and improve the security of energy supply (Energy Efficiency Directive 2012/27/EU).
BEIS	**Internal energy market / Third Energy Package**	x			Package of legislation on the development of the internal energy market, particularly cross-border trading.
BEIS	**Onshore Hydrocarbon licensing**	x	x	x	Directive 94/22/EEC sets the conditions for tendering and determining applications for hydrocarbon licenses and imposes restrictions on the terms which may be included in licences and their extension.

Responsible UKG Dept.	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
BEIS	**Renewable Energy Directive**	x*	x*	x*	The Renewable Energy Directive (2009/28/EC) places a 15% renewable energy target, and a 10% renewable energy sub target for the transport sector on the UK. The Directive sets out a number of other measures and frameworks to support the production and promotion of energy from renewable sources.
BEIS	**Security of supply (emergency stocks of oil)**	x*			Directive 2009/119/EC obligates Member States to maintain emergency stocks of crude oil and petroleum products.
BEIS	**Security of supply (gas)**	x			Regulations concerning the security of gas supply, preventing potential supply disruptions and supporting a response to them should they occur. The regulations also create common standards to measure serious threats and define how much gas is needed to be able to supply households and vulnerable consumers.
BEIS	**Environmental law concerning energy planning consents**	x*		x*	Directives set out provisions for Environmental Impact Assessments for generating stations and overhead lines (85/337/EEC, 97/11/EC, 2003/35/EC, 2009/31/EC, 2011/92/EU and 2014/52/EU).
BEIS	**Transport of dangerous goods and transportable pressure equipment - Class 7 only**	x			Regulation establishes a common regime for all aspects of the transport of radiological (Class 7) dangerous goods, by road, rail, and inland waterway, subject to some national derogations. It links to the Euratom legislation Directive 2008/68/EC on the inland transport of dangerous goods.

BEIS	**GEO-Blocking**	x*	x*	x*	Regulation prohibits blocking or redirecting users away from versions of websites available to other EU nationals. It therefore prohibits discriminatory terms of access on the basis of location in EU when purchasing distance goods, wholly online services, and services tied to a specific location (some exceptions apply), as well as discrimination based on place of issue of the payment method.
Cabinet Office	**Voting rights and candidacy rules for EU citizens in local government elections**		x	x	Article 20(2)(b) TFEU, Article 22 TFEU sets out that all parts of the UK must allow EU citizens the right to vote and stand in local government elections. In England and Wales local elections also include Police and Crime Commissioner elections, mayoral elections and combined authority mayoral elections. This is set out in detail in UK legislation, specifically in Section 4 of the Representation of the People Act 1983.
DCMS	**The Rental and Lending Directive (concerning public library lending)**	x			The lending articles of this Directive give rightholders the right to allow or to prohibit the lending of their work. The Directive also allows Member States to derogate from the lending right in respect of public lending, provided that at least the author obtains remuneration.
DEFRA	**Biodiversity - Access and Benefit Sharing of Genetic Resources (ABS)**	x	x	x	Rules set up under the Nagoya Protocol to help preserve biodiversity regulate access to the genetic resources of other countries and how the benefits from research and development using these resources are shared with the provider country. Implemented into EU Law under Regulation (EU) No 511/2014 with Regulation (EU) 2015/1866 providing implementation for register of collections, monitoring user compliance and best practices.
DEFRA	**Flood Risk Management**	x	x	x	These policies and regulations (primarily the EU Floods Directive) aim to reduce the risks to people, properties and infrastructure from flooding and coastal erosion.

Responsible UKG Dept.	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
DEFRA	**Management of Waste from Extractive Industries**	x*	x*	x*	The Directive is concerned with the management of waste from extractive (mining) industries. Specific EU Directives 2006/21/EC and the three Seveso-Directives (82/501/EEC, 96/82/EC, 2012/18/EU) relating to the disposal of waste and overlapping safety of operations. Interaction with UNECE workshops in providing best practice guidance and Eurasian standards. Further interactions based on industry specific circumstances e.g. Water Framework Directive 2000/60/EC. Directive 2011/92/EU outlines future operational planning under Environmental Impact Assessments.
DEFRA	**Marine Environment**	x	x	x	Rules relating to management and protection of, but not limited to, marine pollution, litter, biodiversity, food webs and seafloor integrity. Implemented under Directives 2008/56/EC, 2017/845/EU with reference to the OSPAR Convention between the governments of North-East Atlantic.
DEFRA	**Natural Environment and Biodiversity**	x*	x*	x*	Policies and common standards covering the conservation of the UK's terrestrial, freshwater and marine species and habitats in compliance with international obligations such as the Convention on Biological Diversity. This is joined by EU Regulations (EU) No 1143/2014, (EU) No 1143/2014, and (EEC) No 3254/91 and Directives 2009/147/EC, 92/43/EEC, 1999/22/EC, and 83/129/EEC. This particularly concerns the network of sites which currently form part of the EU's Natura 2000 (N2K) network.
DEFRA	**Spatial Data Infrastructure Standards**	x	x	x	EU INSPIRE system under Directive 2007/2/EC that ensures a harmonised approach to spatial data publishing to improve environmental reporting.
DEFRA	**Water Quality**	x	x	x	These policies and regulations (primarily the EU Water Framework Directive and the EU Drinking Water Directive) aim to improve the ecological and chemical status of the UK's rivers, lakes, estuaries, coastal waters and groundwater, and provide safe, quality drinking water.
DEFRA	**Water Resources**	x	x	x	These policies and regulations cover the provision of sustainable, safe and affordable water supplies for households, businesses, energy production and agriculture.
DEFRA	**Land use**	x*	x*	x*	Elements of Environmental Impact Assessment Directive and Strategic Environmental Assessment Directive cover rural land use.

DEFRA	**Forestry (domestic)**	x*	x*	x*	These policies and regulations cover timber production and woodland management, including EU Environmental Impact Assessment.
DEFRA	**Noise directives**	x	x	x	The Directive is concerned with noise mapping and action planning and does not address trade or cross-border issues.
DfT	**Airport charges**	x			Relating to Directive 2009/12/EC on airport charges.
DfT	**Air Passenger Rights**	x*			Regulation 1107/2006 imposes certain obligations on airports in respect of passengers with disabilities and reduced mobility (specifically Articles 5-9)
DfT	**Aviation - compensating PSO air routes**		x*	x	Relating to regulation (EC) 1008/2008 on the Operation of Air Services (Articles 16-18).
DfT	**Aviation - groundhandling at airports**	x			Relating to Directive 96/67/EC on access to the groundhandling market at certain airports.
DfT	**Aviation noise management at airports**	x*			Regulation 598/2014, establishing rules and procedures with regard to the introduction of noise-related operating restrictions at airports within a balanced approach.
DfT	**Aviation Slots**	x			Regulation 95/93 on common rules for the allocation of slots at airports.
DfT	**Bus Franchising rules**	x	x	x	Regulation (EC) 1370/2007 as amended by 2016/2338 relating to the way in which competent authorities are able to award public passenger services contracts.
DfT	**Cableways**	x			EU Regulation 2016/424 on cableway installations and repealing Directive 2000/9/EC relating to cableway installations designed to carry persons.
DfT	**Driver hours and tachographs**	x			Regulations around working hours and break requirements for commercial vehicle drivers and requirements for the installation and use of tachograph devices to record driver activities (EU regulations 561/2006 and 165/2014). Also, mobile road transport working time rules (Directive 2002/15/EC).
DfT	**Electronic road toll systems**	x	x	x	Directive 2004/52/EC on interoperability of electronic road toll systems and EU Regulation 219/2009.

Responsible UKG Dept.	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
DfT	**Elements of harbours (marine environment issues)**	x	x*	x*	Directive 2011/92 amended by Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment.
DfT	**Maritime - public service contracts/obligations, and financial assistance for shipping services which both start and finish within Scotland/to, from and within Wales**		x	x	Regulation 3577/92 that applies the principle of freedom to services to provide cabotage maritime transport.
DfT	**Maritime – ports services and port reception facilities, including for ship-generated waste**	x*	x*	x*	Regulation 2017/352 that establishes a framework for the provision of port services and common rules on the financial transparency of ports. Directive 2000/59 contains a mix of competence and is relevant here insofar as it relates to harbours only.

DfT	**Maritime Employment and Social Rights**	x			Directives and Regulations relating to employment, social rights and health and safety for seafarers on ships. These rules cover, inter alia, coordination of social security systems, and the minimum safety and health requirements for improved medical treatment on board vessels.
DfT	**Passenger rights (rail)**	x			Regulation (1071/2009) establishing common rules for the licensing of commercial goods and passenger transport operators.
DfT	**Rail franchising rules - insofar as they do not relate to state aid rules**	x			Regulation (EC) 1370/2007 as amended by 2016/2338 relating to the way in which competent authorities are able to award public passenger services contracts.
DfT	**Rail markets and operator licensing (governance, structure, track access & charging)**	x*			Directive 2012/34/EU, to be amended by Directive 2016/2370/EU (both part of the market pillar of the 4th railway package) which recasts a number of EU Directives and establishes a single European railway area with common rules on: the governance of railway undertakings and infrastructure managers, infrastructure financing and charging, conditions of access to railway infrastructure and services and regulatory oversight of the rail market.
DfT	**Rail markets - train driving licenses and other certificates**	x			Directives 2007/59/EC and 2014/82/EU on train driving licensing rules, setting out the conditions and procedures for the licensing and certification of train drivers operating in the EU.
DfT	**Rail safety**	x			Directive 2004/49/EC on safety on the Community's railways and amending Council Directive 95/18/EC (which will be replaced by Directive 2016/798 in June 2019 or 2020 - technical pillar of 4th railway package) along with relevant Regulations and Decisions.
DfT	**Rail Workers Rights Directive**	x			Directive 2005/47/EC on the agreement between the social partners on working conditions of mobile workers engaged in cross-border rail services, supplementing the Working Time Directive (Directive 1993/104/EC).

Responsible UKG Dept.	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
DfT	**Retrofitting of HGV mirrors**	x			Directive 2007/38/EC on the retrofitting of mirrors to registered heavy goods vehicles.
DfT	**Road infrastructure safety management**	x	x	x	Directive 2008/96/EC on the support of road infrastructure safety management.
DfT	**Use of goods vehicles hired without drivers**	x			Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road.
DfT	**Charging of HGVs**	x*	x*	x*	Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures.
DfT	**Coach and bus services**	x			Regulation 181/2011 that set out the rights of passengers on bus and coach transport.
DfT	**Roadworthiness Directive**	x			Rules (directives 2014/45/EC and 2014/47/EC) relating to roadworthiness tests for motor vehicles and their trailers, plus associated inspections.
DfT	**Speed limitation devices**	x			Directive 1992/6/EEC on the installation and use of speed limitation devices for certain categories of motor vehicles (amended by Directive 2002/85/EEC).
DfT	**Driver CPC (certificates of professional competence)**	x			Directive 2003/56/EC - transposed by SI 2007/605 - CPC is a condition of access to EU27 under ECMT permit system and likely to be a condition of negotiated agreements with EEA states.

DfT	**Mutual recognition of qualifications (but not CPC) (relates specifically to recognition of drivers' qualifications)**	x			Directive 2005/36/EC on the recognition of professional qualifications.
DfT	**Safety specifications**	x			Directive 91/671/EEC on the compulsory use of safety belts in vehicles of less than 3.5 tonnes (amended by 2003/20/EC).
DfT	**Trans European Transport Network**	x*	x*	x*	The EU Regulation establishes the trans European transport network, it includes maps of the core and comprehensive networks and sets specific standards to be implemented by 2030 and 2050 respectively. It is the geographic focus for EU transport regulation referencing individual pieces of legislation in different transport modes. .
DfT	**Transporting Dangerous Goods by Rail, Road and Inland Waterway Directive**	x			Directive covering the carriage of dangerous goods and use of transportable pressure equipment by road, rail and inland waterway.
DHSC	**Clinical trials of medicinal products for human use**	x			Regulations and Directives on clinical trials on medicinal products for human use.

Responsible UKG Dept.	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
DHSC	**Elements of the regulation of tobacco and related products**	x*	x*	x*	Provision made for print and press advertising and promotion of electronic cigarettes in Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the member states concerning the manufacture, presentation and sale of tobacco and related products. Provision made for print and press advertising, display and promotions in Directive 2003/33/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.
DHSC	**Good laboratory practice**	x*	x*	x*	Directives relating to the inspection and verification of good laboratory practice and harmonising laws, regulations and administrative provisions on good laboratory practice (Directives 2004/9/EC and 2004/10/EC).
DHSC	**Medicine prices**	x			Directive 89/105/EEC relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in national health insurance systems.
DHSC	**Medicinal products for human use**	x			EU Directives and Regulations that relate to medicinal products for human use and, inter alia, lay down procedures for the marketing authorisation, supervision and pharmacovigilance of these products.
DWP	**Elements of EU social security coordination**	x*	x*		This is an area of shared EU competence for devolved benefits. The EU Social Security Coordination Regulations require Member States to ensure that citizens who exercise their right to free movement are not disadvantaged, e.g. by taking into account periods of residence and work and contributions paid in other Member States when considering the entitlement of claimants for UK benefits, including state pensions. The rules also require the UK to export benefits to persons living in another EU Member State in certain circumstances.

