

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 9 November 2020	Committee Clerk
Meeting time: 10.00	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 Proposed negative instruments that raise no reporting issues
under Standing Order 21.3B
10.00–10.05 (Pages 1 – 2)
CLA(5)–32–20 – Paper 1 – Proposed negative statutory instruments with clear reports
 - 2.1 pNeg(5)33 – The Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020
 - 2.2 pNeg(5)35 – The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2020
- 3 Instruments that raise issues to be reported to the Senedd under
Standing Order 21.2 or 21.3
10.05–10.10



Negative Resolution Instruments

3.1 SL(5)640 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020

(Pages 3 – 17)

CLA(5)–32–20 – Paper 2 – Report

CLA(5)–32–20 – Paper 3 – Regulations

CLA(5)–32–20 – Paper 4 – Explanatory Memorandum

3.2 SL(5)644 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 17) Regulations 2020

(Pages 18 – 36)

CLA(5)–32–20 – Paper 5 – Report

CLA(5)–32–20 – Paper 6 – Regulations

CLA(5)–32–20 – Paper 7 – Explanatory Memorandum

CLA(5)–32–20 – Paper 8 – Letter from the Minister for Finance and Trefnydd, 30 October 2020

CLA(5)–32–20 – Paper 9 – Written statement, 29 October 2020

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

10.10–10.15

4.1 SICM(5)36 – The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

(Pages 37 – 69)

CLA(5)–32–20 – Paper 10 – Statutory Instrument Consent Memorandum

CLA(5)–32–20 – Paper 11 – Regulations

CLA(5)–32–20 – Paper 12 – Explanatory Memorandum

CLA(5)–32–20 – Paper 13 – Letter from the Minister for Environment, Energy and Rural Affairs, 27 October 2020

CLA(5)–32–20 – Paper 14 – Written statement

CLA(5)–32–20 – Paper 15 – Commentary

**4.2 SICM(5)38 – The European Union Withdrawal (Consequential Modifications)
(EU Exit) Regulations 2020**

(Pages 70 – 108)

CLA(5)–32–20 – Paper 16 – Statutory Instrument Consent Memorandum

CLA(5)–32–20 – Paper 17 – Regulations

CLA(5)–32–20 – Paper 18 – Explanatory Memorandum

CLA(5)–32–20 – Paper 19 – Letter from the Minister for Finance and

Trefnydd, 2 November 2020

CLA(5)–32–20 – Paper 20 – Written statement

CLA(5)–32–20 – Paper 21 – Commentary

5 Written statements under Standing Order 30C

10.15–10.25

**5.1 WS–30C(5)191 – The Common Organisation of the Markets in Agricultural
Products (Miscellaneous Amendments) (EU Exit) Regulations 2020**

(Pages 109 – 115)

CLA(5)–32–20 – Paper 22 – Written statement

CLA(5)–32–20 – Paper 23 – Commentary

**5.2 WS–30C(5)192 – The Common Organisation of the Markets in Agricultural
Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020**

(Pages 116 – 120)

CLA(5)–32–20 – Paper 24 – Written statement

CLA(5)–32–20 – Paper 25 – Commentary

5.3 WS–30C(5)193 – The Detergents (Amendment) (EU Exit) Regulations 2020

(Pages 121 – 124)

CLA(5)–32–20 – Paper 26 – Written statement

CLA(5)–32–20 – Paper 27 – Commentary

**5.4 WS–30C(5)195 – The Animal Welfare and Invasive Non–native Species
(Amendment etc.) (EU Exit) Regulations 2020**

(Pages 125 – 129)

CLA(5)–32–20 – Paper 28 – Written statement

CLA(5)–32–20 – Paper 29 – Commentary

**5.5 WS-30C(5)197 – The Agricultural Products, Food and Drink (Amendment Etc.)
(EU Exit) Regulations 2020**

(Pages 130 – 137)

CLA(5)-32-20 – Paper 30 – Written statement

CLA(5)-32-20 – Paper 31 – Commentary

**5.6 WS-30C(5)198 – The Import of, and Trade in, Animal Products (Miscellaneous
Amendments) (EU Exit) Regulations 2020**

(Pages 138 – 144)

CLA(5)-32-20 – Paper 32 – Written statement

CLA(5)-32-20 – Paper 33 – Commentary

6 Papers to note

10.25-10.30

**6.1 Letter from the Minister for Environment, Energy and Rural Affairs: UK
Fisheries Bill**

(Pages 145 – 147)

CLA(5)-32-20 – Paper 34 – Letter from the Minister for Environment, Energy
and Rural Affairs, 30 October 2020

**6.2 Correspondence from the Minister for Housing and Local Government: Local
Government and Elections (Wales) Bill**

(Pages 148 – 155)

CLA(5)-32-20 – Paper 35 – Letter from the Minister for Housing and Local
Government, 30 October 2020

CLA(5)-32-20 – Paper 36 – Letter from the Minister for Housing and Local
Government to the Chair of the Equality, Local Government and Communities
Committee, 30 October 2020

**6.3 Correspondence with the Minister for Housing and Local Government: The
Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction)
(Wales) Regulations 2020**

(Pages 156 – 165)

CLA(5)-32-20 – Paper 37 – Letter from the Minister for Housing and Local
Government, 3 November 2020

CLA(5)-32-20 – Paper 38 – Letter to the Minister for Housing and Local Government, 22 October 2020

CLA(5)-32-20 – Paper 39 – Welsh Government response

CLA(5)-32-20 – Paper 40 – Report

6.4 Letter from the First Minister: British-Irish Council

(Pages 166 – 167)

CLA(5)-32-20 – Paper 41 – Letter from the First Minister, 3 November 2020

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

10.30

8 Discussion on Statutory Instrument Consent Memoranda

10.30–10.35

(Pages 168 – 173)

CLA(5)-32-20 – Paper 42 – Letter from the First Minister, 4 November 2020

CLA(5)-32-20 – Paper 43 – Letter to the First Minister, 23 October 2020

CLA(5)-32-20 – Paper 44 – Letter from the Llywydd, 7 May 2019

9 Briefing on arrangements for the 2021 Senedd Elections

10.35–10.40

(Pages 174 – 184)

CLA(5)-32-20 – Paper 45 – Briefing paper

10 Supplementary Legislative Consent Memorandum on the Trade Bill

10.40–10.55

(Pages 185 – 200)

CLA(5)-32-20 – Paper 46 – Supplementary Legislative Consent Memorandum

CLA(5)-32-20 – Paper 47 – Legal advice note

CLA(5)-32-20 – Paper 48 – Letter from the Minister for International Relations and the Welsh Language, 11 September 2020

11 Legislative Consent Memorandum on the UK Internal Market Bill: Consideration of draft report

10.55–11.15

CLA(5)-32-20 – Paper 49 – Draft report

Date of the next meeting – 16 November 2020

Proposed Negative Statutory Instruments with Clear Reports

9 November 2020

Pn(5)33 – The Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

Procedure: Proposed Negative

These Regulations are proposed to be made under paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018, in order to address deficiencies arising from the withdrawal of the United Kingdom from the European Union.

The Regulations make minor, technical amendments to the Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, such as replacing references to “UK” with “Great Britain” in order to reflect the Northern Ireland Protocol. The Explanatory Memorandum to the Regulations confirms that the Regulations do not make any policy changes.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

Pn(5)35 – The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2020

Procedure: Proposed Negative

The purpose of the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2020 (“the Regulations”) is to ensure retained EU law operates effectively once the UK leaves the EU.

These Regulations make amendments to the Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019 (“the 2019 Regulations”).

Regulation 3 amends the 2019 Regulations, which in turn amend the Marine Licensing (Exempted Activities) (Wales) Order 2011 in order to correct an error in references.



Regulation 4 amends the 2019 Regulations, which in turn amend the European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016. The EMFF scheme and funding will continue to be governed by the EU until the closure of those programmes and activities, as set out by Article 138 of the Withdrawal Agreement. The applicable Union law will continue to directly apply in the UK and will not become part of Retained EU law, as a result of section 7A and section 3(2)(bi) of the EU Withdrawal Act 2018, as amended by the EU (Withdrawal Agreement) Act 2020. Amendments are therefore made to the 2019 Regulations, relating to the 2016 Regulations to reflect the position that the EU legislation referenced in the 2016 Regulations has effect by virtue of the Withdrawal Agreement, and the EU (Withdrawal) Act.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A.

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes



SL(5)640 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (S.I. 2020/206) (W.48) which contains measures to prevent the introduction and spread of harmful plant pests and diseases.

These Regulations also amend the Plant Health etc. (Fees) (Wales) Regulations 2018 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019.

The purpose of these Regulations is the maintenance of biosecurity.

These Regulations also amend Schedule 3 to the 2020 Regulations as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

1. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

Part 2 of these Regulations make amendments to secondary legislation relating to Plant Health Fees payable to the Welsh Ministers.

Implications arising from exiting the European Union

These Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).



Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

3 November 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

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Legislation, Justice and Constitution Committee

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. 1134 (W. 259)

PLANT HEALTH, WALES

**The Official Controls (Plant Health
and Genetically Modified
Organisms) (Wales) (Amendment)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (S.I. 2020/206) (W. 48) (“the 2020 Regulations”), that give effect to—

- (a) Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (OJ No. L 317, 23.11.2016, p. 4), and
- (b) Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, in so far as it applies to the rules referred to in Article 1(2)(g) (OJ No. L 95, 7.4.2017, p. 1).

Regulation 2(3) and (7) updates the references in the 2020 Regulations to—

- (a) Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto (OJ No. L 31, 4.2.2017, p. 29), which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/885 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto (OJ No. L 205, 29.6.2020, p. 9), and

- (b) Commission Implementing Decision (EU) 2019/1615 establishing emergency measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (OJ No. L 250, 30.9.2015, p. 91), which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/1191 establishing measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (OJ No. L 262, 12.8.2020, p. 6).

Regulation 2(5) amends regulation 21 of the 2020 Regulations to allow the appropriate authority to authorise the use of potential quarantine plant pests for official testing, scientific or educational purposes, trials, varietal selection or breeding.