DWP	**Private cross border pensions**	x			EU legislation on the operation of the EEA internal market in financial services allows occupational pension schemes based in one country to operate (have members) in another.
GEO	**Equal treatment legislation[5]**		x*	x*	It bans discrimination and harassment in employment on the following grounds: sex, race, age, disability, sexual orientation and religion or belief. It also bans discrimination in the provision of services on grounds of sex and race. It also requires the existence of an equalities monitoring body, such as EHRC.
HSE	**Civil use of Explosives**	x			Directives setting out the permissions required to transfer, track and trace civil explosives (2008/43/EC) and rules on the product safety and market surveillance of these (2014/28/EU).
HSE	**Control of major accident hazards**	x	x*	x*	Seveso III Directive on the control of major accident hazards involving dangerous substances (2012/18/EU). This places duties on businesses using dangerous substances to take measures to prevent major accidents to people and the environment. This mainly applies to the chemical manufacture sector but covers any business that uses, produces or stores dangerous substances at or above determined thresholds.
HSE	**Genetically modified micro-organisms contained use (i.e. rules on protection of human health and the environment during the development)**	x	x*	x*	Directive 2009/41/EC on the contained use of genetically modified microorganisms (GMMs) to protect humans and the environment. This relates to work with GMMs in contained facilities, e.g. a research laboratory or biotechnology production facility, to ensure barriers (containment measures) are in place.
HSE	**Health and safety at work**	x			Directives, including the Health and Safety At Work Framework Directive (89/391/EEC), that require employers to protect the health and safety of their employees. Requirements cover, inter alia, the general layout of workplaces, hazards at work, specific sectors (e.g. construction, mining and onshore and offshore drilling) and work equipment.
HSE	**Ionising radiation (occupational exposures)**	x			Ionising radiation occurs as either electromagnetic rays (such as X-rays and gamma rays) or particles (such as alpha and beta particles). It occurs naturally (e.g. radon gas) and can also be produced artificially. Directive 2013/59/Euratom lays down basic safety standards for protection against exposure to ionising radiation. This includes occupational exposures.

[5] This appears in category 2 (non-legislative) for Northern Ireland.

Responsible UKG Dept.	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
MHCLG	**Environmental Impact Assessment (EIA) Directive**	x	x	x	The Environmental Impact Assessment Directive (85/337/EEC) integrates environmental considerations into the preparation of proposals for development to reduce their impact on the environment.
MHCLG	**Energy Performance of Buildings Directive**	x	x	x	The Energy Performance of Buildings Directive (2010/31/EU) aims to improve and make transparent the energy performance of buildings.
HO	**Police and criminal justice cooperation - practical cooperation - European Judicial Network**	x*	x*		Council Decision 2008/976/JHA on the European Judicial Network aims to facilitate judicial cooperation by establishing a network of Contact Points in Member States who are experts in matters such as Mutual Legal Assistance. These Contact Points assist with establishing direct contacts between competent authorities and by providing legal and practical information necessary to prepare an effective request for judicial cooperation or to improve cooperation more generally.
HO	**Police and criminal justice cooperation - practical cooperation - Joint Action on Organised**	x*	x*		Joint Action 97/827/JHA establishes a peer-evaluation mechanism that enables Member States to evaluate each other on the application and implementation of instruments designed to combat international organised crime.

	Crime				
HO	**Police and criminal justice cooperation - practical cooperation - mutual legal assistance**	x*	x*		The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (EU MLAC) encourages and facilitates mutual assistance between the judicial, police and customs authorities of Member States on criminal matters.
HO	**Police and criminal justice cooperation - data sharing - False and Authentic Documents Online (FADO)**	x*	x*		Joint Action 98/700/JHA establishing the European Image Archiving System, also known as False and Authentic Documents Online (FADO), is an EU database that facilitates the exchange of information between document experts in Member States on genuine and false identity documents, visas and border officer stamps used across the EU.
HO	**Police and criminal justice cooperation - agencies - EU-LISA**	x*	x*		Regulation 1077/2011/EU establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (EU-LISA) - the European Agency responsible for the operational management of large-scale IT systems in the area of freedom, security and justice, including EURODAC, SIS II and the Visa Information System.
HO	**Police and criminal justice cooperation - agencies - Eurojust**	x*	x*		Council Decision 2002/187/JHA (as amended) setting up Eurojust with a view to reinforcing the fight against serious crime - the EU's judicial cooperation agency, which supports Member States' investigation and prosecution agencies in tackling serious cross-border and organised crime. Eurojust helps prevent and resolve conflicts of jurisdiction and facilitates the execution of mutual legal assistance and mutual recognition instruments, such as the European Arrest Warrant (EAW). It also provides funding, technical support and legal expertise on the requirements of different legal systems.

Responsible UKG Dept.	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
HO	**Police and criminal justice cooperation - agencies - Europol**	x*	x*		Regulation 2016/794/EU on the European Union Agency for Law Enforcement Cooperation (Europol) - an EU agency that assists Member States' law enforcement agencies in tackling cross-border crime by supporting practical cooperation for cross-border investigations; holding central databases with information on suspected criminals and objects associated with crime; and providing analytical support to make links between crimes committed in different countries.
HO	**Police and criminal justice Cooperation - data sharing - European Criminal Records Information System (ECRIS)**	x*	x*		Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States and Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) - a secure electronic system providing for the exchange of information between Member States' authorities in relation to criminal records. It also places requirements on Member States to hold the criminal records of their nationals for offences committed across the EU.
HO	**Police and criminal justice cooperation - data sharing - Prüm framework**	x*	x*		Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on implementation of 2008/615/JHA created 'Prüm', which is both a legal framework requiring Member States to allow the reciprocal searching of each other's databases for DNA profiles, vehicle registration data and fingerprint (or dactyloscopic) data, and a legal basis for joint operations relating to police cooperation. There is also a communications network enabling exchange of the forms of data set out above.
HO	**Police and**	x*	x*		Council Decision 2007/533/JHA on the establishment, operation and use of the second-generation Schengen

	criminal justice cooperation - data sharing - Schengen Information System (SIS II)				Information System ('SIS II') (and see also Council Implementing Decision 2015/215) - a system providing law enforcement 'alerts', including on wanted or suspected criminals, suspected terrorists, missing people, and stolen or missing property. SIS II is a 'Schengen' measure. Whilst the UK is not part of the Schengen border-free zone, we have agreed access to SIS II for law enforcement purposes.
HO	**Police and criminal justice cooperation - minimum standards legislation - cybercrime**	x*	x*		Directive 2013/40/EU establishes common minimum standards for the definition of criminal offences and sanctions in the area of attacks against information systems. This measure also aims to facilitate the prevention of cybercrime and to improve cooperation between judicial and other competent authorities.
HO	**Police and criminal justice cooperation - minimum standards legislation - human trafficking**	x*	x*		Directive 2011/36/EU establishes common minimum standards for the definition of criminal offences and sanctions in the area of trafficking in human beings. This measure also introduces common provisions on the prevention of human trafficking and the protection of victims of human trafficking.
HO	**Police and criminal justice cooperation - practical cooperation - asset recovery offices**	x*	x*		Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or property related to, crime. AROs are national central contact points that facilitate EU-wide identification and tracing of assets derived from crime. The UK's ARO is housed within the UK Financial Intelligence Unit in the National Crime Agency.

Responsible UKG Dept.	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
HO	**Police and criminal justice cooperation - practical cooperation - basic cooperation legislation on child sexual exploitation**	x*	x*		Council Decision 2000/375/JHA sets common rules requiring all Member States to set up 24 hour contact points to receive and act on intelligence related to child pornography or indecent images of children.
HO	**Police and criminal justice cooperation - practical cooperation - Convention Implementing the Schengen Agreement (law enforcement cooperation)**	x*	x*		The law enforcement cooperation provisions of the Convention implementing the Schengen Agreement aim to tackle the threat of cross-border crime within the Schengen Area by facilitating police cooperation and cross-border surveillance. In particular, Article 40 provides that law enforcement in one Member State who have a suspect under surveillance can continue their surveillance of that suspect in the territory of another Member State as long as the latter has authorised it. Member States can also request for other Member States to undertake the surveillance of a suspect on their behalf.

HO	**Police and criminal justice cooperation - practical cooperation - European Investigation Order**	x*	x*		The European Investigation Order Directive (2014/41/EU) aims to make judicial cooperation in assisting in the investigation and prosecution of criminal offences on investigations between EU Member States faster and more efficient. The new measure standardised requests made between EU Member States for information and evidence, allows for there to be mutual recognition of judicial decisions from other Member States and sets deadlines for recognising and executing requests.
HO	**Police and criminal justice cooperation - practical cooperation - joint investigation teams**	x*	x*		Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams. A JIT is an investigation team set up for a specific purpose and a fixed period, which can be extended, between two or more parties (at least two of which must be a competent authority of an EU Member State) to investigate a specific matter or type of crime.
HO	**Police and criminal justice cooperation - practical cooperation - mutual recognition of asset freezing orders**	x*	x*		Council Framework Decision 2003/577/JHA covers the mutual recognition and execution in one Member State of orders freezing property and evidence that were issued in another Member State.
HO	**Police and criminal justice**	x*	x*		Council Framework Decision 2006/783/JHA facilitates the mutual recognition and execution in one Member State of confiscation orders issued in another Member State.

	cooperation - practical cooperation - mutual recognition of confiscation orders				
HO	**Police and criminal justice cooperation - practical cooperation - Swedish initiative**	x*	x*		Council Framework Decision 2006/960/JHA (the 'Swedish Initiative'), simplifies the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The Initiative sets out rules for the cross-border exchanges of criminal information and intelligence, ensuring time-bound procedures for cross-border data exchanges.
HO	**Regulatory systems - firearms - deactivation standards and techniques**	x*			Regulation 2015/2403/EU establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable.
HO	**Regulatory systems - firearms - illicit manufacturing and trafficking**	x*			Council Decision 2014/164/EU approving Article 10 of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Counterparts and Ammunition; and Regulation 258/2012/EU implementing that protocol by laying down rules governing export authorisation, and import and transmit measures for firearms, their parts and essential components and ammunition.
HO	**Regulatory systems - firearms - control on acquisition**	x*			Directive 91/477/EEC, as amended by Directives 2008/51/EC and EU/2017/853, on the control of the acquisition and possession of weapons, setting out certain minimum standards for the circulation of firearms within the EU.

	and possession of weapons				
HO	**Police and criminal justice cooperation - practical cooperation - cooperation on football disorder**	x*	x*		Council Decision 2002/348/JHA that sets up National Football Information Points in each Member State. These Information Points share information and intelligence for facilitating international police cooperation in connection with international football matches.
HO	**Police and criminal justice cooperation - accreditation of Forensic Service Providers (FSP) and mutual recognition of results of FSPs - Prüm Framework**	x*	x*		Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities, requires Member States to ensure that FSPs undertaking laboratory activities in relation to DNA and fingerprints are accredited to international standard EN ISO/IEC 17025. Member States must also ensure that national authorities recognise the results of accredited FSPs in other MS as equally reliable as the results of domestic FSPs.
HO	**Police and criminal justice cooperation - agencies - CEPOL**	x*	x*		Council Decision 2005/681/JHA establishing the European Police College (CEPOL) - a European agency that brings together a network of training institutes for law enforcement officials and supports them in frontline training on security priorities, law enforcement cooperation and information exchange.

HO	**Police and criminal justice cooperation - data sharing - passenger name records (PNR)**	x*	x*		Directive 2016/681/EU creates a common legal basis for Member States to process passenger name record (PNR) data in order to prevent, detect, investigate and prosecute terrorist offences and serious criminal offences. PNR data is personal information provided by passengers and collected and held by airlines. It includes the name of the passenger, travel dates, itineraries, seats, baggage, contact details and means of payment. It can be used by law enforcement authorities in different countries to identify criminal and terrorist movements.
HO	**Regulatory systems - minimum standards legislation - the protection of animals used for scientific purposes**	x			Directive 2010/63/EU implementing common minimum standards for the protection of animals used for experimental and scientific purposes. This is implemented through the use of risk-based inspections and increased transparency. Sets out a licencing regime covering establishments, people, and projects using animals in science and broader principles of animal welfare.
MoJ	**Civil judicial co-operation - applicable law in contracts and non-contractual obligations**	x	x		Rome I Regulation (593/2008) covers applicable law in contracts. Rome II Regulation (864/2007) covers applicable law in non-contractual obligations.
MoJ	**Civil judicial co-operation - cross border mediation (Mediation Directive)**	x	x		The Mediation Directive (2008/52) facilitates access to alternative dispute resolution and promotes amicable settlement of disputes through the use of mediation in cross-border disputes.

MoJ	**Civil judicial co-operation - jurisdiction and recognition and enforcement of judgments in civil and commercial matters**	x	x		The Brussels I Regulation (1215/2012) covers jurisdiction and recognition and enforcement of judgments and applies between EU Member States. Insolvency Regulation (1346/2000 and 2015/848) covers jurisdictional rules and applicable law and recognition of insolvency proceedings in cross-border insolvencies.
MoJ	**Civil judicial co-operation - jurisdiction and recognition and enforcement of judgments: instruments in family law**	x	x		The Brussels IIa Regulation (2201/2003) covers jurisdictional rules in matrimonial and parental responsibility matters and the recognition and enforcement of judgments. The Maintenance Regulation (4/2009) covers rules for determining which court has jurisdiction, and the recognition and enforcement of maintenance decisions. Regulation on protection measures in civil matters (606/2013) covers recognition and enforcement of protection measures, including for victims of domestic violence.
MoJ	**Civil judicial co-operation - legal aid in cross border cases**	x	x		The Legal Aid Directive (2002/8) establishes common minimum rules for the grant of legal aid in cross-border disputes.
MoJ	**Civil judicial co-operation - service of documents**	x	x		EU Service Regulation (2007/1393) covers rules for serving documents in other EU countries. Taking of Evidence Regulation (2001/1206) covers cross-border processing of requests to take evidence. European Judicial Network in Civil and Commercial Matters (2001/470) facilitates cross-border cooperation for judges and practitioners and access to justice for those involved in disputes.

	and taking of evidence				
MoJ	**Civil judicial co-operation - uniform fast track procedures for certain civil and commercial claims**	x	x		The Small Claims (861/2007 revised by 2015/2421), Enforcement Order (805/2004) and Order for Payment (1896/2006) Regulations facilitate means for obtaining decisions on claims that can be enforced throughout the EU.
MoJ	**Criminal offences minimum standards measures**	x	x		The Combating Child Sexual Exploitation Directive (2011/92) establishes common minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It contains provisions aimed at preventing these crimes and protecting victims.
MoJ	**Mutual recognition of criminal court judgments measures and cross border cooperation**	x	x		Mutual Recognition of Financial Penalties (MRFP) (2005/214) provides for Member States to recognise and enforce financial penalties (of over 70 euros) issued by judicial or administrative authorities of another Member State, in which the person required to pay the fine is normally resident or has property or income. It covers criminal financial penalties including those imposed for road traffic offences. The Criminal European Protection Order (2011/99) allows individuals, including domestic violence victims, to have the terms of certain protection measures that are issued in one Member State recognised and, if necessary, enforced in any other EU Member State. Prisoner Transfer Framework Decision (PTFD) (2008/909) is the principal mechanism for transferring prisoners between EU Member States. European Supervision Order (ESO) (2009/829) establishes a legal framework that enables the court in a Member State which is prosecuting a suspect for a crime committed there to allow the suspect to go to another (usually their 'home') Member State to await trial, and for the “home” country to assume responsibility for supervising compliance with the conditions of that bail. Victims Compensation Directive (2004/80) requires Member States to set up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their

					respective territories.
MoJ	**Procedural rights (criminal cases) – minimum standards measures**	x	x		The Right to Information in Criminal Proceedings Directive (20012/13) sets common minimum standards for information to be provided to people suspected or accused of having committed a criminal offence. The Interpretation and Translation Directive (2010/64) sets common minimum standards on interpretation and translation in criminal proceedings throughout the EU.
MoJ	**Provision of legal services (temporary and permanent basis)**	x	x		Lawyers Establishment Directive (98/5) provides the framework for permanent establishment of lawyers from one EU member state in another, under home or host state title. Lawyers Services Directive (77/249) provides the framework for temporary provision of legal services under home state title (including fly-in/fly-out). (Both Directives apply only to specified titles. In the UK, these are solicitor, barrister, advocate.)
MoJ	**Sentencing - taking convictions into account**	x	x		Framework Decision on taking convictions into account (2008/675) requires the national criminal courts of all Member States to take account of a defendant's known previous convictions in other Member States to the extent previous national convictions are taken into account.
MoJ	**Victims' rights measures in criminal cases – minimum standards (Victims' Rights Directive)**	x	x		Victims' Rights Directive (2012/99) sets common minimum standards on the rights, support and protection afforded to the victims of crime across all Member States.

Category 2: Non-legislative areas

22 Policy areas where we think that common rules of ways of working will be needed and we expect to implement this through a non-legislative common framework agreement. In some of these areas, consistent fixes to retained EU law (made using secondary legislation) will create a unified body of UK law alongside the non-legislative framework agreement.

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
BEIS	**Company law**	x			These Directives and Regulations cover aspects of the life cycle of a company, including company formation, capital & disclosure requirements, cross border mergers, shareholders rights, accounting and reporting, and audit. Regulations set out the framework for certain EU-specific legal entities. Also includes the establishment of branches, subsidiaries and agencies in other Member States, underpinned by Treaty Article 49.
BEIS	**Late payment (commercial transactions)**	x	x	x	Late Payment Directive (2011/7/EU) protects businesses within the EU against late payment in commercial transactions.
BEIS	**Radioactive substances**	x*	x*	x*	Directive establishes a framework for responsible and safe management of spent fuel and radioactive waste, both for current workers and the general public, and to avoid imposing burdens on future generations.
BEIS	**Recognition of insolvency proceedings in EU Member States**	x	x*		Regulation 2015/848 on Insolvency Proceedings focusses on resolving conflicts of jurisdiction and cross-border insolvencies, providing rules to determine which EU states' courts have jurisdiction to open insolvency proceedings, ensuring that those proceedings and their effects are recognised throughout the EU, and coordinating between proceedings in different member states. This Regulation recasts and supersedes an earlier instrument, Regulation 1346/2000.

BEIS	**Specified quantities and packaged goods legislation**	x*			EU law sets the rules for quantity control, quantity labelling and specified quantities for packaged goods.
Cabinet Office	**Public procurement**	x*	x*	x*	The regime provided by the EU procurement Directives, covering public procurement contracts for supplies, services, works and concessions above certain financial thresholds awarded by the public sector and by utilities operating in the energy, water, transport and postal services sectors (Directives 2014/24/EU, 2014/25/EU and 2014/23/EU).
Cabinet Office	**Statistics**	x*	x*	x*	Provision of prescribed datasets to the EU on a wide variety of topics (statistics is cross-cutting).
DEFRA	**Air Quality**	x	x	x	Policies, directives and regulations that aim to reduce harmful emissions and concentrations of air pollutants that can damage human health and the environment, including in relation to national emission ceilings, ambient air quality, industrial emissions and relevant product standards (Directives 2008/50/EC, 2004/107/EC). This includes regulations that implement international commitments under the UNECE Convention on Long-range Transboundary Air Pollution and Kiev Protocol to the UNECE Aarhus Convention.
DEFRA	**Best available Techniques**	x	x	x	Industrial facilities undertaking specific types of activity are required to use Best Available Techniques (BAT) to reduce emissions to air, water and land. BAT means the available techniques which are the best for preventing or minimising emissions and impacts on the environment. The Industrial Emissions Directive aims to prevent and reduce harmful industrial emissions, while promoting the use of techniques that reduce pollutant emissions and that are energy and resource efficient. The UK government will put in place a process for determining future UK BAT Conclusions for industrial emissions. This would be developed with the devolved administrations and competent authorities across the UK.

Responsible UK Government Dept.	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
DfT	**Commercial Transport**	x			Regulations 1072/2009 (for goods vehicles), 1073/2009 (for road passenger transport), and Directive EC 1992/106/EC Directive for Combined Transport (including access). All these rules involve access arrangements for non-UK vehicles and may be affected (and need to be consistent with) international agreements. This framework was previously called: Access for non-UK hauliers and passenger transport operations, plus combined transport.
DfT	**Intelligent transport systems**	x*	x*	x*	Policies and common standards relating to national electronic registers and data for intelligent transport systems. This includes Regulations made under Directive 2010/40.
DfT	**Operator licensing (roads)**	x			Regulation (1071/2009) establishing common rules for the licensing of commercial goods and passenger transport operators. The Regulations/Directive require the UK to recognise the Operator's Licences and associated documents of EU based haulage, bus and coach operators that are issued in other member states. This gives a standard basis for them to operate to/from/within the UK. Operator Licensing requirements are implemented by the Office of the Traffic Commissioner in Great Britain and Department for Infrastructure in Northern Ireland and competent authorities in each of the other member states. These bodies also have a regulatory role in maintaining standards and compliance with the Directives. DVSA in GB and DVA in NI are the enforcement body for breaches of the regulations by EU hauliers, through roadside penalties, prosecution in UK courts or referral back to their home competent authority
DfT	**Rail technical standards (Interoperability)**	x*			Driver Licensing Directive (roads) and directive and regulations relating to driver certificates of professional competence. Driving licences are governed by several international and EU arrangements, including the UN Conventions on road traffic, which provide for safety and standards. UK photocard licences comply with the format laid out in the 1968 Vienna Convention on Road Traffic.

					The EU Third Driving Licence Directive provides for mutual recognition and exchange of Member State driving licences.
DfT	**Driver licensing**	x			Driver Licensing Directive (roads) and directive and regulations relating to driver certificates of professional competence. Driving licences are governed by several international and EU arrangements, including the UN Conventions on road traffic, which provide for safety and standards. UK photocard licences comply with the format laid out in the 1968 Vienna Convention on Road Traffic. The EU Third Driving Licence Directive provides for mutual recognition and exchange of Member State driving licences.
DfT	**Roads – Motor Insurance**	x			Directive 2009/103/EC. Directive relating to insurance against civil liability in respect of the use of motor vehicles. There are also a number of pieces of domestic HMT legislation which may operate in the area. (This area was previously called Compulsory (3rd Party) Motor Insurance - as per Part VI Road Traffic Act 1988).
DHSC	**Nutrition Labelling, Composition and Standards**	x*	x*	x*	Regulations and Directives on the nutrition and health claims made on food; food for special medical purposes and weight control; food intended for infants; the addition of vitamins and other substances to food; and food supplements.
DHSC	**Blood Safety and Quality**	x	x	x	Defines the quality and safety standards for blood and its components as set out in Directive 2002/98/EC. It covers all steps in the transfusion process from donation, collection, testing, processing, and storage to distribution. Its implementation is supported by Commission Directive 2004/33/EC, Commission Directive 2005/61/EC and Commission Directive 2005/62/EC. There are also some specific technical requirements in the following commissioning directives 2009/135/EC, 2011/38/EU, 2014/110/EU, 2016/1214

DHSC	**Organs, tissues and cells (apart from embryos and gametes)**	x	x	x	Directives setting out standards on the quality and safety of human organs intended for transplantation and tissues and cells for human application as part of medical treatment, and sets out the information procedures for exchange between Member States (Directives 2010/53/EU, 2012/25/EU, 2004/23/EC, 2006/17/EC, 2006/86/EC, 2012/39/EU, 2015/565 and 2015/566).
DHSC	**Public health (serious cross-border threats to health) (notification system for pandemic flu, Zika etc)**	x*	x*	x*	Decision No 1082/2013/EU on serious cross-border threats to health and Regulation 851/2004 establishing a European centre for disease prevention and control. These set rules on epidemiological surveillance, monitoring, early warning of, and combating serious cross-border threats to health, including preparedness and response planning related to those activities, in order to coordinate and complement national policies. It aims to support cooperation and coordination between Member States.
GEO	**Equal Treatment Legislation[6]**	x*			It bans discrimination and harassment in employment on the following grounds: sex, race, age, disability, sexual orientation and religion or belief. It also bans discrimination in the provision of services on grounds of sex and race. It also requires the existence of an equalities monitoring body, such as EHRC.
MHCLG	**Hazardous substances planning**	x	x	x	Ensures that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in land-use policies. This includes controls on the siting of new establishments and modifications to establishments which fall within the scope of the Directive (i.e. storing or using significant amounts of hazardous substances), and on new developments and public areas in the vicinity of such establishments.

[6] This framework area is listed in category 1 (no further action) for Wales and Scotland.

MHCLG	**Strategic Environmental Assessment (SEA) Directive**	x	x	x	The Strategic Environmental Assessment (SEA) Directive on the assessment of the effects of certain plans and programmes on the environment.

Category 3: Legislative areas

18 policy areas where new primary legislation may be required (or has been put in place) in whole or in part, to implement the common rules and ways of working, alongside a non-legislative framework agreement and - potentially - a consistent approach to retained EU law.

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
BEIS	**Implementation of EU Emissions Trading System (ETS)**	x*	x*	x*	Directive 2003/87/EC establishes the European Union Emissions Trading System for greenhouse gases. The Scheme sets a maximum volume of gas that can be emitted by all participating installations and aircrafts. These operators then monitor, verify and report their emissions, and must surrender allowances equivalent to their emissions annually. Allowances are issued either by being sold at auction or allocated for free to some operators, and can be traded, with the price determined by the market.

BEIS (DHSC, MHCLG DEFRA, DfE and MoJ also have interest)	**Mutual recognition of professional qualifications (MRPQ)**	x*	x*	x*	The Directive defines the processes for the recognition for professional qualifications and professional experience throughout the EU, thereby enabling EU professionals to work in a regulated profession in an EU country other than that in which they qualified on either a permanent or temporary basis.
BEIS	**Services Directive**	x*	x*	x*	The Directive seeks to realise the full potential of services markets in Europe by removing legal and administrative barriers to trade, by increasing transparency and by making it easier for businesses and consumers to provide or use services in the EU Single Market. The Directive is implemented by the Provision of Services Regulations in the UK. The Regulations set out rules for how competent authorities can design authorisation schemes for service providers in the UK. The Regulations prevent regulators imposing new regulatory or administrative requirements that act as discriminatory barriers to the provision of services, ensuring authorisation schemes are proportionate and justified by the public interest.
DEFRA	**Agricultural support**[7]	x*	x*	x*	Policies and Regulations under the EU Common Agricultural Policy covering Pillar 1 (income and market support); Pillar 2 (rural growth, agri-environment, agricultural productivity grants or services and organic conversion and maintenance grants); and cross-cutting issues, including cross compliance, finance & controls.
DEFRA	**Agriculture - fertiliser regulations**[7]	x	x	x	Regulations providing common standards for compositional ingredients, labelling, packaging, sampling and analysis of fertilisers. The UK is also signed up to a number of international agreements (e.g. the Gothenburg Protocol) and EU agreements (the National Ceilings Directive) related to fertiliser regulation.