Regulation 2(6) amends Schedule 3 to the 2020 Regulations to enable Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts (OJ No. L 321, 12.12.2019, p. 64) to be enforced from 14 December 2020 (the date on which the provisions in that Regulation will apply to certain plants, plant products and other objects).

Regulations 2(2) and (4), 3 and 4 make consequential and other minor 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, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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

2020 No. 1134 (W. 259)

PLANT HEALTH, WALES

**The Official Controls (Plant Health
and Genetically Modified
Organisms) (Wales) (Amendment)
Regulations 2020**

Made 16 October 2020

Laid before Senedd Cymru 20 October 2020

Coming into force 13 November 2020

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972(1) (“the 1972 Act”) in relation to the common agricultural policy(2).

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act and, with the consent of the Treasury, in exercise of the

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- (1) 1972 c. 68. The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Section 2(2) of the 1972 Act was previously amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (2) S.I. 2010/2690, which is prospectively revoked by S.I. 2018/1011 from IP completion day.

powers conferred by section 56(1) of the Finance Act 1973⁽¹⁾ now vested in them⁽²⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears expedient to the Welsh Ministers for the references to the European Union instruments mentioned in regulation 2(3)(b) to be construed as references to those instruments as amended from time to time.

Title and commencement

1. The title of these Regulations is the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020 and they come into force on 13 November 2020.

PART 1

Amendment of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020

Amendment of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020

2.—(1) The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020⁽³⁾ are amended as follows.

(2) In regulation 2(1), in paragraph (c) of the definition of “controlled plant pest”, at the end insert “, including a potential quarantine plant pest within the meaning given in regulation 21(3)”.

(3) In regulation 3(1)—

(a) omit the definitions of—

(i) “Commission Implementing Decision (EU) 2017/198”, and

(ii) “Commission Implementing Decision (EU) 2019/1615”;

(b) at the end insert—

““Commission Implementing Regulation (EU) 2020/885” (“*Rheoliad Gweithredu'r Comisiwn (EU) 2020/885*”) means Commission Implementing Regulation (EU)

(1) 1973 c. 51; section 56(1) was amended by S.I. 2011/1043, and is prospectively amended by paragraph 17 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16) from a date and time to be appointed.

(2) By virtue of section 59(5) of the Government of Wales Act 2006 (c. 32).

(3) S.I. 2020/206 (W. 48).

2020/885 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto⁽¹⁾;

“Commission Implementing Regulation (EU) 2020/1191” (“*Rheoliad Gweithredu'r Comisiwn (EU) 2020/1191*”) means Commission Implementing Regulation (EU) 2020/1191 establishing measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV)⁽²⁾.”

(4) In regulation 13(10)—

- (a) omit the definition of “working hour”;
- (b) at the appropriate place insert—

““working day” (“*diwrnod gwaith*”) has the meaning given in regulation 7(4).”

(5) In regulation 21—

- (a) for paragraph (1) substitute—

“(1) The appropriate authority may grant an authorisation to permit—

- (a) the carrying out of any activity specified in a plant health derogation,
- (b) the introduction into Wales, the movement within Wales, or the holding or multiplication in Wales, of a potential quarantine plant pest for official testing, scientific or educational purposes, trials, varietal selection or breeding, or
- (c) the carrying out of any other activity which requires the approval of the appropriate authority under the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.”;

- (b) for paragraph (3) substitute—

“(3) In paragraph (1)—

“plant health derogation” (“*rhanddirymiad iechyd planhigion*”) means—

- (a) a derogation from provisions of the EU Plant Health Regulation which is set out in an implementing or delegated act adopted by the European Commission under the EU Plant Health Regulation or the Official Controls Regulation, or

(1) OJ No. L 205, 29.6.2020, p. 9.

(2) OJ No. L 262, 12.8.2020, p. 6.

- (b) a derogation in any decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, which continues to apply for the purposes of the EU Plant Health Regulation on or after the commencement date and allows member States to authorise an activity which would otherwise be prohibited by or under the EU Plant Health Regulation;

“potential quarantine plant pest” (*“plānhiģion cwarantin posibl”*) means a plant pest which is not a Union quarantine pest, a protected zone quarantine pest or a plant pest subject to any measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation, but which, in the opinion of the appropriate authority, fulfils the criteria set out in Subsection 1 of Section 3 of Annex 1 to that Regulation or may fulfil the criteria in Subsection 2 of that Section.”

(6) In Schedule 3, in the table in Part 3, after the entry for Commission Delegated Regulation (EU) 2019/1602 insert—

“Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts(1)

<p>Article 2(1)(d), (e), (f), (g)(i) and (h) (as read with Article 2(2) and (3)), Article 5(1) (as read with Article 5(2), Article 6(1) and (4) and Article 8(2))</p>	<p>Requires the operator responsible for a consignment to comply with certain conditions where identity and physical checks on the consignment are to be performed at a control point other than a border control post.”</p>
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(1) OJ No. L 321, 12.12.2019, p. 64.

(7) In the table in Schedule 4—

(a) omit the entries relating to—

(i) Commission Implementing Decision 2017/198/EU, and

(ii) Commission Implementing Decision (EU) 2019/1615;

(b) at the end insert—

“Commission Implementing Regulation (EU) 2020/885	Article 2 (prohibition on the introduction of <i>Pseudomonas syringae</i> pv. <i>actinidiae</i> Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto into the Union territory, and its spread within the Union territory)
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Article 3
(requirements in relation to the introduction into the Union territory of specified plants originating in third countries)

Article 7
(requirements in relation to the movement within the Union territory of specified plants that have spent a part of their lives in the Union)

Commission Implementing Regulation (EU) 2020/1191	Article 2 (prohibition on the introduction of Tomato brown rugose fruit virus into the Union territory and its spread within the Union territory)
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Article 6
(requirements in relation to the movement within the Union territory of specified plants for planting within the Union)

Article 7

(requirements in relation to the movement within the Union territory of specified seeds)

Article 8
(requirements in relation to the introduction into the Union territory of specified plants for planting originating in third countries)

Article 9
(requirements in relation to the introduction into the Union territory of specified seeds originating in third countries)”.

PART 2

Consequential amendments to legislation relating to fees

Amendment of the Plant Health etc. (Fees) (Wales) Regulations 2018

3. In the Plant Health etc. (Fees) (Wales) Regulations 2018⁽¹⁾, in regulation 5(5), for “for the purposes of any derogation described in Article 8(1) or 48(1) of the EU Plant Health Regulation” substitute “described in regulation 20(1)(a) or (b)(i) or 21(1)(b) of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020”.

Amendment of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019

4. In the Plant Health (Fees) (Forestry) (Wales) Regulations 2019⁽²⁾, in regulation 2(1), in the definition of “licence”, in paragraph (b), after “21(1)(a)” insert “or (b)”.

(1) S.I. 2018/1179 (W. 238), amended by S.I. 2020/44 (W. 5); there are other amending instruments but none are relevant.
(2) S.I. 2019/497 (W. 114), amended by S.I. 2020/44 (W. 5) and S.I. 2020/206 (W. 48).

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
16 October 2020

Explanatory Memorandum to the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the Senedd 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 Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
20 October 2020

PART 1

1. Description

The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020 (“this instrument”) amends the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (S.I. 2020/206) (W.48) which contains measures to prevent the introduction and spread of harmful plant pests and diseases. This instrument also amends the Plant Health etc. (Fees) (Wales) Regulations 2018 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019. The purpose of this instrument is the maintenance of biosecurity. This instrument also amends Schedule 3 to the 2020 Regulations as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts.

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

Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over elements of these Regulations because they are giving effect to EU provisions. Further, these Regulations amend Regulations that were subject to the negative procedure.

3. Legislative background

The EU Plant Health Regulation ((EU) 2016/2031) and the EU Official Controls Regulation ((EU) 2017/625) (“the EU Regulations”) establish controls and restrictions which apply to the import (from third countries), and internal movement within and between EU Member States, of certain plants, plant pests and other material (such as soil). The purpose of the Regulations is to help reduce biosecurity risk, strengthen the current plant health regime and protect the environment from the spread of harmful pests.

The EU Regulations, and the tertiary legislation made under the Regulations, are directly applicable in the United Kingdom. Domestic legislation is not needed to implement the substantive provisions in this EU legislation. However, supplementary domestic provisions are necessary to enable the competent authorities (in Wales, the Welsh Ministers) to carry out their obligations under the EU Regulations, enforce the Regulations and implement derogations to various provisions in the EU legislation that are available to member States. The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (“the 2020 Regulations”) contain these supplementary domestic provisions. Separate but parallel legislation is in place in England, Northern Ireland, and Scotland.

The Welsh Ministers have powers to make this instrument. They are designated in relation to the common agricultural policy under the European Communities Act 1972 (see S.I. 2010/2690) and powers under section 56 of the Finance Act 1973 are conferred on them by section 59(5) of the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

This instrument updates the references in the 2020 Regulations to Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto, which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/885.

This instrument also updates the references in the 2020 Regulations to Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus, which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/1191.

This instrument enables the Welsh Ministers to authorise the use of potential quarantine plant pests (a pest or disease which has provisionally been assessed as having the potential to be a Quarantine Pest but for which a full risk assessment has not yet been completed) for official testing, scientific or educational purposes, trials, varietal selection or breeding. These pests would be managed in line with strict biosecurity requirements with routine inspections to ensure compliance. This instrument also amends the Plant Health etc. (Fees) (Wales) Regulations 2018 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 to provide a mechanism for the Welsh Ministers to charge for the issue of licences authorising the use of such plant pests.

This instrument amends Schedule 3 to the 2020 Regulations to enable the enforcement of Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts.

5. Consultation

This instrument has not been the subject of consultation.

6. Regulatory Impact Assessment (RIA)

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.

There are no significant financial implications. The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business. The new measures concern pests which are already subject to Animal and Plant Health Agency inspection and surveillance programmes.

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

With regard to the Government of Wales Act 2006 this legislation has no impact on statutory partners (sections 72-75) or the statutory duties (sections 77-79).

Agenda Item 3.2

SL(5)644 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 17) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the “International Travel Regulations”). The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”. Part 2 of these Regulations amends the list of exempt countries and territories to remove the entries for Cyprus and Lithuania.