[7] For a number of EFRA-related frameworks, the position is not yet clear on whether they will require, or will be impacted by, primary legislation. It is currently anticipated that most of these frameworks will not require new primary legislation (and can rely on secondary legislation instead), but until the outstanding issues are resolved they continue to be listed in the legislative category.

DEFRA	**Agriculture - GMO marketing and cultivation[7]**	x	x	x	Directive 2001/18 – decisions on authorising GMO trials (delegated to Member States) and on marketing GMOs (decisions taken at EU level). Regulation 1830/2003 – requires the traceability and labelling of GMOs approved for marketing. Regulation 1946/2003 – requires notification to third countries of proposed GMO exports. Enforcement powers for these directly applicable Regulations are set out in parallel SIs in all four nations.
DEFRA	**Agriculture - organic farming[7]**	x	x	x	Regulation 834/2007 sets out the principles and overarching standards for organic production certification. Specific Regulations also apply such as 889/2008 on labelling of organic produce and 710/2009 on organic aquaculture.
DEFRA	**Agriculture - zootech[7]**	x*	x*	x*	EU Regulation 2016/1012 replaces a host of current zootech regulations by species from 1 November 2018. For the purpose of this exercise we treat the EU position as it will be on 1 November 2018 as the relevant framework. The EU rules support trade of pedigree breeding animals and germinal products by e.g. defining what constitutes "purebred". They provide for individual breed societies to be officially recognised and breeding programmes to be approved by competent authorities. The rules impose rights and obligations on societies and proscribe rules when breeding animals and germinal products are traded between recognised breed societies across the EU.
DEFRA	**Animal health and welfare[7]**	x	x	x	EU rules and standards that aim to maintain animal health and allow their movement, including policies covering: prevention of disease (entering UK), control of disease (endemic and exotic), surveillance (for exotic disease) movement of livestock, pet passports and veterinary medicines. EU rules relating to aspects of animal welfare including on-farm issues, movement of livestock and slaughter.
DEFRA and HSE	**Chemicals and Pesticides**	x*	x*	x*	Regulation of the manufacture, authorisation and sale and use of chemical products primarily through the REACH regulation but also including: Persistent Organic Pollutants (POPs), Polychlorinated Biphenyls (PCBs) and Minamata. Regulations governing the authorisation and use of pesticide products and the maximum residue levels in food, and a framework for action on sustainable use of pesticides.
DEFRA	**Fisheries management & support**	x*	x*	x*	Policies and Regulations relating to rules relating to the sustainability of fisheries (quotas), access to waters, conservation measures, enforcement and financial support.

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
DEFRA	**Food Compositional Standards and Labelling.[7]**	x	x	x	Minimum standards for a range of specific food commodities such as sugar, coffee, honey, caseins, condensed milk, chocolate, jams, fruit juices and bottled water. Regulations setting out requirements on provision of information to consumers on food labels.
DEFRA	**Ozone depleting substances and F-gases[7]**	x	x	x	The UK has international obligations under the Montreal Protocol to phase out the use of ODS, phase down hydrofluorocarbons by 85% by 2036, licence imports and exports and report on usage to the UN. EU Regulations and institutions currently deliver these obligations through quota restrictions, licencing and reporting requirements. The EU Regulations also go further with product bans, leakage controls measures and certification requirements for technicians.
DEFRA	**Plant Health[7]**	x	x	x	Requirements in relation to the import and internal EU movement of plants and plant products, risk assessment of new plant pests and outbreak management. Assurance and auditing of policies across the UK to protect plant biosecurity.
DEFRA	**Plant varieties and seeds[7]**	x	x	x	Requirements for plant variety rights, registration of plant varieties and quality assurance of marketed seed and propagating material.

DEFRA	**Resources and Waste[7]**	x*	x*	x*	Policies and Regulations that aim to meet certain essential product requirements and set product standards including for packaging (e.g. ROHS in Electrical and Electronic Equipment, Batteries and Vehicles) in order to manage waste. Policies and regulations covering waste and its recovery/recycling (Landfill Directive, Waste Framework Directive) including producer responsibility (reuse/recovery/recycling targets under the Waste Electrical and Electronic Equipment Directive, Batteries Directive, End of Life Vehicles Directive and Packaging Directive). Also covering the shipment of waste.
DHSC	**Reciprocal and cross-border healthcare**	x*	x*	x*	Directive 2011/24/EU codified a series of case law. It sets out the conditions under which a patient may travel to another EU country to receive medical care and reimbursement. The requirements under the Directive have been transposed by England, Wales, Scotland, Northern Ireland and Gibraltar.
Food Standards Agency	**Food and feed safety and hygiene law**	x	x	x	EU Regulations laying down the general principles and requirements of food and feed safety and hygiene; food and feed law enforcement (official controls); food safety labelling; risk analysis; and incident handling. The regulations set out an overarching and coherent framework for the development of food and feed legislation and lay down general principles, requirements and procedures that underpin decision making in matters of food and feed safety, covering all stages of food and feed production and distribution.

4 Policy areas that the UK Government believes are reserved, but are subject to ongoing discussion with the devolved administrations

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
BEIS	**Elements of product safety and standards relating to explosive atmospheres**				ATEX covers equipment and protective systems intended for use in explosive atmospheres, safety devices and components for such equipment.
BEIS	**State aid**				Articles 107 - 109 of TFEU and associated Treaty articles, Regulations and EU legislation prohibit State aid by Member States and create a framework for assessing compatibility of aid with the internal market, investigating and making complaints about allegedly unlawful aid and creating exemptions for certain categories of aid.
DEFRA	**Food Geographical Indications (Protected Food Names)**				Geographical Indications (GIs) are a form of intellectual property protection. Under the EU schemes, producers can apply to protect regionally distinct or traditional agri-food products. Once registered, these products are protected throughout the EU against imitation or misuse of their names.
HO	**Data sharing - Eurodac**				Regulation 603/2013/EU established Eurodac - an EU database containing fingerprints of illegal entrants and asylum applicants. Its primary purpose is to support the effective application of the Dublin Convention by helping to determine which EU Member State is responsible for examining an asylum application.

Glossary of terms

BEIS - Department for Business, Energy and Industrial Strategy
CO - Cabinet Office
Concordat - a form of non-legislative agreement
DA - Devolved Administration
Defra - Department for Environment, Food and Rural Affairs
DfT - Department for Transport
DHSC - Department of Health and Social Care
DWP - Department for Work and Pensions
FSA - Food Standards Agency
GEO - Government Equalities Office
HSE - Health and Safety Executive
HO - Home Office
JMC(EN) - Joint Ministerial Committee (European Negotiations)
MHCLG - Ministry of Housing, Communities and Local Government
MoJ - Ministry of Justice
UKG - UK Government

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Agriculture (Payments) (Amendments etc.) (EU Exit) Regulations 2020**
DATE	**07 October 2020**
BY	**Rebecca Evans MS, Minister for Finance and Trefnydd**

The 2020 Regulations amend the following legislation which applies to Wales:

EU legislation

- Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors;

- Commission Delegated Regulation (EU) 2017/891 of 13 March 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors;

- Commission Implementing Regulation (EU) 2017/892 of 13 March 2017 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors;

- Commission Implementing Regulation (EU) 2017/1185 laying down rules for the application of Regulation (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards notifications to the Commission of information and documents;

Domestic legislation

- The Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/763);

- The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/765);

- The Agriculture (Legislative Functions) (EU Exit) Regulations 2019 (S.I. 2019/748);

- The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/733);

- The Rural Development (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/764);

- The Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/770);

- The European Structural Investment Funds (Common Provisions) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/785);

- The Market Measures Payment Schemes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/823);

- The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/831);

- The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1402);

- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No.2) Regulations 2019 (S.I. 2019/1422); and

- the Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1405)

These 2020 Regulations revoke the following domestic legislation:

- The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/207);
- The Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/208);
- Regulation 2 of the Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/812); and;
- Part 4 of the Food and Farming (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/759).

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

The effect of the concurrent and joint functions contained in this SI have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the Office for the Secretary of State for Wales in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

The purpose of the amendments

The European Union (Withdrawal) Act 2018 ("the Withdrawal Act") converts and preserves EU law into domestic law ("retained EU law") at the end of the transition period following the UK's withdrawal from the EU.

In relation to Direct Payments, the 2020 Regulations make changes to clarify the position of specified EU Regulations which were incorporated into domestic law with effect from exit day insofar as relating to direct payments and incorporated with effect from the end of the transition period ("IP completion day") for remaining purposes. The 2020 Regulations amend or revoke a number of earlier EU Exit SIs, to reflect that those SIs will not apply in relation to direct payments following the Withdrawal Agreement and the Direct Payments to Farmers (Legislative Continuity) Act 2020 and regulations made under it.

In relation to Rural Development, the 2020 Regulations amend previous EU Exit SIs, which were made before the Withdrawal Agreement was signed. These need to be updated to reflect the new position, and a small number of amendments are being made to ensure that the rural development rules continue to function effectively at the end of IP completion day.

In relation to Public Intervention ("PI") and Private Storage Aid ("PSA), the 2020 Regulations make amendments to earlier EU Exit SIs that set the rules for PI and PSA schemes included in the Common Organisation of Agricultural Markets ("CMO") regime. These amendments will ensure provisions relating to the setting of prices for the intervention tendering process can be run administratively, which is in keeping with domestic processes and will allow relevant authorities to mirror the current system of administering PI and PSA as closely as possible at the end of the transition period, to ensure producers and operators

do not experience any change in how the schemes are run immediately after the end of the transition period.
The 2020 Regulations also amend retained EU law concerning producer groups, producer organisations, notifications in the fruit and vegetables and processed fruit and vegetables sectors, and notifications of agricultural market information to domestic authorities. These amendments should be read in conjunction with The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020 which also make operability corrections to Commission Delegated Regulation (EU) No 2017/891 and Commission Implementing Regulation (EU) No 2017/892
More generally, the 2020 Regulations make a small number of minor drafting amendments to update drafting and correct errors and oversights in earlier EU Exit SIs, for example missed cross-references that needed amending and substituting a reference to Pounds Sterling for a reference to Euro. In addition, the 2020 Regulations make limited amendments to previous EU Exit SIs to take account of the Northern Ireland Protocol, and to ensure that UK Paying Agencies are able to continue complying with EU rules for the purposes of Article 138 of the Withdrawal Agreement.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here: https://www.legislation.gov.uk/ukdsi/2020/9780348212747/contents

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency and to ensure consistency and coherence of the statute book. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

170 - The Agriculture (Payments) (Amendments etc.) (EU Exit) Regulations 2020

Laid in the UK Parliament: 5 October 2020

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 34
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C(1) and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 and section 6(1) of the Direct Payments to Farmers (Legislative Continuity) Act 2020.

The Regulations amend a number of EU regulations and domestic legislation (EU Exit Regulations) that apply to Wales. The Regulations also revoke four EU Exit Regulations. The legislation amended or revoked is set out in the Statement by Welsh Government, and the UK Government's Explanatory Memorandum, at paragraphs 2.3 and 2.4.

The purpose of these Regulations is to correct deficiencies in retained EU law relating to the Common Agricultural Policy (CAP). If retained EU law relating to CAP was not amended, it would contain inoperable rules that would prevent the UK Government and the devolved administrations from being able to deliver agricultural and market support schemes

currently run under the CAP to the agricultural sector after the Implementation Period completion day (IP completion day) on 31 December 2020.

The amendments are required in order to take into account change in the legislative position, since the original EU Exit Regulations were made, following the Withdrawal Agreement and the Direct Payment to Farmers (Legislative Continuity) Act 2020 ("the Direct Payment Act"). Amendments have also been made to the EU Regulations since the EU Exit Regulations were made. Notable changes are made by these Regulations in relation to the following:

1. Direct Payments. These Regulations make changes to clarify the position of specified EU Regulations which were incorporated into domestic law with effect from exit day insofar as relating to direct payments and incorporated with effect from the IP Completion date for remaining purposes. These Regulations amend or revoke a number of earlier EU Exit SIs, to reflect that those SIs will not apply in relation to direct payments following the Withdrawal Agreement and the Direct Payment Act and regulations made under it.

2. Rural Development. These Regulations amend previous EU Exit SIs in relation to rural development, which were made before the Withdrawal Agreement was signed. These need to be updated to reflect the new position, and a small number of amendments are being made to ensure that the rural development rules continue to function effectively after IP completion day.

3. Public Intervention (PI) and Private Storage Aid (PSA). These Regulations make amendments to earlier EU Exit SIs that set the rules for PI and PSA schemes included in the Common Organisation of Agricultural Markets ("CMO") regime, to ensure that relevant authorities may mirror the current system of administering PI and PSA as closely as possible after IP completion day, to ensure producers and operators do not experience any change in how the schemes are run.

4. Producer groups, organisations etc. These Regulations amend retained EU law concerning producer groups, producer organisations, notifications in the fruit and vegetables and processed fruit and vegetables sectors, and notifications of agricultural market information to domestic authorities.

These Regulations make limited amendments to previous EU Exit Regulations where retained EU law is affected by the Northern Ireland Protocol, and make amendments to previous EU Exit Regulations to ensure UK paying agencies are able to continue to comply with EU rules for the purposes of Article 138 of the Withdrawal Agreement.

A small number of minor drafting amendments are made by these Regulations to update drafting and correct errors and oversights in earlier EU Exit SIs, including missed cross-references that needed amending and substituting a reference to Pounds Sterling for a reference to Euro.

Legal Advisers agree with the statement laid by the Welsh Government dated 7 October 2020 regarding the effect of these Regulations.
The effect of the concurrent and joint functions contained in these Regulations has the potential to engage the consent requirements in Schedule 7B to the Government of Wales Act 2006, and as such represent a potential restriction on the future competence of the Senedd. The Statement by Welsh Government provides that it is negotiating with the Office for the Secretary of State for Wales in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

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

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020**

DATE **07 October 2020**

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

The 2020 Regulations include provisions previously laid before the UK Parliament as an urgent "made affirmative" instrument, the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1343). That instrument was made and laid on 14 October 2019. However, that instrument required approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days. The instrument was debated and approved by a House of Commons delegated legislation committee, but was not debated by the House of Lords within the requisite 28 day period, and in consequence those provisions needed to be re-made.

The 2020 Regulations amends the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 correcting minor errors. Defra decided not to revoke or remake this EU Exit SI due to the minor nature of the errors corrected by this instrument.

This instrument amends retained EU legislation and a UK statutory instrument relating to the Common Organisation of Markets (CMO) in areas which Defra considers are of reserved competence. It should be read in conjunction with The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 which relates to the CMO, specifically producer organisations in the fruit and vegetable sector, in areas of devolved competence.

<u>The 2020 Regulations amend the following legislation</u>

<u>European legislation</u>

- Commission Delegated Regulation (EU) No 880/2012 supplementing Council Regulation (EC) No 1234/2007 as regards transnational cooperation and contractual negotiations of

producer organisations in the milk and milk products sector;

- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products;

- Commission Delegated Regulation (EU) No 2016/232 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to certain aspects of producer cooperation;

- Commission Delegated Regulation (EU) 2017/891 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors;

- Commission Implementing Regulation (EU) 2017/892 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors; and

- This instrument also revokes all implementing acts adopted under Articles 97(3) and (4), 99, 106 and 115(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council that would otherwise form part of UK law by virtue of section 3(1) of the European Union (Withdrawal) Act 2018.

Domestic legislation

- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/828).

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

Welsh Government officials are of the view that the 2020 Regulations contain provisions which are within the scope of the Senedd's legislative competence, and as such the related functions should not be solely conferred on the Secretary of State.

DEFRA take the view that amendments in the 2020 Regulations relate to reserved matters. On this basis, DEFRA intend to transfer various functions to the Secretary of State.

The purpose of the amendments

The retained EU regulations amended by this instrument relate principally to the CMO. The CMO is the framework for the market measures provided for under the CAP. The CMO was set up as a means of meeting the objectives of the CAP (Article 40 Treaty on the

Functioning of the European Union), in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to:

- manage market volatility;
- incentivise collaboration between and competitiveness of agricultural producers; and
- facilitate trade.

The specific CMO measures amended by this instrument set out rules for producer organisations in the fruit and vegetable, and milk and milk products sectors; and wine imports and quality policy. They also conferred various legislative functions on the European Commission so that it could develop the technical details required to operate a specific regime. Examples of these functions include: setting eligibility criteria, establishing recognition criteria for producer organisations, establishing key dates for submission of claims for aid, setting out rules for contractual negotiations in the milk sector, and laying down details of checks to be carried out to enable producer cooperation.

This instrument makes the appropriate corrections to retained EU law to ensure that CMO rules will operate effectively at the end of the transition period. These amendments include corrections to a previous EU Exit SI. The approach when amending retained EU law has been to ensure that legislation remains as close to the current system as possible; changes are largely technical in nature.

This instrument makes a number of changes:

- Firstly, it omits and subsequently amends CMO rules relating to transnational producer groups, which will no longer be relevant in the UK at the end of the transition period;
- Secondly, it ensures that CMO rules relating to domestic producer organisations continue to function, preventing ambiguity or disruption for stakeholders in this sector; and
- Thirdly, it makes provision for wines to ensure arrangements for the protection and cancelation of Protected Designations of Origin (“PDOs”) and Protected Geographical Indications (“PGIs”) continue to function at the end of the transition period.

At the end of the transition period, without amendment, the retained EU legislation referenced above would contain European terms and requirements that might prevent the UK government and the Devolved Administrations from being able to deliver the market support schemes to the agricultural sector. Without these amendments the UK would not be

able to administer the Fruit and Vegetable Aid Scheme correctly, including carrying out checks on Producer Organisations recognised in the Aid Scheme and paying aid to those producers.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:
https://www.legislation.gov.uk/ukdsi/2020/9780348212761/contents

Response to UK Government

The Welsh Government's position is that agriculture and the CAP are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes the subject matter of the 2020 Regulations is reserved. Therefore, the UK Government has not requested Welsh Ministerial consent.

The Welsh Government's view is that the above functions directly relate to the objectives of the CMO to improve the productivity of the agricultural sector and so raise the competitiveness of primary produce in the market place. The subject matter of agriculture and CAP is within the legislative competence of the Senedd (i.e. devolved). Under the terms of the Intergovernmental Agreement, the consent of Welsh Ministers should have been sought prior to laying the 2020 Regulations.

The Welsh Ministers have written to the UK Government to inform them of our view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence and Welsh Ministers do not plan to grant unilateral consent for this Statutory Instrument.

UK MINISTERS ACTING IN DEVOLVED AREAS

171 - The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulation 2020

Laid in the UK Parliament: 5 October 2020

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 36
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 ("the EUWA").

These Regulations cover the policy area of the Common Organisation of Agricultural Markets ("CMO"), which is the framework for market measures and responding to a market crisis in the agricultural sector, provided for under the Common Agricultural Policy ("CAP"). The EUWA converts and preserves EU law relating to the CMO at the end of the transition period into domestic law ("retained EU law"). This instrument makes the appropriate corrections to retained EU law to ensure that CMO rules will operate effectively at the end of the transition period. These amendments include corrections to a previous EU Exit SI. The Welsh Government's statement dated 7 October 2020 states that the UK Government's approach when amending retained EU law has been to ensure that

legislation remains as close to the current system as possible, and that the changes made by these Regulations are largely technical in nature.

These Regulations make a number of changes:

- they revoke CMO rules relating to transnational producer groups, which will no longer be relevant in the UK at the end of the transition period;
- they ensure that CMO rules relating to domestic producer organisations continue to function, preventing ambiguity or disruption for stakeholders in this sector; and
- they make provision for wines to ensure arrangements for the protection and cancellation of Protected Designations of Origin and Protected Geographical Indications continue to function at the end of the transition period.

Legal Services have reviewed the Welsh Government's statement dated 7 October 2020 and the Explanatory Memorandum to the Regulations.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 7 October 2020 regarding the effect of these Regulations:

1. Welsh Government officials are of the view that the 2020 Regulations contain provisions which are within the scope of the Senedd's legislative competence, and as such the related functions should not be solely conferred on the Secretary of State. DEFRA takes the view that amendments in the Regulations relate to reserved matters. On this basis, the Regulations transfer various functions to the Secretary of State. In the Explanatory Memorandum to the Regulations, it is noted that:

> "Defra has engaged the Devolved Administrations on its approach to CAP legislation under the European Union (Withdrawal) Act 2018, including on this instrument, to familiarise them with the legislation ahead of laying. Defra has engaged with the Devolved Administrations during the drafting of this instrument."

The Welsh Ministers have written to the UK Government to inform it of their view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence and Welsh Ministers do not plan to grant unilateral consent for these Regulations.

2. Other than referring to agriculture and the CAP, which are not subject matters which are reserved under the Government of Wales Act 2006 and are therefore devolved, the Welsh Government's statement does not identify which specific legislative powers of the Senedd or

executive powers of the Welsh Ministers are affected by this instrument. Legal Advisers recommend that clarification is sought on which devolved powers are affected.

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

Legal Advisers draw the Committee's attention to the following issues in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks ("the Memorandum"):

- The Welsh Government's position is that agriculture and the CAP are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes that the subject matter of these Regulations is reserved. The UK Government has not therefore requested Welsh Ministerial consent.

- The Welsh Government's view is that the functions which are dealt with by these Regulations directly relate to the objectives of the CMO to improve the productivity of the agricultural sector and so raise the competitiveness of primary produce in the market place. The subject matter of agriculture and CAP is within the legislative competence of the Senedd (i.e. devolved). Under the terms of the Memorandum, the consent of Welsh Ministers should have been sought prior to laying the Regulations.

As it is unclear from the Welsh Government's statement dated 7 October 2020 what specific impact the Regulations may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to make any further assessment as to whether any significant issues arise under paragraph 8 of the Memorandum in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Food (Amendment) (EU Exit) Regulations 2020**

DATE **09 October 2020**

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

The 2020 Regulations amend the following legislation which applies in relation to Wales.

The retained direct EU law which is being amended

- Regulation (EU) No 1169/2011 of the European Parliament and of the Council of the European Parliament and of the Council on the provision of food information to consumers
- Commission Implementing Regulation (EU) No 2018/775 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food

Domestic legislation which is being amended

- The Food (Lot Marking) Regulations 1996 (S.I. 1996/1502)
- The Food (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/259)
- The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/778)

The2020 Regulations also amend certain domestic law that applies in relation to England only.

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

The 2020 Regulations make minor technical amendments to domestic regulations and retained direct EU legislation to ensure the operability of this legislation at the end of the transition period. There is no impact on the Welsh Ministers' executive competence or the Senedd's legislative competence.

The purpose of the amendments

The European Union (Withdrawal) Act 2018 ("the Withdrawal Act") converts and preserves EU law into domestic law ("retained EU law") at the end of the transition period following the UK's withdrawal from the EU.

The 2020 Regulations makes further limited amendments to domestic legislation that has been the subject of earlier EU Exit SIs, generally by making amendments to take account of the Northern Ireland Protocol.

The 2020 also amends retained direct EU law in relation to country of origin of a primary ingredient (Regulation (EU) 2018/775) to make it operable in the context of the UK being a third country and to take into account functioning of Northern Ireland Protocol.

The SI will amend the Food (Lot Marking) Regulations 1996 to include an exception to the lot marking requirement for "qualifying Northern Ireland goods" by reference to regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.legislation.gov.uk/ukdsi/2020/9780348213065

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency and to ensure consistency and coherence of the statute book. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

172 - The Food (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 8 October 2020

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 38
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government under sections 8 and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations implement the Ireland / Northern Ireland Protocol in relation to food law. The Regulations will ensure that relevant EU food law applies in Northern Ireland at the end of the Implementation Period on 31 December 2020, in accordance with the Protocol.

The Regulations also make some minor technical amendments to domestic regulations and retained direct EU legislation to ensure the operability of this legislation at the end of the Implementation Period.

Legal Advisers agree with the statement laid by the Welsh Government dated 9 October 2020 regarding the effect of these Regulations. Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

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

Department for Business, Energy & Industrial Strategy

UK Government
Llywodraeth y DU

The Rt Hon Alok Sharma MP
Secretary of State for Business, Energy & Industrial Strategy

T: 020 7215 5000
E: enquiries@beis.gov.uk

Rt Hon Simon Hart MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

T: 0292 092 4216
E: Correspondence@ukgovwales.gov.uk

Mick Antoniw MS
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
CF99 1NA

12 October 2020

Dear Mick,

Thank you for your letter of 7 August.

As your committee will be aware, the common rules regulating trade, in the context of which the devolved settlements were established, will fall away with EU rules at the end of the Transition Period. This will create the potential for significant levels of regulatory divergence between the four nations. The UK Internal Market Bill will provide regulatory stability for businesses and consumers, smoothing the passage from the Transition Period without threatening the Covid recovery.

We have requested Legislative Consent Motions for the Bill from all three devolved legislatures and will continue to work closely with the devolved administrations to agree them. The Bill's primary purpose is to maintain the status quo of seamless internal trade and support the prosperity and welfare of people and businesses across the UK.

<u>The need for primary legislation and the principles behind it</u>
The UK Government has been clear in its view that the UK Internal Market Bill is urgently needed to ensure a smooth passage from the Transition Period as the common rules regulating trade will fall away with the EU institutions. Without it, damaging levels of regulatory divergence between the four nations could arise from 1 January 2021. A well-functioning internal market with a market access commitment will give businesses the regulatory clarity they need, ensuring that supply chains continue to operate smoothly and keep the costs of doing business as low as possible.