A person who is subject to a requirement to isolate imposed by the International Travel Regulations is permitted to leave the place at which the person is isolating for a limited number of reasons. These exceptions to the requirement to isolate include an exception permitting a person’s participation in a listed sporting event. Part 3 of these Regulations amends the list of sporting events in Schedule 4 to the International Travel Regulations.

Part 4 of these Regulations makes various miscellaneous amendments.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

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 or 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 Government's explanation that advice has been received from the Joint Biosecurity Centre that indicates that the risk to public health posed by the incidence and spread of coronavirus in Cyprus and Lithuania has increased. In the Explanatory Memorandum the Welsh Government states:

"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."

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 30 October 2020.

In particular, we note that the letter says:

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



Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

3 November 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Pack Page 20

Legislation, Justice and Constitution Committee

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. 1191 (W. 269)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 17)
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 Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order (S.I. 2020/942);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020 (S.I. 2020/1098) (W. 249);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2020 (S.I. 2020/1133) (W. 258);
 - the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2020 (S.I. 2020/1165) (W. 263).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons

arriving in Wales to isolate for a period determined in accordance with the Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Part 2 of these Regulations – in regulations 2 and 3 – amends the list of exempt countries and territories to remove the entries for Cyprus and Lithuania; and makes transitional provision in connection with these countries’ change of status.

Part 3 of these Regulations – in regulation 4 – amends the list of sporting events in Schedule 4 to the International Travel Regulations.

A person who is subject to a requirement to isolate imposed by the International Travel Regulations is permitted to leave the place at which the person is isolating for a limited number of reasons. These exceptions to the requirement to isolate are set out in regulation 10 of the International Travel Regulations, and they include an exception permitting a person’s participation in a listed sporting event.

Part 4 of these Regulations – in regulations 5 and 6 – makes various miscellaneous amendments to Schedules 1 and 2 to the International Travel Regulations. Schedule 1 to those Regulations lists certain information (“passenger information”) that persons arriving in Wales from abroad must provide to the Secretary of State via an electronic passenger locator form. Schedule 2 to those Regulations exempts certain categories of worker from having to provide passenger information and from having to isolate.

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

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

2020 No. 1191 (W. 269)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel)
(Wales) (Amendment) (No. 17)
Regulations 2020**

Made at 11.50 a.m. on 30 October 2020

*Laid before Senedd
Cymru at 3.00 p.m. on 30 October 2020*

*Coming into force at 4.00 a.m. on 1 November
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. 17) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 1 November 2020.

(3) In these Regulations, the “International Travel Regulations” means the Health Protection

(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.

(Coronavirus, International Travel) (Wales)
Regulations 2020(1).

PART 2

Amendments to the list of exempt countries and territories in Schedule 3 to the International Travel Regulations

Removal of countries from the list of exempt countries and territories

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

“Cyprus”;

“Lithuania”.

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where a person (“P”)—

- (a) arrives in Wales at or after 4.00 a.m. on 1 November 2020, and
- (b) was last in Cyprus or Lithuania—
 - (i) within the period of 14 days ending with the day of P’s arrival in Wales, and
 - (ii) before 4.00 a.m. on 1 November 2020.

(2) P is, by virtue of having been in Cyprus or Lithuania to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

(1) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, 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), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258) and S.I. 2020/1165 (W. 263).

PART 3

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

Additions to the list of specified sporting events

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

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

“(m) Professional Darts Corporation –
PDPA World Championship Qualifier.”

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

“(i) The November meeting, Cheltenham;
(j) Churchill Stakes;
(k) Lancashire Chase;
(l) Ladbrokes Trophy meeting;
(m) Tingle Creek Chase;
(n) Becher Chase;
(o) The International meeting,
Cheltenham;
(p) Long Walk Hurdle;
(q) King George VI meeting;
(r) Coral Welsh Grand National;
(s) New Year’s Day meeting, Cheltenham;
(t) Classic Chase;
(u) Clarence House Chase;
(v) Festival Trials Day, Cheltenham.”

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

“(j) Motorsport UK – Walter Hayes
Trophy;
(k) BTRA Truck Racing Championship;
(l) Porsche Challenge GB.”

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

“(i) Hennessy Sports – International
Boxing Championship Matches;
(j) International Boxing Championship
Matches – MTK Promotions.”

(6) In paragraph 15—

- (a) the words from “Manchester” to the end become sub-paragraph (a);
- (b) after that sub-paragraph insert—

“(b) Allam British Open 2020 Squash Championships.”

- (7) In paragraph 17—
- (a) the words from “Matchroom” to the end become sub-paragraph (a);
 - (b) after that sub-paragraph insert—
“(b) Matchroom – World Pool Championship.”
- (8) For paragraph 19 substitute—
- “19. Martial Arts and Mixed Martial Arts—**
- (a) Cage Warriors Trilogy Series;
 - (b) GB Taekwondo Fight Night I – International Taekwondo, Para Taekwondo and Karate Event;
 - (c) GB Taekwondo Fight Night II – International Taekwondo, Para Taekwondo and Karate Event.”
- (9) At the end insert—
- “21. Badminton—**
- (a) European Mixed Team Badminton Championships – Group 1 Qualifying Event;
 - (b) Yonex All England Open Badminton Championships.
- 22. Curling – Curling Euro Super Series.**
- 23. Judo – British Closed Senior Invitational Competition.**
- 24. Ping Pong – Matchroom – World Championship of Ping Pong.”**

PART 4

Miscellaneous amendments to Schedules 1 and 2 to the International Travel Regulations

Amendments to Schedule 1 (passenger information)

5.—(1) Schedule 1 to the International Travel Regulations is amended as follows.

- (2) In paragraph 2 (journey details)—
- (a) in sub-paragraph (e), for “travel booking reference” substitute “seat number”;
 - (b) after sub-paragraph (e) insert—
“(ea) coach number.”;
 - (c) in sub-paragraph (f), for “, train number, or ticket number (as appropriate)” substitute “or vessel name”;
 - (d) in sub-paragraph (k)(iv), for “the travel booking reference” substitute “the seat number”;

- (e) in sub-paragraph (k)(v), for “, train number, or ticket number (as appropriate) of” substitute “or vessel name for”;
- (f) after sub-paragraph (k)(v) insert—
 - “(vi) the coach number for their onward journey.”

Amendments to Schedule 2 (exempt persons)

6.—(1) Schedule 2 to the International Travel Regulations is amended as follows.

(2) For paragraph 3(2)(b) substitute—

“(b) “visiting forces” means any body, contingent or detachment of the forces of a country, being a body, contingent or detachment for the time being present in the United Kingdom (including United Kingdom territorial waters), on the invitation of Her Majesty’s Government in the United Kingdom.”

(3) At the end of paragraph 13(1), as full-out words beneath paragraph (c), insert—

“where they have travelled to the United Kingdom in the course of their work.”

(4) In paragraph 24(1), for “14 days of their arrival in the United Kingdom” substitute “the period during which they would, but for this paragraph, have been subject to an isolation requirement (within the meaning of regulation 10(2) of these Regulations)”.

(5) At the end of paragraph 24(1), as full-out words beneath paragraph (d), insert—

“where they have travelled to the United Kingdom in the course of their work.”

(6) In paragraph 38, for sub-paragraph (2)(a)(ii) and (iii) substitute—

- “(ii) who is designated as such for the purposes of these Regulations by the Sports Council for Wales,
- (iii) who is designated as such for the purposes of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020⁽¹⁾ (despite the revocation of those Regulations), or
- (iv) not falling within sub-paragraph (i), (ii) or (iii) who participates in the UEFA Champions’ league or Europa league.”

(1) S.I. 2020/725(W. 162).

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
At 11.50 a.m. on 30 October 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 17) 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. 17) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

30 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.

Illustrative document of amendments

An illustrative document showing amendments made to the International Travel Regulations is being prepared, and will be published on the GOV.wales website shortly. It will include the amendments being made by these Regulations.

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 25 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 Cyprus and Lithuania has increased. On the basis of this advice the Welsh Government consider that isolation requirements should now be introduced for travellers coming into Wales from those countries.

The following additional amendments are being made to the sectoral exemptions:

- Amendment to widen the definition of “visiting forces” to allow armed forces personnel to travel to Wales for training exercises.
- Amendment to the wording of two paragraphs to make it clear that the exemptions only apply where an individual has travelled to the UK for work purposes.
- Amendment to the exemption for offshore workers to make clear that the relevant time period is the period during which, but for the exemption, they would have been required to isolate (which may not always be 14 days depending on the circumstances).
- Amendments to the definition of “elite athlete” to address an issue arising from the revocation of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 by the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020.

Amendments are also being made to the International Travel Regulations to add a number of sporting events to the list in Schedule 4 for which those involved are exempted from isolation requirements.

Lastly, amendments are made to the passenger information requirements to remove unnecessary data requests and include a new requirement to provide seat numbers where available.

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 Sunday 1 November 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/3672/20

Elin Jones, MS
Llywydd
Senedd Cymru

30 October 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 17) Regulations 2020

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

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

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

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

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

Yours sincerely,

Rebecca Evans AS/MS
Minister for Finance and Trefnydd

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

Bae Caerdydd • Cardiff Bay
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Correspondence.Rebecca.Evans@gov.wales
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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



WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Health Protection (Coronavirus, International Travel) (Wales) Amendments**

DATE **29 October 2020**

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

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 14 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

On 10 July, the Welsh Government amended these 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 Lithuania and Cyprus will be removed from the list of exempt countries and territories, so travellers from Lithuania and Cyprus will need to isolate on arrival in Wales.

Further amendments will be made to the sectoral exemptions to permit visiting foreign troops to take part in training exercises in Wales and technical amendments will be made to two categories to clarify the exemption applies only to travel for work purposes.

Additional events will also be added to the list of sporting events in Schedule 4 for which those involved are excepted from the isolation requirements for limited purposes connected with their participation.

Changes will be made to the passenger information requirements to remove unnecessary data requests and include a new requirement for seat numbers where available.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Sunday 1 November.

Agenda Item 4.1

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before 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 Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020 (‘the 2020 Regulations’) were laid before Parliament on 20 October 2020. The 2020 Regulations can be found at:

<https://statutoryinstruments.parliament.uk/timeline/dEaap6JB/SI-2020/>

Summary of the Statutory Instrument and its objective

3. The objective of the 2020 Regulations to ensure that the United Kingdom (UK) meets its obligations under the Protocol on Ireland/Northern Ireland to the withdrawal agreement (“the Protocol”) and to place the Protocol on a legal footing, ensuring legislation operates effectively for the UK outside of the European Union (EU) in relation to the Common Fisheries Policy (CFP), required at the end of the Implementation Period (IP).
4. The 2020 Regulations make technical amendments to the following primary legislation:
 - The Fisheries Act 1981

Relevant provision to be made by the SI

5. The 2020 Regulations make technical changes to the Fisheries (Amendment) (EU Exit) Regulations 2019 which in turn update provisions in Section 30 of the Fisheries Act 1981 in relation to both Northern Ireland (NI) and Great Britain.
6. These updates enable NI to enforce its obligations under directly applicable EU law under the Protocol. Without this change, Northern Irish authorities will not be able to enforce directly applicable EU fisheries law in NI, and the UK would not be able to meet its obligations under Protocol.

Why it is appropriate for the SI to make this provision

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

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

Financial implications

8. There are no anticipated financial implications for the Welsh Government associated with these Regulations.

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

Draft Regulations laid before Parliament under paragraphs 1(1) and 8F(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. 0000

**EXITING THE EUROPEAN UNION
SEA FISHERIES**

**The Common Fisheries Policy (Amendment
etc.) (EU Exit) (No. 2) Regulations 2020**

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 8(1) and 8C(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(1), makes the following Regulations.

In accordance with paragraphs 1(1) and 8F(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.

Citation and commencement

1.—(1) These Regulations may be cited as the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020.

(2) Subject to paragraph (3), these Regulations come into force immediately before IP completion day.

(3) Regulations 4 to 7 come into force on IP completion day.

Amendment of the Fisheries (Amendment) (EU Exit) Regulations 2019 in consequence of the European Union (Withdrawal Agreement) Act 2020

2.—(1) Regulation 3 of the Fisheries (Amendment) (EU Exit) Regulations 2019(2) is amended as follows.

(2) In paragraph (4), for sub-paragraphs (b), (c) and (d) substitute—

-
- (1) 2018 c. 16; section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”); section 8C was inserted by section 21 of the 2020 Act; paragraph 8F of Schedule 7 was inserted by paragraph 51 of Schedule 5 to the 2020 Act; paragraph 21 of Schedule 7 was amended by paragraph 53 of Schedule 5 to the 2020 Act.
- (2) S.I. 2019/746; amended by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/XXX).

- (b) in subsection (1), in the words before paragraph (a), for “enforceable Community restrictions, and enforceable EU obligations,” substitute “retained EU restrictions relating to sea fishing, retained EU obligations relating to sea fishing, Northern Ireland Protocol restrictions relating to sea fishing and Northern Ireland Protocol obligations,”;
- (c) in subsection (2), for “enforceable Community restriction or other obligation” substitute “retained EU restriction relating to sea fishing, retained EU obligation relating to sea fishing, Northern Ireland Protocol restriction relating to sea fishing or Northern Ireland Protocol obligation”;
- (d) in subsection (3), omit the definition of “enforceable Community restriction” and “enforceable EU obligation” and, in the appropriate places, insert the following definitions—
- ““Northern Ireland Protocol” means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;”;
- ““Northern Ireland Protocol obligation” means any obligation created or arising by or under the Northern Ireland Protocol, whether or not an obligation to which section 7A(2) of the European Union (Withdrawal) Act 2018 applies;”;
- ““Northern Ireland Protocol restriction” means any restriction created or arising by or under the Northern Ireland Protocol, whether or not a restriction to which section 7A(2) of the European Union (Withdrawal) Act 2018 applies;”;
- ““retained EU restriction” means a restriction that—
- (a) was created or arose by or under the EU Treaties before IP completion day, and
- (b) forms part of retained EU law, as modified from time to time;..”.”.
- (3) In paragraph (5), for sub-paragraphs (b), (c) and (d) substitute—
- (b) in subsection (1), in the words before paragraph (a), for “enforceable EU restrictions, and enforceable EU obligations,” substitute “retained EU restrictions relating to sea fishing, retained EU obligations relating to sea fishing, Northern Ireland Protocol restrictions relating to sea fishing and Northern Ireland Protocol obligations,”;
- (c) in subsection (2), for “enforceable EU restriction or other obligation” substitute “retained EU restriction relating to sea fishing, retained EU obligation relating to sea fishing, Northern Ireland Protocol restriction relating to sea fishing or Northern Ireland Protocol obligation”;
- (d) in subsection (3), omit the definition of “enforceable EU restriction” and “enforceable EU obligation” and, in the appropriate places, insert the following definitions—
- ““Northern Ireland Protocol” means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;”;
- ““Northern Ireland Protocol obligation” means any obligation created or arising by or under the Northern Ireland Protocol, whether or not an obligation to which section 7A(2) of the European Union (Withdrawal) Act 2018 applies;”;
- ““Northern Ireland Protocol restriction” means any restriction created or arising by or under the Northern Ireland Protocol, whether or not a restriction to which section 7A(2) of the European Union (Withdrawal) Act 2018 applies;”;
- ““retained EU restriction” means a restriction that—
- (a) was created or arose by or under the EU Treaties before IP completion day, and

- (b) forms part of retained EU law,
as modified from time to time;..”.”.

Amendment of the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 in consequence of the European Union (Withdrawal Agreement) Act 2020

3.—(1) The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019(3) are amended as follows.

(2) In regulation 9—

(a) in paragraph (3), for sub-paragraphs (a) to (d) substitute—

“(a) for point (b) substitute—

“(b) ‘Domestic trade’ means trade in Great Britain in bluefin tuna caught in the ICCAT Convention Area by a United Kingdom catching vessel or trap, which is landed in Great Britain, or which is caged in a farm established in the United Kingdom;”;

(b) in point (c)—

(i) after “third country” insert “or Northern Ireland”,

(ii) for “Union” in the first place it occurs, substitute “United Kingdom”, and

(iii) for “the territory of the Union” substitute “Great Britain”;

(c) in point (d), for “the territory of the Union” substitute “Great Britain”;

(d) in point (e), for “the territory of the Union” in both places it occurs, substitute “Great Britain”;”;

(b) in paragraph (4)—

(i) in sub-paragraph (a)—

(aa) in paragraph (ii), omit “and”, and

(bb) after paragraph (ii), insert—

“(iia) after “ports,” insert “and”, and”;

(ii) in sub-paragraph (b)—

(aa) for “territory” substitute “the territory”, and

(bb) for “United Kingdom” substitute “Great Britain”;

(iii) in sub-paragraph (d), for “8; and” substitute “7;”, and

(iv) after sub-paragraph (d), insert—

“(da) in paragraph 8—

(i) for “Flag or trap Member States shall” substitute “A fisheries administration must only”, and

(ii) for “only to their” substitute “to”; and”;

(c) in paragraph (5)(a), in the new paragraph 2 to be substituted by that paragraph, for “the United Kingdom” substitute “Great Britain”;

(d) in paragraph (7)(b), for “the United Kingdom” substitute “Great Britain”;

(3) [S.I. 2019/753](#); amended by [S.I. 2019/1312](#) and the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/XXX).

- (e) in paragraph (8), in the new paragraph 1 to be substituted by that paragraph, for “Where the United Kingdom is the re-exporting country” substitute “Where a re-export from Great Britain takes place”; and
- (f) in paragraph (10)(a)(iii), for “the United Kingdom” substitute “Great Britain”.

Amendment of Council Regulation (EC) No 1035/2001

4.—(1) Council Regulation (EC) No 1035/2001 establishing a catch documentation scheme for *Dissostichus* spp. is amended as follows.

- (2) In Article 1, omit “by the Community”.
- (3) In Article 2—
 - (a) in paragraph 1—
 - (i) in point (a), for “Community” substitute “United Kingdom”, and
 - (ii) in point (b), for “the Community” substitute “Great Britain”;
 - (b) omit paragraph 3.
- (4) In Article 3—
 - (a) in point (d)—
 - (i) after “State” insert “or from Northern Ireland into Great Britain”, and
 - (ii) after “except” insert “(in either case)”;
 - (b) in point (f)—
 - (i) in the first indent, after “State”, in the second place it occurs, insert “or its removal from Great Britain to Northern Ireland or vice versa”, and
 - (ii) in the second indent, for “faciliate” substitute “facilitate”;
 - (c) for point (g) substitute—
 - “(g) ‘export’ means any movement of a catch in its harvested or processed form:
 - from the territory under the control of a State or free trade zone of landing, or, where that State or free trade zone forms part of a customs union, any other Member State of this customs union, or
 - where Great Britain is the place of landing, from Great Britain;”;
 - (d) for point (h) substitute—
 - “(h) ‘re-export’ means any movement of a catch in its harvested or processed form:
 - from territory under the control of the State, free trade zone, or Member State of a customs union of import unless that State, free trade zone, or any Member State of that customs union of import is the first place of import, in which case the movement is an export within the definition in point (g), or
 - where Great Britain is the place of import, from Great Britain, unless Great Britain is the first place of import, in which case the movement is an export within the definition in point (g);”.
- (5) In Article 4—
 - (a) in paragraphs 1 and 2, for “Member States shall” substitute “A fisheries administration must”; and
 - (b) in paragraph 3—