<u>Devolution and scope of internal market proposals</u>
The Government's proposals are designed to ensure that devolution can continue to work for all parts of the UK, and that all devolved policy areas remain devolved while

ensuring that there are no new barriers to UK internal trade. At the end of the Transition Period, new powers will be transferred to Wales in a total of 66 policy areas.

Oversight, impact assessments and enforcement

Independent monitoring and advice regarding the UK's internal market will be provided on a non-binding basis by a new Office of the Internal Market (OIM) within the Competition and Markets Authority. The OIM will be independent and operate at arms' length from the Government and devolved administrations. All administrations and legislatures will be able to request specific reporting according to areas of interest.

The Government is therefore not seeking to replicate the European Commission's close supervision of Single Market rules but instead prioritised shared arrangements, underpinned by impartial and expert advice. OIM's reports and advice will be non-binding and will not constrain the ability for devolved administrations to implement regulation once new powers are returned from Brussels to the UK Government and the devolved administrations.

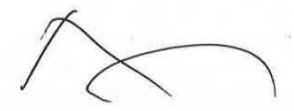
Dispute resolution and common frameworks

The internal market functions of the OIM will enable constructive intergovernmental engagement and support the separate political process to resolve disagreements between administrations. The intergovernmental arrangements that the OIM will support this engagement are subject to the outcomes of the Review of Intergovernmental Relations.

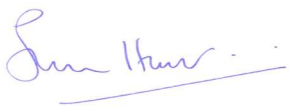
There will be an obligation for Ministers from UK Government and the devolved administrations to make a statement following reports on contentious regulations laid by the OIM before all four of the legislatures, which could facilitate a debate in the legislatures where appropriate, ensuring transparency in regulations that impact intra-UK trade and providing appropriate parliamentary oversight and accountability. This approach provides flexibility to resolve potential disagreements based on impartial, independently produced evidence. This provision will also need to have explicit links with decision-making and dispute resolution mechanisms in individual common frameworks.

The Government recognises the value of cooperation between the four nations in keeping our standards high. The UK Government is seeking to continue the productive, meaningful conversations with the devolved administrations on frameworks, to maintain the UK's current high standards.

Yours sincerely,



THE RT HON ALOK SHARMA MP
Secretary of State for Business, Energy & Industrial Strategy



THE RT HON SIMON HART MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

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

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

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

12 October 2020

Dear Mick

Breaches of the 21 day rule, and other matters concerning Covid-related legislation

Thank you for your letter of 24 September 2020, I am responding on the points you have raised on the clarity and accessibility of the law made by the Welsh Ministers relating to coronavirus.

We took the decision very early on during this pandemic to create the 'Coronavirus and the law' page to act as a single point for users to access copies of the subordinate legislation made by the Welsh Ministers. The feedback we have received from users, and legal commentators, has been supportive and we will continue to use the site to make this information available. It is not, however, intended to replace the services provided by the Queen's Printer for printing and publication of legislation, nor the additional service provided by The National Archives through the legislation.gov.uk site. That continues to provide access to authoritative text versions of primary legislation and statutory instruments in pdf format, as well as access to such legislation digitally.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YPCCGB@llyw.cymru PSCGMET@gov.wales

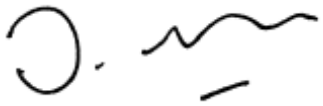
Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

The National Archives have made commitments to ensure statutory instruments made after 2018 are updated with subsequent amendments and changes as soon as possible after they are made, but as I have explained to the Committee previously there are technical, capacity and capability factors preventing them doing this for legislation made in the Welsh language at the present time. In due course, resources permitting, the Welsh Government will be providing support to their service to enable such legislation to be updated.

In the meantime we took the decision to prepare and maintain an "as amended" version of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, and the subsequent Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, in both languages given the importance of the legislation to people in Wales, and the frequency with which such legislation was being amended. I am pleased to advise the Committee that legislation.gov.uk have prioritised keeping these instruments up to date on their site, as well as the changes being made to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020. For this reason we took the decision not to commit further resource to preparing our own 'as amended' version of the International Travel Regulations.

However we agree with the points made by the Committee on accessing an 'as amended' version of those Regulations in the Welsh language. I am therefore pleased to confirm that we will prepare and publish such a document, in both languages, as soon as possible.

Yours sincerely,



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

Jane Hutt AS/MS
Y Dirprwy Weinidog a'r Prif Chwip
Deputy Minister and Chief Whip

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JH/3432/20

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Tŷ HywelCardiff Bay
CF99 1SN
Mick.Antoniw@senedd.wales

John Griffiths MS
Chair, Equality, Local Government and Communities Committee
Senedd Cymru
Tŷ HywelCardiff Bay
CF99 1SN
John.Griffiths@senedd.wales

15 October 2020

Dear Chair,

Thank you for your joint letter of 13 October, in response to my letter of 30 September, about the Legislative Consent Memorandum laid on 3 August with regards to the UK Government's Domestic Abuse Bill ("the Bill").

The Bill's progression through the House of Lords is being delayed, with Lords Second Reading not expected to commence until December, and subsequent stages of the Parliamentary scrutiny process to follow in the New Year. Consequently, the plenary debate scheduled to take place on 10 November has been postponed.

In the meantime, my officials are actively continuing discussions with their UK Government counterparts with regards to us seeking amendments to certain provisions within the Bill. I will write to update you on any agreements reached on these matters, and addressing the substantive points in your most recent letter as the discussions progress.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Yours sincerely,

Jane Hutt AS/MS
Y Dirprwy Weinidog a'r Prif Chwip
Deputy Minister and Chief Whip

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Welsh Government amendments to the United Kingdom Internal Market Bill**
DATE	**15 October 2020**
BY	**Jeremy Miles MS, Counsel General and Minister for European Transition**

I have today written to the Lord Speaker and to the leaders of the political groups in the House of Lords to urge their support for a set of amendments to the United Kingdom Internal Market Bill which, as currently drafted, represents a fundamental attack on devolution.

My letter to the Lord Speaker is at Annex 1. A brief introduction to the set of amendments is at Annex 2, and the Welsh Government's amendments are at Annex 3.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/CG/3454/20

The Rt. Hon. The Lord Fowler
Lord Speaker
House of Lords
SW1A 2PW
lordspeaker@parliament.uk

15 October 2020

Dear Lord Speaker

UNITED KINGDOM INTERNAL MARKET BILL

The Welsh Government is deeply concerned about the UK Internal Market Bill which will receive its second reading next week.

The Bill represents an unprecedented attack on the devolution settlement in Wales, and, we believe, in Scotland and Northern Ireland. It would undermine the Senedd's right to regulate in devolved areas of competence; give wholly new powers to UK Ministers to spend public funds on devolved issues in Wales, without any undertaking to work with the devolved Government in doing so; and would explicitly amend the Government of Wales Act to enable the government to impose a new 'state aid' regime without our agreement.

It would undermine the hard work which has been underway for more than three years on the part of all four Governments to develop the Common Frameworks programme, which aims to simultaneously ensure the smooth functioning of the UK Internal Market while protecting the established constitutional rights of the devolved legislatures and governments.

We have therefore developed a set of model amendments which I have pleasure in enclosing with this letter. We would urge members of the House to support these in order to protect the rights of the devolved institutions.

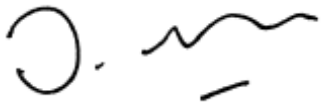
Although the amendments have been developed so as to have equal validity across all three of the devolved nations, I should stress that these are proposals from the Welsh Government. The Scottish Government has indicated that it is broadly supportive of these amendments while remaining resolutely opposed to the Bill in principle on the basis that it weakens devolution and breaches international law.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YPCCGB@llyw.cymru PSCGMET@gov.wales

I am copying this letter to the Leader of the House of Lords, Baroness Evans of Bowes Park; the Shadow Leader of the House of Lords, Baroness Smith of Basildon, the Leader of the Liberal Democrats, Lord Newby and the Convenor of the Cross-Bench peers, Lord Judge; as well as to the First Minister and Deputy First Minister of Northern Ireland and Michael Russell, MSP, Cabinet Secretary for the Constitution, Europe and External Affairs in the Scottish Government.

Yours sincerely,



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

WELSH GOVERNMENT:

MODEL AMENDMENTS FOR THE UNITED KINGDOM INTERNAL MARKET BILL

The Welsh Government has prepared 'model amendments' which it would urge Peers to consider tabling to address its concerns with regard to the Bill, which as drafted would fundamentally undermine the devolution settlement.

In order to be valid and logical without further drafting, the amendments are presented so as to apply to Scotland and Northern Ireland as well as Wales.

Parts 1 – 3 and Schedules 1 and 2

In respect of Parts 1 – 3 of the Bill, the amendments aim to:

- Limit the application of Parts 1 to 3 to those subject areas, services or professions specified in regulations, which should only be made in circumstances where it has not been possible to reach agreement on a Common Framework for that specific subject area, service or profession *[amendment no.1 to insert new Clause after Clause 1, amendment no. 13 to insert new Clause to replace Clause 17, amendment no. 16 to insert new Clause after Clause 23 and amendment no. 25 inserting a new Schedule before Schedule 1. There are also related amendments to Clause 3 (amendment 3), Clause 9 (amendment 7), Clause 16 (amendments 11 and 12) and Clause 25 (amendment 17)]*

- Widen the scope of the exceptions to the market access principles to a wider range of public policy considerations, in line with practice within the EU *[amendment no. 8 inserting new Clause to replace Clause 10, amendment no. 9 to Clause 11, amendment no. 14 to Clause 18, amendment no. 15 to Clause 20, amendments nos. 26 and 27 to Schedule 1]*

- Require the consent of the devolved administrations should the Government wish to use its delegated powers to add to the areas or scope in which the principles can be applied or amend the exceptions to them and to any guidance issued by the Government *[amendment no. 2 to Clause 3, amendment no. 4 to Clause 6, amendment no. 10 to Clause 12]*

- Limit the scope of the application of the non-discrimination principle *[amendment nos. 5 and 6 to Clause 8]*

- Require Ministers, when making legislation, to have regard to the need to ensure a high level of protection in respect of environmental protection, food standards etc. in the regulation of goods *[amendment no. 24 inserting new Clause after Clause 52.]*

Part 4 and Schedule 3

In respect of Part 4 and Schedule 3, the amendments are intended to:

- Reflect the fact that, unlike its other functions, the Office of the Internal Market (OIM) in the Competition and Markets Authority (CMA) will be dealing with matters within devolved competence. These amendments therefore strengthen the role of the devolved institutions in the CMA's overall governance and the appointment of the OIM Panel *[amendments no. 19 to Clause 39, amendment no. 20 to Clause 40 and amendment nos. 28 to 34 to Schedule 3]*

- Ensure that the OIM is equally accountable to all four legislatures and administrations *[amendment no. 35 to Schedule 3]*

- Add to the role of the OIM to reflect the fact that powers under Parts 1 – 3 can only be 'switched on' by Regulations *[amendment no. 18to insert a new Clause after Clause 31]*

Part 6

In respect of Part 6, the amendments are intended to remove the wholly new powers which the Bill would give to UK Ministers to fund activities within devolved competence in Scotland, Wales and Northern Ireland *[amendment no. 21 to remove Clause 48]*

Part 7

In respect of Part 7 the amendments are intended to:

- Remove the provisions which would prevent devolved legislation from making provision about the regulation of State aid, thereby maintaining the status quo and ensuring that each part of the UK can play a part in determining the UK's future State aid regime *[amendment no. 22 to remove Clause 50]*

- Remove the provisions which would make the Bill a 'protected enactment' (which would mean devolved legislatures would be prohibited from making any change to it), as the Government has claimed it is an economic, not a constitutional Bill *[amendment no.23 to remove Clause 51]*

AMENDMENTS TO THE UNITED KINGDOM INTERNAL MARKET BILL

After Clause 1

BARONESS FINLAY OF LLANDAFF

1 Insert the following new Clause—

"Application of market access principles

Legislation to which market access principles apply

(1) The United Kingdom market access principles apply to legislation only so far as it relates to a subject specified in regulations made by the Secretary of State.

(2) Regulations under subsection (1) may specify a subject only if it is within a description listed in Schedule *(Subjects to which market access principles may be applied).*

(3) The Secretary of State may by regulations amend Schedule *(Subjects to which market access principles may be applied).*

(4) Regulations under this section are subject to affirmative resolution procedure.

(5) Before laying a draft of a statutory instrument containing regulations under this section before either House of Parliament, the Secretary of State must give notice of the proposed regulations to—

(a) each devolved authority, and

(b) the Competition and Markets Authority.

(6) The Secretary of State may not lay the draft instrument before either House of Parliament until—

(a) the Secretary of State has received—

(i) a statement in relation to the proposed regulations from each devolved authority, and

(ii) a report or advice on the proposed regulations from the Competition and Markets Authority, or

(b) the period of 12 months beginning with the day on which notice was given under subsection (5) has ended.

(7) When a draft of a statutory instrument containing regulations under this section is laid before either House of Parliament, the Secretary of State must at the same time lay before that House copies of any statements, report or advice mentioned in subsection (6)(a).

(8) In this section, "devolved authority" means—

(a) the Scottish Ministers;

(b) the Welsh Ministers;

(c) the Department for the Economy in Northern Ireland."

Member's explanatory statement

This amendment means that the United Kingdom market access principles only apply to legislation relating to subjects specified in regulations made by the Secretary of State. It introduces a new Schedule (inserted by amendment 25) listing the subjects that may be specified, and sets out the procedure for making regulations.