- (i) for “Member States shall” substitute “A fisheries administration must”, and
 - (ii) for “their flag” substitute “United Kingdom fishing”.
- (6) In Article 5—
 - (a) for “Member States shall” substitute “A fisheries administration must”; and
 - (b) for “their flag” substitute “United Kingdom fishing”.
- (7) In Article 6—
 - (a) for “Member States shall” substitute “A fisheries administration must”; and
 - (b) for “of their flag vessels” substitute “United Kingdom fishing vessel”.
- (8) In Article 7—
 - (a) in the first paragraph—
 - (i) for “Member States shall” substitute “A fisheries administration must”, and
 - (ii) for “they issue” substitute “it issues”; and
 - (b) in the second paragraph—
 - (i) for “They shall” substitute “A fisheries administration must”,
 - (ii) for “they have” substitute “it has”, and
 - (iii) for “their flag” substitute “the”.
- (9) In Article 8—
 - (a) in paragraph 1—
 - (i) for “Community” substitute “United Kingdom”, and
 - (ii) for “shall” substitute “must”; and
 - (b) in paragraph 2—
 - (i) for “shall” in each place it occurs, substitute “must”,
 - (ii) in the words before point (a), for “Community” substitute “United Kingdom”,
 - (iii) in point (a), for “he” substitute “the master”, and
 - (iv) in point (d)—
 - (aa) for “the Flag Member State of the vessel” substitute “a fisheries administration”,
 - (bb) for “Flag Member State” in the second place it occurs, substitute “fisheries administration”, and
 - (cc) omit the second subparagraph.
- (10) In Article 9—
 - (a) in the first paragraph, for “the Flag Member State shall” substitute “a fisheries administration must”; and
 - (b) omit the final subparagraph.
- (11) In Article 10—
 - (a) for “shall” in each place it occurs, substitute “must”;
 - (b) in paragraph 1, in the words before point (a), for “Community” substitute “United Kingdom”;
 - (c) in paragraph 2, omit the second subparagraph; and
 - (d) in paragraph 3—

- (i) in the first subparagraph, for “the Flag Member State of the vessel” substitute “a fisheries administration”, and
 - (ii) omit the second subparagraph.
- (12) In Article 11—
 - (a) in the first paragraph—
 - (i) for “Community” substitute “United Kingdom”,
 - (ii) for “shall” substitute “must”, and
 - (iii) for “the Flag Member State” substitute “a fisheries administration”;
 - (b) omit the second subparagraph.
- (13) In Article 12—
 - (a) for “shall” in each place it occurs, substitute “must”;
 - (b) in paragraph 1, in the words before the first indent, for “Community” substitute “United Kingdom”;
 - (c) in paragraph 2, omit the second subparagraph; and
 - (d) in paragraph 3, omit the second subparagraph.
- (14) In the heading of Chapter 4, for “Member States” substitute “a fisheries administration”.
- (15) In Article 13—
 - (a) in paragraph 1—
 - (i) for “Member States shall” substitute “A fisheries administration must”, and
 - (ii) for “their territory” substitute “Great Britain”;
 - (b) in paragraph 2, in the first subparagraph, for “Member State”, in each place it occurs, substitute “fisheries administration”;
 - (c) in paragraph 3—
 - (i) for “Member States shall” substitute “A fisheries administration must”,
 - (ii) for “Commission and the other Member States” substitute “other fisheries administrations”, and
 - (iii) for “Member State” substitute “fisheries administration”; and
 - (d) after paragraph 3, insert—
 - “4. In paragraph 3, “the other fisheries administrations” does not include the Department for Agriculture, Environment and Rural Affairs in Northern Ireland.”.
- (16) In Article 14—
 - (a) for “Member States shall” substitute “A fisheries administration must”; and
 - (b) for “their” substitute “its”.
- (17) In Article 15—
 - (a) in paragraph 1—
 - (i) for “Member States shall” substitute “A fisheries administration must”, and
 - (ii) for “their territory” substitute “Great Britain”;
 - (b) in paragraph 2—
 - (i) for “Member States shall” substitute “A fisheries administration must”,
 - (ii) for “their” in the first place it occurs, substitute “its”, and
 - (iii) for “their territory” substitute “Great Britain”;

- (c) in paragraph 3—
 - (i) for “Member States shall” substitute “A fisheries administration must”, and
 - (ii) for “Commission” substitute “other fisheries administrations”; and
- (d) after paragraph 4, insert—
 - “5. In paragraph 3, “the other fisheries administrations” does not include the Department for Agriculture, Environment and Rural Affairs in Northern Ireland.”.
- (18) In Article 16, in the first paragraph—
 - (a) for “Member States shall” substitute “A fisheries administration must”; and
 - (b) for “their territory” substitute “Great Britain”.
- (19) In Article 17—
 - (a) after “importation” insert “into”; and
 - (b) after “exportation” insert “from Great Britain”.
- (20) In Article 18—
 - (a) in paragraph 1—
 - (i) in the words before point (a), for “the Member State of landing” substitute “Great Britain, where Great Britain is the place of landing”, and
 - (ii) in the words after point (c), for “the exporting Member State” substitute “a fisheries administration”; and
 - (b) omit paragraph 2.
- (21) In Article 19—
 - (a) in paragraph 1—
 - (i) for “shall” in both places it occurs, substitute “must”,
 - (ii) in the words after point (b)—
 - (aa) for “He” substitute “The re-exporter”, and
 - (bb) for “in the re-exporting Member State” substitute “of a fisheries administration”; and
 - (b) omit paragraph 2.
- (22) In Article 20—
 - (a) in paragraph 1—
 - (i) for “The Flag Member State shall” substitute “A fisheries administration must”, and
 - (ii) for “Commission” substitute “other fisheries administrations”;
 - (b) in paragraph 2—
 - (i) for “Member States shall” substitute “A fisheries administration must”, and
 - (ii) for “Commission” substitute “other fisheries administrations”;
 - (c) after paragraph 2, insert—
 - “3. In paragraph 2, “the other fisheries administrations” does not include the Department for Agriculture, Environment and Rural Affairs in Northern Ireland.”.
- (23) In Article 21, for “Member States shall notify the Commission, which shall” substitute “The Secretary of State must”.
- (24) Omit Article 22.
- (25) In Article 22a—

- (a) for “Member State” substitute “fisheries administration”;
 - (b) for “shall” in each place it occurs, substitute “must”; and
 - (c) for “Member States” substitute “a fisheries administration”.
- (26) Omit Articles 23 to 26.
- (27) In Annex 1, in point 2(vi), omit the words from “(for Community vessels” to the end.

Application of Regulation (EC) No 1005/2008 to Northern Ireland

5.—(1) Subject to the modifications in paragraph (3), the provisions of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing⁽⁴⁾ listed in paragraph (2) have effect in Northern Ireland.

- (2) The provisions are—
- (a) Chapter 1, so far as relevant for the purposes of the other provisions listed in this paragraph;
 - (b) Chapter 2;
 - (c) Chapter 5;
 - (d) Article 37;
 - (e) Articles 54, 54A and 54D.
- (3) The modifications are that—
- (a) Article 2 is to be read as if—
 - (i) in point 20, for “the United Kingdom” there were substituted “Northern Ireland”, and
 - (ii) after point 23, there were inserted—

“24. ‘EU fishing vessel’ means a fishing vessel flying the flag of a member state of the European Union and registered in the European Union.”;
 - (b) the heading to Chapter 2 is to be read as if—
 - (i) for “THIRD COUNTRY” there were substituted “EU”, and
 - (ii) for “UNITED KINGDOM PORTS” there were substituted “PORTS IN NORTHERN IRELAND”;
 - (c) the heading to Section 1 of Chapter 2 is to be read as if, for “third country” there were substituted “EU”;
 - (d) Article 4 is to be read as if—
 - (i) in paragraph 1—
 - (aa) for “third country” there were substituted “EU”, and
 - (bb) for “the ports of the United Kingdom” there were substituted “ports in Northern Ireland”,
 - (ii) in paragraph 2—
 - (aa) for “of the United Kingdom” there were substituted “in Northern Ireland”,
 - (bb) for “third country” there were substituted “EU”, and
 - (cc) at the end, there were inserted “(For rules corresponding to those in this Chapter and applicable to the conduct of landing or transshipment operations by other third country fishing vessels in ports in Northern Ireland, see Chapter II of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and

(4) EUR 2008/1005, as amended by S.I. 2019/739 and S.I. 2019/753.

- unregulated fishing, as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.)”, and
- (iii) for paragraph 3 there were substituted—
- “**3.** Transhipments between third country vessels or between such vessels and United Kingdom vessels are prohibited in United Kingdom waters.
- 3A.** Despite paragraph 3, transhipments between EU fishing vessels may take place in port, where authorised in accordance with the provisions of this Chapter.”;
- (e) Article 5 is to be read as if, in paragraph 2, for “third country” there were substituted “EU”;
- (f) Article 6 is to be read as if—
- (i) in paragraph 1—
- (aa) for “third country” there were substituted “EU”, and
- (bb) the words after point (h) were omitted,
- (ii) paragraph 2 were omitted,
- (iii) in paragraph 3, for “third country” there were substituted “EU”;
- (g) Article 7 is to be read as if, for paragraph 1, there were substituted—
- “**1.** Without prejudice to point 5 of Article 37, an EU fishing vessel shall be granted authorisation to access a port only if the information set out in Article 6(1) is complete.”;
- (h) Article 8 is to be read as if—
- (i) in paragraph 1—
- (aa) for “third country” there were substituted “EU”, and
- (bb) for “the United Kingdom” there were substituted “Northern Ireland”, and
- (ii) for paragraph 3B there were substituted—
- “**3B.** Where the exercise of the power to make regulations under paragraph 3 would be within the jurisdiction of the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, under Article 1(5) of Regulation (EU) No 1380/2013, before making such regulations under the power in paragraph 3A the Secretary of State must obtain the consent of that Department.”;
- (i) Article 9 is to be read as if, in paragraph 1, for “third country” there were substituted “EU”;
- (j) Article 11 is to be read as if, in paragraph 2, for “a third country” there were substituted “an EU”;
- (k) Article 25 is to be read as if, in paragraph 1(a), for “Chapters II, III, IV, VIII, X and XI” there were substituted “Chapter 2”;
- (l) Article 37 is to be read as if—
- (i) points 2 to 4 were omitted,
- (ii) in point 5—
- (aa) for “the United Kingdom” substitute “Northern Ireland”, and
- (bb) for “United Kingdom port”, in both places it occurs, substitute “port in Northern Ireland”, and
- (iii) points 9 and 10 were omitted;
- (m) Article 54 is to be read as if—

- (i) in paragraph 1, “or the Welsh Ministers” were omitted, and
- (ii) paragraph 2 were omitted.