Clause 3

BARONESS FINLAY OF LLANDAFF

2 Clause 3, page 3, line 30, leave out "consult" and insert "obtain the consent of"

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before making regulations amending clause 3(3), which specifies the types of statutory requirement that are within the scope of the mutual recognition principle.

Clause 4

BARONESS FINLAY OF LLANDAFF

3 Clause 4, page 4, line 5, leave out "is the day before the day on which this section comes into force" and insert "in relation to a statutory requirement relating to a subject is the day before the day on which regulations under section (*Legislation to which market access principles apply*) specifying that subject come into force"

Member's explanatory statement

This amendment is related to the new clause inserted by amendment 1. It means that the mutual recognition principle does not apply to a statutory requirement that applied in one part of the United Kingdom before regulations came into force specifying the subject of the requirement as one to which the principle applies.

Clause 6

BARONESS FINLAY OF LLANDAFF

4 Clause 6, page 5, line 28, leave out "consult" and insert "obtain the consent of"

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before making regulations amending clause 6(3), which specifies the types of statutory provision that are within the scope of the non-discrimination principle.

Clause 8

BARONESS FINLAY OF LLANDAFF

5 Clause 8, page 6, line 21, leave out paragraph (d)

Member's explanatory statement

This amendment is consequential on amendment 8, which replaces clause 10. It removes the provision that a relevant requirement is indirectly discriminatory if (among other things) it cannot reasonably be considered a necessary means of achieving a legitimate aim. The issue is addressed more generally in the new clause 10.

BARONESS FINLAY OF LLANDAFF

6 Clause 8, page 6, line 45, leave out subsections (6) to (9)

Member's explanatory statement

This amendment removes provisions about the meaning and application of clause 8(1)(d), as a consequence of amendment 5 removing clause 8(1)(d).

Clause 9

BARONESS FINLAY OF LLANDAFF

7 Clause 9, page 7, line 10, leave out subsection (1) and insert—

"(1) Statutory provision relating to a subject is not a relevant requirement for the purposes of the non-discrimination principle for goods if the same provision was in force in the part of the United Kingdom concerned on the day before the day on which regulations under section (*Legislation to which market access principles apply*) specifying that subject come into force."

Member's explanatory statement

This amendment is related to the new clause inserted by amendment 1. It means that the non-discrimination principle does not apply to a statutory requirement that applied in part of the United Kingdom before regulations came into force specifying the subject of the requirement as one to which the market access principles apply.

Clause 10

BARONESS FINLAY OF LLANDAFF

8 Leave out Clause 10 and insert the following new Clause—

"Exclusions from market access principles: public policy etc.

(1) The United Kingdom market access principles do not apply to (and sections 2(3) and 5(3) do not affect the operation of) any legislation so far as it satisfies the conditions set out in subsections (2) and (3).

(2) The first condition is that the aim of the legislation is—

(a) the protection of the life or health of humans, animals or plants,

(b) the protection of public safety or security,

(c) the protection of the environment,

(d) the protection of animal welfare,

(e) consumer protection,

(f) the improvement of working conditions, or

(g) a combination of any of those aims.

(3) The second condition is that the legislation can reasonably be considered a proportionate means of achieving that aim or those aims.

(4) The United Kingdom market access principles do not apply to (and sections 2(3) and 5(3) do not affect the operation of) any legislation so far as it imposes, or relates to the imposition of, any tax, rate, duty or similar charge.

(5) A relevant requirement is not to be taken indirectly to discriminate against goods for the purposes of section 8 if—

(a) it is statutory provision contained in, or in subordinate legislation made under, an Act of Parliament,

(b) the same, or substantially the same, statutory provision applies in the originating part,

(c) the statutory provision that applies in the originating part is also contained in, or in subordinate legislation made under, an Act of Parliament, and

(d) no substantive change to the statutory provision has come into force—

(i) in the destination part but not the originating part, or

(ii) in the originating part but not the destination part.

(6) In subsection (5), "relevant requirement", "statutory provision", "originating part" and "destination part" have the meanings they have in relation to the non-discrimination principle for goods (see sections 5 and 6).

(7) The Secretary of State may by regulations amend subsection (2).

(8) Regulations under subsection (7) are subject to affirmative resolution procedure.

(9) Before making regulations under subsection (7) the Secretary of State must obtain the consent of—

(a) the Scottish Ministers;

(b) the Welsh Ministers;

(c) the Department for the Economy in Northern Ireland."

Member's explanatory statement

This amendment specifies exclusions from the United Kingdom market access principles, in place of the narrower exclusions in Schedule 1. In particular, it means the principles will not apply to legislation which can reasonably be considered a proportionate means of achieving any of the policy aims listed in subsection (2).

Clause 11

BARONESS FINLAY OF LLANDAFF

9 Clause 11, page 8, line 9, leave out subsections (6) and (7)

Member's explanatory statement

This amendment is consequential on amendment 8 replacing clause 10, which will mean that Schedule 1 no longer sets out exclusions from the United Kingdom market access principles. It removes provisions modifying one of the exclusions in Schedule 1.

Clause 12

BARONESS FINLAY OF LLANDAFF

10 Clause 12, page 8, line 31, at end insert—

"(4A) Before issuing, revising or withdrawing any guidance the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland."

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before issuing, revising or withdrawing guidance on the operation of the United Kingdom market access principles or of Part 1 of the Bill.

Clause 16

BARONESS FINLAY OF LLANDAFF

11 Clause 16, page 11, line 26, leave out paragraph (c) and insert—

"(c) a requirement that—

(i) is in force, or otherwise has effect, in relation to a service on the relevant day, and has not been substantively changed after that day, or

(ii) comes into force, or otherwise takes effect, in relation to a service after the relevant day, if it re-enacts or replicates (without substantive change) a legislative requirement in force or having effect in relation to the service immediately before the relevant day;"

Member's explanatory statement

This amendment is related to new clause 17 substituted by amendment 13, which means that Part 2 applies only to services specified in regulations. This amendment and amendment 12 mean that Part 2 does not generally apply to requirements that have effect before the regulations come into force.

BARONESS FINLAY OF LLANDAFF

12 Clause 16, page 12, line 3, leave out subsection (7) and insert—

"(7) For the purposes of subsections (5)(c) and (6)—

(a) the "relevant day" is the day before the day on which section 18 first applies, or sections 19 and 20 first apply, in relation to a service by virtue of regulations under section (*Services: application of sections 18 to 20*);

(b) an authorisation requirement corresponds to another authorisation requirement if it relates to the same, or substantially the same, services."

Member's explanatory statement

This amendment is related to the new clause 17 substituted by amendment 13, which means that Part 2 applies only to services specified in regulations. This amendment and amendment 11 mean that Part 2 does not generally apply to requirements that have effect before the regulations come into force.

Clause 17

BARONESS FINLAY OF LLANDAFF

13 Leave out clause 17 and insert the following new clause—

"Services: application of sections 18 to 20

(1) Section 18 applies to a service only if it is specified in regulations made by the Secretary of State.

(2) Regulations under subsection (1) may not specify a service listed in the table in Part 1 of Schedule 2.

(3) Sections 19 and 20 apply to a service only if it is specified in regulations made by the Secretary of State.

(4) Regulations under subsection (3) may not specify a service listed in the table in Part 2 of Schedule 2.

(5) In Schedule 2—

(a) Part 3 lists authorisation requirements to which section 18 does not apply;

(b) Part 4 lists regulatory requirements to which sections 19 and 20 do not apply.

(6) The Secretary of State must keep Schedule 2 under review.

(7) The Secretary of State may by regulations amend Schedule 2.

(8) Regulations under subsections (1) and (3) are subject to affirmative resolution procedure.

(9) Before laying a draft of a statutory instrument containing regulations under subsection (1) or (3) before either House of Parliament, the Secretary of State must give notice of the proposed regulations to—

(a) each devolved authority, and

(b) the Competition and Markets Authority.

(10) The Secretary of State may not lay the draft instrument before either House of Parliament until—

(a) the Secretary of State has received—

(i) a statement in relation to the proposed regulations from each devolved authority, and

(ii) a report or advice on the proposed regulations from the Competition and Markets Authority, or

(b) the period of 12 months beginning with the day on which notice was given under subsection (9) has ended.

(11) When a draft of a statutory instrument containing regulations under subsection (1) or (3) is laid before either House of Parliament, the Secretary of State must at the same time lay before that House copies of any statements, report or advice mentioned in subsection (10)(a).

(12) Regulations under subsection (7) are subject to affirmative resolution procedure.

(13) But, during the period of three months beginning with the day this section comes into force, the Secretary of State may make regulations under subsection (7) subject instead to made affirmative procedure.

(14) Before making regulations under subsection (7) the Secretary of State must obtain the consent of each devolved authority.

(15) In this section, "devolved authority" means—

(a) the Scottish Ministers;

(b) the Welsh Ministers;

(c) the Department for the Economy in Northern Ireland."

Member's explanatory statement

This amendment means that the provisions in Part 2 limiting the effect of certain requirements apply only to services that are specified in regulations made by the Secretary of State. It provides that services listed in Schedule 2 may not be specified, and sets out the procedure for making regulations.

Clause 18

BARONESS FINLAY OF LLANDAFF

14 Clause 18, page 13, line 14, at end insert "or by any other overriding reason relating to the public interest"

Member's explanatory statement

This amendment broadens the purposes for which an authorisation requirement may be applied to a person authorised in another part of the United Kingdom, to include any overriding reason relating to the public interest (rather than only to respond to a public health emergency).

Clause 20

BARONESS FINLAY OF LLANDAFF

15 Clause 20, page 14, line 20, leave out subsections (6) to (8)

Member's explanatory statement

This amendment removes the list of "legitimate aims" in clause 20(6) and the power to amend that list. The intention is that the reference to a legitimate aim in clause 20(2)(d) should be read as meaning any legitimate aim, not only the three aims listed in subsection (6).

After Clause 23

BARONESS FINLAY OF LLANDAFF

16 Insert the following new Clause—

"Application of Part 3

(1) This Part applies to a profession only if it is specified in regulations made by the Secretary of State.

(2) Regulations under this section are subject to affirmative resolution procedure.

(3) Before laying a draft of a statutory instrument containing regulations under this section before either House of Parliament, the Secretary of State must give notice of the proposed regulations to—

(a) each devolved authority, and

(b) the Competition and Markets Authority.

(4) The Secretary of State may not lay the draft instrument before either House of Parliament until—

(a) the Secretary of State has received—

(i) a statement in relation to the proposed regulations from each devolved authority, and

(ii) a report or advice on the proposed regulations from the Competition and Markets Authority, or

(b) the period of 12 months beginning with the day on which notice was given under subsection (3) has ended.

(5) When a draft of a statutory instrument containing regulations under this section is laid before either House of Parliament, the Secretary of State must at the same time lay before that House copies of any statements, report or advice mentioned in subsection (4)(a).

(6) In this section, "devolved authority" means—

(a) the Scottish Ministers;

(b) the Welsh Ministers;

(c) the Department for the Economy in Northern Ireland."

Member's explanatory statement

This amendment means that Part 3 of the Bill (concerning mutual recognition of professional qualifications) will apply to a profession only if it is specified in regulations made by the Secretary of State. It also sets out the procedure for making regulations.

Clause 25

BARONESS FINLAY OF LLANDAFF

17 Clause 25, page 45, line 46, leave out subsections (2) and (3) and insert—

"(2) In subsection (1) "existing provision" means—

(a) provision that is in force in relation to a profession on the date that regulations under section (*Application of Part 3*) are made in relation to that profession, or

(b) provision that comes into force in relation to a profession after that date so far as it is, in substance, a re-enactment or replication of provision within paragraph (a).

(3) Subsection (1) does not apply (and section 22(2) accordingly does apply) in relation to a profession if, after the date on which regulations under section (*Application of Part 3*) are made in relation to that profession, provision comes into force in a part of the United Kingdom other than the relevant part that changes the circumstances in which individuals are qualified in relation to that profession."

Member's explanatory statement

This amendment is related to amendment 16. It means that Part 3 does not generally apply to legislation that is already in force in relation to a profession when regulations are made applying Part 3 to that profession (or that restates legislation that was in force at that time).

After Clause 31

BARONESS FINLAY OF LLANDAFF

18 Insert the following new Clause—

"Advice on proposal to make regulations applying Part 1, 2 or 3

(1) Where the CMA is given notice of proposed regulations in accordance with section (*Application of market access principles*)(5), (*Services: application of sections 18 to 20*)(9) or (*Application of Part 3*)(3), the CMA must give advice, or make a report, to the Secretary of State with respect to the proposed regulations.

(2) The advice or report must (among other things) consider the potential effects on the matters specified in subsection (3)—

(a) of any regulatory provision that any relevant national authority has proposed or might reasonably be expected to propose and that would be affected by the making of the proposed regulations, and

(b) of the application of Part 1, 2 or 3 of this Act by virtue of the proposed regulations.

(3) The matters mentioned in subsection (2) are—

(a) the effective operation of the internal market in the United Kingdom, including—

(i) indirect or cumulative effects;

(ii) distortion of competition or trade;

(iii) impacts on prices, the quality of goods and services or choice for consumers;

(b) the following in each part of the United Kingdom—

(i) the health and safety of humans, animals and plants,

(ii) standards of environmental protection, and

(iii) any other aim that any regulatory provision mentioned in subsection (2)(a) would seek to promote.