Application of Commission Regulation (EC) No 1010/2009 to Northern Ireland

6.—(1) Subject to the modifications in paragraph (3), the provisions of [Commission Regulation \(EC\) No 1010/2009](#) laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing⁽⁵⁾ listed in paragraph (2) have effect in Northern Ireland.

(2) The provisions are—

- (a) Title 1;
- (b) Annexes 1, 2A, 3A and 3B.

(3) The modifications are that—

- (a) the heading to Title 1 is to be read as if—
 - (i) for “THIRD COUNTRY” there were substituted “EU”, and
 - (ii) for “UNITED KINGDOM PORTS” there were substituted “PORTS IN NORTHERN IRELAND”;
- (b) the heading to Chapter 1 of Title 1 is to be read as if for “third country” there were substituted “EU”;
- (c) Article 2 is to be read as if paragraph 2 were omitted;
- (d) Article 4 is to be read as if—
 - (i) in point (c), for “the United Kingdom” there were substituted “Northern Ireland”, and
 - (ii) points (e), (m) and (r) were omitted;
- (e) Annex 2A is to be read as if, for “third country” where it appears in the heading, there were substituted “EU”.

Application of Commission Regulation (EU) No 468/2010 to Northern Ireland

7. [Commission Regulation \(EU\) No 468/2010](#) establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing⁽⁶⁾ has effect in Northern Ireland for the purposes of the provisions of retained direct EU legislation given effect in and modified by regulations 5 and 6.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

(5) EUR 2009/1010, as amended by [S.I. 2019/739](#).

(6) EUR 2010/468, as amended by [S.I. 2019/739](#).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by 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 (in particular, under section 8(2)(b), (c), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations are also made in exercise of the powers conferred by section 8C of the European Union (Withdrawal) Act 2018 in order to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement (“the Northern Ireland Protocol”).

These Regulations make amendments to EU Exit Statutory Instruments in order to update provisions in consequence of the European Union (Withdrawal Agreement) Act 2020, in particular, in consequence of the Northern Ireland Protocol. Regulation 2 makes amendments in order to ensure that section 30 of the Fisheries Act 1981 (c. 29) can be used for enforcement of breaches of EU law made applicable in Northern Ireland by the Northern Ireland Protocol. Regulations 3 and 4 make amendments to ensure that the retained EU law version of Regulation (EU) No 640/2010 and Regulation (EU) No 1035/2001, respectively, apply correctly with the Northern Ireland Protocol.

Regulations 5 to 7 apply provisions of retained direct EU legislation relating to illegal, unreported and unregulated (“IUU”) fishing to Northern Ireland. These provisions impose certain controls and procedures on third country fishing vessels wishing to visit United Kingdom ports. It is necessary to apply retained EU law in this area to Northern Ireland, specifically in relation to the use of ports by EU fishing vessels, to comply with obligations under the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (“the Port State Measures Agreement”), to which the UK intends to accede at the end of the implementation period.

Under the Port State Measures Agreement, the UK will be obliged to impose controls on access by all third country fishing vessels to ports in the United Kingdom. This includes EU vessels. In Northern Ireland, these controls will be applied through Regulation (EC) No 1005/2008 (the IUU Regulation, as it applies by virtue of the Northern Ireland Protocol), for third country vessels which are not EU vessels, and through the provisions applied by regulations 5 to 7 for EU vessels. The controls include: a requirement to use designated ports; a requirement to obtain authorisation prior to using ports; requirements to submit certain documents in advance of using ports; and a regime of inspection.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

EXPLANATORY MEMORANDUM TO
THE COMMON FISHERIES POLICY (AMENDMENT ETC.) (EU EXIT) (NO. 2)
REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Common Fisheries Policy (“CFP”) imposes a common approach to the sustainable management of fisheries across the European Union and its waters. Several provisions of the CFP are included in Annex 2 to the Protocol on Ireland / Northern Ireland in the EU Withdrawal Agreement (“the Protocol”) and will therefore be directly applicable in the UK in respect of Northern Ireland from the end of the transition period. This instrument makes amendments to domestic law, retained EU law and previous amendments to retained EU law, all in the field of the CFP, ensuring the legislation operates effectively for the UK outside of the European Union to account for the inclusion of that legislation in Annex 2 to the Protocol.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The CFP regulates fishing activities and the enforcement of those activities in EU waters, and in respect of EU fishing vessels outside of those waters, as well as implementing the EU’s obligations under international agreements. This instrument deals with the following provisions:
- a) the Fisheries (Amendment) (EU Exit) Regulations 2019¹ (“the 2019 Regulations”); specifically regulation 3 which amends section 30 of the Fisheries Act 1981 (“the 1981 Act”). Section 30 of the 1981 Act provides for the enforcement of breaches of EU law relating to sea fishing. Regulation 3 of the 2019 Regulations currently amends section 30 to provide for the enforcement of breaches of retained EU law instead;
 - b) the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019² and specifically the amendments made by those Regulations to Regulation (EU) No 640/2010 establishing a catch documentation programme for bluefin tuna *Thunnus thynnus* (“Regulation 640/2010”) in retained EU law. Regulation 640/2010 currently implements Recommendation 18-13 on the ‘Recommendation by ICCAT replacing recommendation 11-20 on an ICCAT Bluefin tuna catch documentation program’ adopted by the International Commission for the Conservation of Atlantic Tunas (“ICCAT”). The catch documentation scheme adopted by ICCAT, as implemented by the EU, imposes

¹ 2019/746

² 2019/753

various controls on imports and exports of bluefin tuna from and on movements of tuna within the EU;

- c) Council Regulation (EC) No 1035/2001 establishing a catch documentation scheme for *Dissostichus* spp (“Regulation 1035/2001”). This Regulation currently implements measure 170/XVIII which establishes a catch documentation scheme for *Dissostichus* spp. adopted by the Convention on the Conservation of Antarctic Marine Living Resources (“CCAMLR”). The catch documentation scheme adopted by CCAMLR, as implemented by the EU, imposes various controls on imports and exports of *Dissostichus* spp. (toothfish) from, and on movements of tuna within, the EU.
- d) Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (“the retained IUU regulation”). This Regulation currently legislates for the EU’s regime to tackle IUU fishing and ensure the conservation and sustainable exploitation of fisheries resources under the CFP;
- e) Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing; and
- f) Commission Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing.

2.3 Full explanations of how the above legislation is amended or applied can be found in the table at Annex B.

Why is it being changed?

2.4 The EU is a contracting party to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (known as the Port State Measures Agreement or “the PSMA”). The PSMA is a multilateral fisheries agreement designed to combat illegal, unreported and unregulated fishing by regulating access to the ports of contracting parties by foreign fishing vessels. The UK intends to accede to the PSMA as an independent party at the end of the transition period, as part of our commitment to sustainable fishing and to tackling illegal, unreported and unregulated (“IUU”) fishing practices. The EU implements its obligations under the PSMA through Council Regulation (EC) No 1005/2008 (“the IUU Regulation”), which will continue to apply to and in the United Kingdom in respect of Northern Ireland by virtue of the Protocol.

2.5 The IUU Regulation does not regulate access by EU vessels to EU ports (such vessels are not foreign fishing vessels for the purposes of the EU’s obligations under the PSMA). However, once the UK accedes to the PSMA as an independent contracting party it will be required to impose controls on all non-UK vessels, including those flying the flag of EU Member States. To ensure full compliance with the UK’s obligations vis-à-vis the control of foreign fishing vessels under the PSMA once it accedes to the agreement after the end of the transition period, it is necessary to apply the retained IUU regulation and related provisions of retained EU law to Northern Ireland, specifically in relation to the use of ports by EU fishing vessels. Under the PSMA, the UK will be obliged to impose controls on access by all foreign fishing vessels, including EU vessels. In respect of ports in Northern Ireland, the UK’s obligations in this area will therefore be met both by the retained IUU regulation (in relation to use of those ports by EU vessels), and by the IUU regulation as it applies

by virtue of the Protocol, in respect of all other foreign fishing vessels. In Great Britain the retained IUU regulation will regulate port access by all foreign fishing vessels.

- 2.6 It is also necessary to ensure that Regulations linked to the implementation of the retained IUU regulation (Commission Regulation (EC) No 1010/2009 and Commission Regulation (EU) No 468/2010) are also given appropriate effect in Northern Ireland for the same purpose.
- 2.7 Separate to this, this instrument makes further technical changes to the Fisheries (Amendment) (EU Exit) Regulations 2019 S.I. 2019/746, to update the wording in relation to amendments to section 30 of the Fisheries Act 1981. This is to enable obligations and restrictions under CFP legislation made directly applicable in Northern Ireland under the Protocol to be enforced. Without this change, Northern Irish authorities will not be able to enforce directly applicable EU fisheries law in Northern Ireland, and the UK would not be able to meet its obligations under the Withdrawal Agreement.
- 2.8 Finally, amendments are necessary to reflect the direct application of Regulation 640/2010 and Regulation 1035/2001 in EU law in Northern Ireland under the Protocol and, in the case of Regulation 1035/2001, to correct deficiencies in that Regulation so that it operates effectively in retained EU law at the end of the transition period. These amendments are required to ensure that, from the end of the transition period, the UK is able to fulfil its obligations under the ICCAT and the CCAMLR. The UK is a contracting party to CCAMLR. At the point of submitting this explanatory memorandum, the UK is not yet a contracting party to ICCAT, but the government intends to accede to ICCAT during the transition period in accordance with the terms of the Withdrawal Agreement. These amendments will help the UK play its part in ensuring sustainable and traceable fishing practices and combating IUU fishing as a contracting party to these two regional fisheries management organisations (“RFMOs”).
- 2.9 Annex B to this explanatory memorandum contains further detail on the amendments and other provisions made by this instrument.

What will it now do?

- 2.10 These changes are being made to ensure that the UK is compliant with its obligations under the international agreements to which the UK is or will be an independent contracting party from the end of the transition period; to ensure the UK’s continued ability to tackle IUU fishing and to promote sustainable fishing; and to ensure that appropriate enforcement action can be taken in respect of breaches of those EU fisheries rules made applicable under the Protocol.