(4) Where the CMA gives advice, or makes a report, to the Secretary of State under this section—

(a) it must at the same time send a copy of the advice or report to the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland;

(b) it must publish the advice or report in such manner as it considers appropriate."

Member's explanatory statement

This amendment requires the CMA to provide advice or a report to the Secretary of State when notified of proposed regulations applying Part 1, 2 or 3 of the Bill (under the clauses inserted or substituted by amendments 1, 13 and 16), and it specifies matters that the advice or report must consider.

Clause 39

BARONESS FINLAY OF LLANDAFF

19 Clause 39, page 31, line 6, leave out "such" and insert "each relevant national authority and such other"

Member's explanatory statement

This amendment requires the CMA to consult the Secretary of State and the devolved administrations when preparing or revising its statement of policy in relation to the enforcement of notices under clause 38 requiring information or documents.

Clause 40

BARONESS FINLAY OF LLANDAFF

20 Clause 40, page 31, leave out lines 39 to 41 and insert—

"must—

(a) consult the CMA and such other persons as the Secretary of State considers appropriate;

(b) obtain the consent of each other relevant national authority."

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before making regulations specifying maximum penalties that may be imposed by the CMA under clause 39.

Clause 48

BARONESS FINLAY OF LLANDAFF

21 *Baroness Finlay of Llandaff gives notice of her intention to oppose the Question that Clause 48 stand part of the Bill.*

Member's explanatory statement

This notice is intended to remove the provision for a Minister of the Crown to provide financial assistance for economic development etc. anywhere in the United Kingdom.

Clause 50

BARONESS FINLAY OF LLANDAFF

22 *Baroness Finlay of Llandaff gives notice of her intention to oppose the Question that Clause 50 stand part of the Bill.*

Member's explanatory statement

This notice is intended to remove provisions changing the legislative competence of the devolved legislatures to prevent devolved Acts making provision about the regulation of the provision of certain subsidies by public authorities.

Clause 51

BARONESS FINLAY OF LLANDAFF

23 *Baroness Finlay of Llandaff gives notice of her intention to oppose the Question that Clause 51 stand part of the Bill.*

Member's explanatory statement

This notice is intended to remove provisions changing the legislative competence of the devolved legislatures to prevent devolved Acts modifying the United Kingdom Internal Market Act 2020.

After Clause 52

BARONESS FINLAY OF LLANDAFF

24 Insert the following new Clause—

"52A Establishing and maintaining high levels of protection in the regulation of goods

(1) The duty in subsection (2) applies where an appropriate authority exercises any function of making of subordinate legislation that establishes, alters or removes a relevant requirement.

(2) The appropriate authority must have regard to the need to establish and maintain a high level of protection in respect of any regulatory aim that is relevant to the relevant requirement.

(3) A person in charge of a Bill in an appropriate legislature that contains provision establishing, altering or removing a relevant requirement must make a statement, on or before introduction of the Bill, that—

(a) sets out the person's view as to whether the provisions will provide for a level of protection in respect of any regulatory aim relevant to the relevant requirement that is equivalent to, higher than or lower than the level of protection afforded by the law before it would be changed by the Bill, and

(b) sets out the person's reasons for holding that view.

(4) The form of any statement under subsection (3), and the manner in which it is to be made, is to be determined under the standing orders of the appropriate legislature.

(5) Before making subordinate legislation that establishes, alters or removes a relevant requirement, the appropriate authority must make a statement that—

(a) sets out the authority's view as to whether the legislation will provide for a level of protection in respect of any regulatory aim relevant to the relevant requirement that is equivalent to, higher than or lower than the level of protection afforded by the law before it would be changed by the legislation, and

(b) sets out the person's reasons for holding that view.

(6) A statement made under subsection (5) must be in writing and be published at such a time before the subordinate legislation is made and in such manner as the authority making it considers appropriate.

(7) But subsection (6) is subject to any requirements imposed by the standing orders of the appropriate legislature in the case of subordinate legislation that must be laid before the legislature.

(8) In this section—

"appropriate authority" means—

(a) a Minister of the Crown;

(b) the Scottish Ministers;

(c) the Welsh Ministers;

(d) the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department;

(e) any other person who exercises the function of making subordinate legislation;

"appropriate legislature" means—

(a) either House of Parliament;

(b) the Scottish Parliament;

(c) Senedd Cymru;

(d) the Northern Ireland Assembly;

"regulatory aim" means—

(a) the protection of the life or health of humans, animals or plants,

(b) the protection of public safety or security,

(c) the protection of the environment,

(d) the protection of animal welfare,

(e) consumer protection,

(f) the improvement of working conditions, or

(g) a combination of any of those aims;

"relevant requirement" means—

(a) a relevant requirement (within the meaning given by section 3) for the purposes of the mutual recognition principle for goods as it applies in relation to the sale of goods in a part of the United Kingdom, or

(b) a relevant requirement (within the meaning given by section 6) for the purposes of the non-discrimination principle for goods."

Member's explanatory statement

This amendment means that Ministers and others involved in making legislation must have regard to the need to establish and maintain a high level of protection in respect of regulatory aims relevant to that legislation and to which the mutual recognition principle for goods or the non-discrimination principle apply.

Before Schedule 1

BARONESS FINLAY OF LLANDAFF

25 Insert the following new Schedule—

"SCHEDULE

SUBJECTS TO WHICH MARKET ACCESS PRINCIPLES MAY BE APPLIED

1 Support for agriculture, including direct payments to farmers and rural development.

2 Support and management of fishing, fisheries and aquaculture, including access to fisheries, fishing quotas and marine conservation.

3 Zootechnical and genealogical conditions for trade in breeding animals used in agriculture and their germinal products.

4 Animal health and welfare.

5 Plant health.

6 Plant varieties and seeds.

7 Cultivation and marketing of genetically modified organisms.

8 Production, certification and labelling of organic products.

9 Food compositional standards and labelling.

10 Use of geographical names for foods and agricultural products.

11 Safety and hygiene of food and animal feed.

12 Regulation of fertilisers, including composition and labelling.

13 Manufacture, authorisation, sale and use of chemicals and pesticides.

14 Emissions trading schemes for greenhouse gases.

15 Ozone depleting substances and fluorinated gases.

16 Prevention, reduction, treatment, disposal and shipment of waste, including standards for products and packaging.

Interpretation

In this Schedule, "food" includes drink."

Member's explanatory statement

This amendment inserts a new Schedule listing the subjects that may be specified by regulations under the new clause inserted by amendment 1 for the purpose of applying the United Kingdom market access principles in Part 1.

Schedule 1

BARONESS FINLAY OF LLANDAFF

26 Schedule 1, page 46, line 5, leave out sub-paragraph (1) and insert—

"(1) This paragraph sets out the conditions referred to in section 43(5)."

Member's explanatory statement

This amendment is consequential on the new clause 10 substituted by amendment 8, which means that paragraph 1 of Schedule 1 will not be relevant to Part 1 of the Bill and will apply only for the purposes of clause 43(5).

BARONESS FINLAY OF LLANDAFF

27 Schedule 1, page 47, line 1, leave out paragraphs 2 to 12

Member's explanatory statement

This amendment removes provisions in Schedule 1 which are not needed as a consequence of the new clause 10 substituted by amendment 8, which sets out exclusions from the United Kingdom market access principles in more general terms.

Schedule 3

BARONESS FINLAY OF LLANDAFF

28 Schedule 3, page 54, line 11, leave out "consult" and insert "obtain the consent of"

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before appointing the chair and members of the CMA's Office of the Internal Market panel (but this is intended to be subject to amendment 29).

BARONESS FINLAY OF LLANDAFF

29 Schedule 3, page 54, line 14, at end insert—

""(2B) But the Secretary of State may make an appointment without a consent required by sub-paragraph (2A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(2C) If the Secretary of State makes an appointment without a consent required by sub-paragraph (2A),

the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with the appointment.""

Member's explanatory statement

This amendment enables the Secretary of State to make an appointment to the OIM panel without the consent of the devolved administrations (required by amendment 28) if one month has passed since consent was requested. Reasons must be given for proceeding without consent.

BARONESS FINLAY OF LLANDAFF

30 Schedule 3, page 54, line 8, at end insert—

"(2A) After sub-paragraph (1)(b) insert—

"(c) one person appointed to membership of the CMA Board by each of—

(i) the Scottish Ministers,

(ii) the Welsh Ministers, and

(iii) the Department for the Economy in Northern Ireland.""

Member's explanatory statement

This amendment provides for each of the devolved administrations to appoint a member to the CMA Board.

BARONESS FINLAY OF LLANDAFF

31 Schedule 3, page 54, line 14, at end insert—

"(4) In sub-paragraph (5), after "(1)(b)" insert "and (c)".

2A In paragraph 2, after sub-paragraph (2) insert—

"(3) Before determining the terms and conditions of an appointment to the CMA Board under paragraph 1(1)(c), the Secretary of State must consult whichever of the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland is responsible for making the appointment.""

Member's explanatory statement

This amendment adds two new amendments to Schedule 3 related to amendment 30. The first updates a cross-reference as a consequence of that amendment. The second requires the Secretary of State to consult the devolved administrations before setting terms and conditions for CMA Board members that they appoint.

BARONESS FINLAY OF LLANDAFF

32 Schedule 3, page 54, line 15, at end insert—

"(4) In sub-paragraph (1), after "(1)(b)" insert "or (c)"."

Member's explanatory statement

This amendment is consequential on amendment 30, and applies the maximum 5-year term for CMA Board members to members appointed by the devolved administrations.

BARONESS FINLAY OF LLANDAFF

33 Schedule 3, page 55, line 3, at end insert—

"(2A) After sub-paragraph (2) insert—

"(2A) Sub-paragraph (2) applies to a member of the CMA Board appointed under paragraph 1(1)(c) as if the reference to the Secretary of State were a reference to whichever of the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland appointed the person.""

Member's explanatory statement

This amendment means that, if a CMA Board member appointed by one of the devolved administrations (by virtue of amendment 30) wishes to resign from membership, they must do so by giving notice to the devolved administration in question.

BARONESS FINLAY OF LLANDAFF

34 Schedule 3, page 55, line 15, at end insert—

"5A (1) Paragraph 7 is amended as follows.

(2) The existing provision becomes sub-paragraph (1).

(3) After that sub-paragraph insert—

"(2) Sub-paragraph (1) applies to a member of the CMA Board appointed under paragraph 1(1)(c) as if the reference to the Secretary of State were a reference to whichever of the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland appointed the person.""

Member's explanatory statement

This amendment means that, where a CMA Board member was appointed by one of the devolved administrations (by virtue of amendment 30), the power to remove that member for incapacity, misbehaviour or dereliction of duty is exercisable by the devolved administration in question.

BARONESS FINLAY OF LLANDAFF

35 Schedule 3, page 55, line 20, at end insert—

"7A In paragraph 12, after "Parliament" insert ", the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly".

7B In paragraph 13, after "Parliament" insert ", the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly".

7C In paragraph 14, after "Parliament" insert ", the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly".

7D In paragraph 27(b), after "(1)(b) insert "and (c)"."

Member's explanatory statement

This amendment requires the CMA to lay its annual plan, proposals for its plan, and its annual report before each of the devolved legislatures. It also adds an amendment to update a cross-reference as a consequence of amendment 30.

Agenda Item 10

Document is Restricted

Agenda Item 11

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Senedd Cymru
Y Pwyllgor Busnes
—
Welsh Parliament
Business Committee

Mick Antoniw MS
Chair, Legislation, Justice and Constitution Committee

08 October 2020

Dear Mick

Covid-19 Regulations

On 6 October the Business Committee discussed the timing of debates of Covid-19 Regulations. In particular, the Committee considered what the appropriate balance should be between the need to allow sufficient time for committee scrutiny on one hand, and on the other the importance of ensuring that Members are given the opportunity to debate the Regulations in a timely manner. The Committee's conclusion was that the Welsh Government's more recent pattern of scheduling debates within two weeks of Regulations having been laid, combined with the ability of the Legislation, Justice and Constitution Committee to consider and report on those Regulations within that timescale, struck a satisfactory balance. The importance of the LJC committee's role in the scrutiny of such legislation was reaffirmed.

However, there was further discussion about the possibility of taking a different approach to those Regulations for which the general purpose had already been considered in the scrutiny of previous Regulations. This point was felt to be particularly relevant in the case of Regulations relating to local restrictions, where a series of Regulations have introduced specific restrictions in a number of County Boroughs in turn and have been scrutinised in detail. One potential option raised in discussion was for Welsh Government to flag new Regulations where the underlying principle had already been scrutinised, to enable a decision to be taken by the Business Committee about the level of further scrutiny which might be required before the debate.

The Business Committee is therefore seeking the LJC Committee's views on the possibility of enabling certain Regulations to be prioritised for debate in such circumstances.

Yours sincerely,

Elin Jones MS
Y Llywydd and Chair of the Business Committee

Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN
SeneddPwyllgorBusnes@Senedd.cymru
0300 200 6565

Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN
SeneddBusiness@senedd.wales
0300 200 6565

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