3. Matters of special interest to Parliament

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. This instrument is made partly in exercise of these powers.
- 6.2 Paragraph 21 of Schedule 7 to the Act specifies that the power to modify retained EU law includes a power to make supplementary, incidental and consequential provision and the power to restate retained EU law in a clearer or more accessible way.
- 6.3 Section 8C of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement as well dealing with matters arising out of, or related to, the Protocol. This instrument is made partly in exercise of these powers.

7. Policy background

What is being done and why?

- 7.1 The Government remains committed to retaining existing standards of effective fisheries management. This instrument is required to ensure that after the end of the transition period there is immediate continuity in regulation, and the same standards are met. In accordance with the provisions of sections 8 and 8C of the European Union (Withdrawal) Act 2018, all amendments to retained CFP legislation have arisen as a result of the UK's departure from the EU or are made to implement the Protocol or deal with matters arising out of, or related to, the Protocol and therefore the amendments do not represent any changes in policy regarding fisheries management. Over time, the fisheries administrations will amend retained EU law in order to implement their own policies.
- 7.2 These technical changes specifically enable the enforcement of the UK's obligations under EU fisheries law directly applicable under the Protocol in Northern Ireland, and separately for the UK to fulfil its obligations under the PSMA, ICCAT, and CCAMLR as an independent contracting party.

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

- 8.1 This instrument is being made using the power in section 8 of 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 United Kingdom from the European Union. In accordance with the requirements of that Act the

Minister has made the relevant statements as detailed in Part 2 of Annex A to this explanatory memorandum.

- 8.2 This instrument is also made in exercise of the powers conferred by section 8C of the European Union (Withdrawal) Act 2018 in order to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement or deal with matter arising out of, or related to, the Protocol.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

- 10.1 The Devolved Administrations (the Scottish Government, Department of Agriculture, Environment and Rural Affairs in Northern Ireland, and the Welsh Government) were involved in the drafting of this instrument.

11. Guidance

- 11.1 Guidance on the UK's approach to the Protocol was published on 20 May 2020 and 7 August 2020 and is available on the GOV.UK website.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no significant changes to what the public sector, or business, will have to do under the regulations are envisaged. The amendments made by the instrument will ensure UK vessels are subject to largely the same rules they are now.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 As the legislation will continue to operate substantially as it did before EU Exit, it will not disproportionately affect small business.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of their standard policy-making procedures.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Jack Mitchell at the Department for Environment, Food and Rural Affairs, telephone: 020 8720 2848 or email: Jack.Mitchell@defra.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Colin Faulkner, Deputy Director for External Fisheries Negotiations & Trade Policy at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Victoria Prentis MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

Annex A

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 Schedule 7	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), 9 and 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 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
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 2(2) ECA 1972	Paragraph 13, 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	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, 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	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 Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020 do no more than is appropriate”.

- 1.2 This is the case because: this instrument corrects deficiencies in legislation that arise from the withdrawal of the UK from the EU, to ensure the UK has functional and operable fisheries legislation after EU Exit, and is able to fulfil its obligations under international agreements. Further to that, the changes regarding Northern Ireland will ensure that the Protocol is implemented.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis 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: correcting deficiencies as necessary to ensure we continue to have operable fisheries legislation after EU Exit, provisions to enable the enforcement of directly applicable EU law under the Protocol, and that the UK is able to fulfil its obligations under international agreements. Further to that, the changes regarding Northern Ireland will ensure that the Protocol is implemented.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis MP, has made the following statement:

“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 Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Victoria Prentis 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, Victoria Prentis MP, 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.

Annex B to the Explanatory Memorandum

Summary of the provisions of the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

<p>Amendment of the Fisheries (Amendment) (EU Exit) Regulations 2019 (Regulation 3) - Section 30 Fisheries Act 1981</p>	<p>This instrument makes further technical changes to the Fisheries (Amendment) (EU Exit) Regulations 2019 S.I. 2019/746, to update the wording in relation to amendments of section 30 of the Fisheries Act 1981 to enable obligations and restrictions under CFP legislation made directly applicable in respect of Northern Ireland under the Protocol to be enforced.</p>
<p>Amendment of the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 in relation to the amendments to Regulation 640/2010; and</p> <p>Amendment of Regulation 1035/2001</p>	<p>These changes correct deficiencies and reflect the direct application of EU law (Regulation 640/2010 and Regulation 1035/2001) in Northern Ireland. These amendments are necessary to ensure that the UK is able to fulfil its obligations under the International Commission for the Conservation of Atlantic Tunas (“ICCAT”) and the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”). These amendments will help the UK play its part in ensuring sustainable and traceable fishing practices and combating IUU fishing.</p> <p>Regulation 9 of the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 makes amendments under s.8 of the European Union (Withdrawal) Act 2018 to Regulation 640/2010 in order to correct deficiencies arising from the UK’s withdrawal from the EU. Regulation 640/2010 is included in Annex 2 to the Protocol and so will be directly applicable in EU law in Northern Ireland at the end of the transition period. This instrument amends regulation 9 of the original amending Regulations under the powers in s.8C of the European Union (Withdrawal) Act 2018 so</p>

	<p>that Regulation 640/2010, as it will apply in retained EU law in Great Britain, operates correctly in light of the inclusion of the Regulation in Annex 2 to the Protocol. A small number of minor operability corrections are also made under s.8 of the 2018 Act.</p> <p>Regulation 1035/2001 is also included in Annex 2 to the Protocol. Unlike Regulation 640/2010, regulations have not previously been made amending it to correct deficiencies arising from the UK's withdrawal from the EU under s.8 of the 2018 Act. This instrument makes both amendments under s.8 and s.8C of the 2018 Act so as to make Regulation 1035/2001 operable in retained EU law after the transition period and to ensure that it will operate correctly in retained EU law in Great Britain in light of the inclusion of the Regulation in Annex 2 to the Protocol.</p>
<p>The application of the retained IUU Regulation (; Commission Regulation (EC) No 1010/2009; and Commission Regulation (EU) No 468/2010 to Northern Ireland</p>	<p>This instrument applies provisions of retained EU legislation relating to illegal, unreported and unregulated ("IUU") fishing to Northern Ireland to impose certain controls and procedures on foreign fishing vessels wishing to visit United Kingdom ports. It is necessary to apply retained EU law in this area to Northern Ireland, specifically in relation to the use of ports by EU fishing vessels, to comply with obligations under the PSMA. Under the PSMA, the UK is obliged to impose controls on access by all foreign fishing vessels, including EU vessels, to ports in the United Kingdom. These controls include: a requirement to use designated ports; a requirement to obtain authorisation prior to using ports; requirements to submit certain documents in advance of using ports; and a regime of inspection. This is necessary due to the direct application of the EU's IUU regulation in Northern Ireland under the Protocol, which does not apply corresponding requirements to EU vessels. It is therefore necessary to supplement the EU's IUU regulation by applying the corresponding retained instrument to Northern Ireland in a limited way.</p>

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/LG/3490/20

Mick Antoniw MS
Chair Legislation Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

27 October 2020

Dear Mick

I am writing to inform you that I have laid a statutory instrument consent memorandum (“the memorandum”) in relation to the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020 (“the Regulations”) which were made by the Parliamentary Under Secretary of State for the Environment, on 22 October. The Regulations contain amendments to the Fisheries Act 1981 which include provision for Wales.

The purpose of the Regulations is to address failures of retained European Union (EU) law to operate effectively and other deficiencies arising from the United Kingdom (UK) leaving the EU as provided for by the European Union (Withdrawal) Act 2018. The corrections contained in the Regulations also ensure the UK meets its obligations under the Protocol on Ireland/Northern Ireland to the withdrawal agreement (“the Protocol”).

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

I have laid the memorandum in accordance with the requirement under Standing Order (SO) 30A. I consider the Regulations to be a relevant statutory instrument because they make provision in relation to Wales amending primary legislation within the legislative competence of the Senedd, which is not an incidental, consequential, transitional, transitory, supplementary or savings provision relating to matters which are not within the legislative competence of the Senedd.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping 'L' and 'G'.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020**

DATE **23 October 2020**

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

SI laid in Parliament, which amends secondary legislation in a devolved area

The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

The 2020 Regulations amend the following legislation:

EU Legislation

- Regulation (EU) No 640/2010 of the European Parliament and of the Council of 7 July 2010 establishing a catch documentation programme for bluefin tuna *Thunnus thynnus* and amending Council Regulation (EC) No 1984/2003;
- Council Regulation (EC) No 1035/2001 of 22 May 2001 establishing a catch documentation scheme for *Dissostichus spp.*;
- Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing;
- Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing; and
- Commission Regulation (EU) No 468/2010 of 28 May 2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing.

Domestic secondary legislation

- The Fisheries (Amendment) (EU Exit) Regulations 2019; and
- The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019.

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

The 2020 Regulations do not impact on the Senedd’s legislative competence.

In respect of the Welsh Ministers’ executive competence, regulation 4 of the 2020 Regulations amends the retained EU law version of Council Regulation (EC) No 1035/2001 which lays down the general rules and conditions governing the implementation of the Catch Documentation Scheme for *Dissostichus spp* (i.e., *Antarctic toothfish*) adopted by the Conservation of Antarctic Marine Living Resources (“CCAMLR”) so as to confer obligations, which are administrative in nature, on a Fisheries Administration (i.e. the Welsh Ministers) in the event of the landing, importation, exportation or re-exportation of *Dissostichus spp* . These provisions relate to the reserved matter of “activities connected with Antarctica”, and therefore fall outside the Senedd’s legislative competence.

The definition of ‘Fisheries Administration’ can be found in the retained EU Regulation (EU) No 1380/2013 of the European Parliament and of the Council, as amended by the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019.

All amendments to the Common Fisheries Policy (CFP) have arisen as a result of the UK’s departure from the EU. The amendments ensure that the retained direct EU legislation concerned operates effectively and that after the end of the Implementation Period (IP) there is immediate continuity in regulation, and the same standards are met in relation to fisheries management. The amendments also ensure that the United Kingdom (UK) meets its obligations under the Protocol on Ireland/Northern Ireland to the withdrawal agreement (“the Protocol”).

The purpose of the amendments

The makes corrections and technical amendments to the Fisheries (Amendment) (EU Exit) Regulations 2019 and the Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019; and directly applies provisions of a variety of retained EU legislation to have effect in relation to Great Britain and Northern Ireland.

The CFP imposes a common approach to the sustainable management of fisheries and regulates fishing activities and the enforcement of those activities across the EU and its waters; as well as implementing the requirements of international agreements that the EU has entered into on behalf of Member States.

The UK Government remains committed to retaining existing standards of effective fisheries management. The 2020 Regulations Package makes corrections to a variety of retained CFP

legislation, ensuring that after the end of the IP there is immediate continuity in regulation, and the same standards are met.

The changes enable the UK to accede to the Port State Measures Agreement (“the PSMA”) and to the International Commission for the Conservation of Atlantic Tunas (“ICCAT”), to be in a position to fulfil its obligations stemming from those agreements, and separately those required under the CCAMLR, to ensure the continued ability to tackle illegal, unreported and unregulated (“IUU”) fishing practices, to promote sustainable fishing, and to enable the operability of the Protocol.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here:

<https://statutoryinstruments.parliament.uk/timeline/dEaap6JB/SI-2020/>

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. A Statutory Instrument Consent Memorandum is being laid in compliance with Standing Order 30.A

UK MINISTERS ACTING IN DEVOLVED AREAS

196 - The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

Laid in the UK Parliament: 22 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 14
SICM under SO 30A (because amends primary legislation)	SICM(5)36

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	3 November 2020

Background

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

Summary

The Common Fisheries Policy (“CFP”) imposes a common approach to the sustainable management of fisheries across the European Union and its waters. Several provisions of the CFP are included in Annex 2 to the Protocol on Ireland / Northern Ireland in the EU Withdrawal Agreement (“the Protocol”) and will therefore be directly applicable in the UK in respect of Northern Ireland from the end of the transition period. This instrument makes amendments to domestic law, retained EU law and previous amendments to retained EU law, all in the field of the CFP, to

ensure that the legislation operates effectively for the UK outside of the EU to account for the inclusion of that legislation in Annex 2 to the Protocol.

The changes made by this instrument enable the UK to accede to the Port State Measures Agreement (“the PSMA”) and to the International Commission for the Conservation of Atlantic Tunas (“ICCAT”), to be in a position to fulfil its obligations stemming from those agreements, and separately those required under the Conservation of Antarctic Marine Living Resources (“CCAMLR”), to ensure the continued ability to tackle illegal, unreported and unregulated (“IUU”) fishing practices, to promote sustainable fishing, and to enable the operability of the Protocol.

Amongst others, this instrument deals with the Fisheries (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”), specifically regulation 3 which amends section 30 of the Fisheries Act 1981 (“the 1981 Act”). Section 30 of the 1981 Act provides for the enforcement of breaches of EU law relating to sea fishing. Regulation 3 of the 2019 Regulations currently amends section 30 to provide for the enforcement of breaches of retained EU law instead. This instrument makes further technical changes to regulation 3 of the 2019 Regulations to update the wording in relation to section 30 of the 1981 Act to enable restrictions and obligations under CFP legislation made directly applicable in respect of Northern Ireland under the Protocol to be enforced.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 23 October 2020 regarding the effect of these Regulations.

In particular, Legal Advisers note the commentary provided in respect of the Welsh Ministers’ executive competence.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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.

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) before the Senedd on 27 October 2020, because the Regulations amend primary legislation within the legislative

competence of the Senedd (in this case, section 30 of the Fisheries Act 1981).

In a [letter](#) to the Committee dated 27 October 2020, the Minister for Environment, Energy and Rural Affairs said that a SICM had been laid, but made no reference as to whether the Welsh Government would table a motion to debate the SICM in Plenary.

Agenda Item 4.2

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before 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 European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 are subject to the affirmative procedure and were laid in draft before the UK Parliament on 21 October 2020. An earlier draft of the SI, with the same title, was laid on 8 October, then withdrawn, amended (but not in devolved areas) and re-laid. A Statutory Instrument Consent Memorandum for the earlier version of the SI was laid on 14 October.
3. The Regulations can be found at:

<https://www.legislation.gov.uk/ukdsi/2020/9780348214055>

Summary of the Statutory Instrument and its objective

4. The objective of the SI is to ensure that the UK statute book works coherently and effectively following the end of the transition period. It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation after the end of the transition period.
5. The SI amends the Interpretation Act 1978 and the equivalent Interpretation Acts passed by the devolved legislatures (including the Legislation (Wales) Act 2019) in relation to the interpretation of references to “relevant separation agreement law”. The SI also amends the European Union (Withdrawal) Act 2018 (EUWA) to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read following the end of the transition period.
6. The SI makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies and provides a general gloss to ensure that the correct interpretation of the EU instrument applies.
7. The SI also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (the 2019 Regulations) and technical repeals to redundant provisions within primary legislation arising from EUWA.

8. The provisions in the SI to which this Memorandum relates vary in territorial extent and application. The territorial extent and application of regulations 2, 3 and 4 which amend the Interpretation Act 1978, EUWA and the 2019 Regulations is the United Kingdom. Regulation 8 which amends the Legislation (Wales) Act 2019 extends and applies to Wales. Regulation 9 and the Schedule which repeals and revokes a number of provisions contained in primary legislation extends and applies to the United Kingdom.

Relevant Provision to be made by the SI

9. Regulations 2 and 8 make consequential amendments to the Interpretation Act 1978 (c. 30) and the Legislation (Wales) Act 2019 (anaw 4) to make interpretative provision for references in domestic legislation to EU instruments which form part of relevant separation agreement law following the end of the transition period.
10. It is the view of the Welsh Government that the provisions described in paragraph 8 above relate to subject matters that are within the legislative competence of the Senedd. The term “relevant separation agreement law” has a broad definition in section 7C of EUWA. This includes domestic legislation that may be made by a Minister of the Crown or the Welsh Ministers to implement separation issues in Part 3 of the Withdrawal Agreement, such as matters relating to state aid and procurement which fall within the Senedd’s legislative competence. It also captures domestic legislation that may be made to implement the Protocol on Ireland/Northern Ireland, which could include provisions relating to a number of matters that are within the Senedd’s legislative competence, such as fisheries and food.

Why it is appropriate for the SI to make this provision

11. There is no divergence between the Welsh Government and the UK Government (The Cabinet Office) on the amendments being made by the SI. It is to be made under section 23 of EUWA and section 41 of WAA which confer powers on a Minister of the Crown to make provision in consequence of both of those Acts. Equivalent powers to make consequential provision are not conferred on the Welsh Ministers and therefore the Welsh Ministers could not make a separate Welsh SI containing provision for the interpretation of legislation that is within the Senedd’s legislative competence.
12. The SI makes a number of technical amendments to the Interpretation Acts which are designed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland/Northern Ireland operate effectively following the end of the transition period.
13. It is our strong preference that laws made in Wales should, as part of the process of withdrawal from the EU, be amended in Wales. In the case of

the changes made by this SI, the Welsh Ministers do not have the powers. Consequently, given the requirement for the amendments to be made by the end of the transition period, the only alternative way to make the amendments in Wales would be to take primary legislation through the Senedd and for it to receive Royal Assent by the end of the year. This would not be a proportionate use of time and resources.

14. The amendments have been considered fully and there is no divergence on them. Given the technical nature of the amendments and the need for interpretative provisions to be in place by the end of the year, it is considered appropriate for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. Furthermore, making the necessary consequential amendments in one instrument helps to promote the accessibility of the law during this period of change.

Financial implications

15. There are no financial implications in consenting to the provisions in the SI.

Jeremy Miles MS
Counsel General and Minister for European Transition

November 2020

(5) In these Regulations, “the 2019 Regulations” means the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019^(a).

PART 2

Amendment of UK primary legislation

Amendment of Interpretation Act 1978

2.—(1) The Interpretation Act 1978^(b) is amended as follows.

(2) In section 20 (references to other enactments)—

(a) in the heading after “enactments” insert “etc.”,

(b) after subsection (2), insert—

“(2A) Where—

(a) an Act passed on or after IP completion day refers to any treaty relating to the EU or any instrument or other document of an EU entity, and

(b) the treaty, instrument or document has effect by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018 (general implementation of remainder of EU withdrawal agreement etc.),

the reference, unless the contrary intention appears and so far as required for the purposes of relevant separation agreement law, is a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).”

(c) in subsection (3), for “Where” substitute “Subject to subsection (2A), where”,

(d) in subsection (5)—

(i) for “subsection (3) or” substitute “subsections (2A) to”, and

(ii) for “that subsection” substitute “the subsection concerned”,

(e) after subsection (5), insert—

“(6) In this section—

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”

(3) In section 20A (references to EU instruments), in the heading, after “to” insert “certain”.

(4) In section 22(1) (application to Acts and Measures)—

(a) for “20(3) to (5)” substitute “20(2A) to (6)”, and

(b) for “in section 20(3)” substitute “in section 20(2A) or (3)”.

(5) After paragraph 7 of Schedule 2, insert—

“**8.** The definition in Schedule 1 of “enactment”, in so far as it relates to retained direct EU legislation, applies to subordinate legislation made at any time before the commencement of this Act as it applies to Acts passed at that time.”

Amendment of European Union (Withdrawal) Act 2018

3.—(1) The European Union (Withdrawal) Act 2018^(c) is amended as follows.

(2) In Schedule 8 (consequential, transitional, transitory and saving provision)—

(a) in paragraph 1—

(a) S.I. 2019/628.

(b) 1978 c. 30.

(c) 2018 c. 16.

- (i) in sub-paragraph (1) for “which”, where it first appears, substitute “so far as it”, and
 - (ii) in sub-paragraph (2) for “which” substitute “so far as it”,
- (b) after paragraph 1, insert—

“Existing ambulatory references to relevant separation agreement law

1A.—(1) Any reference which, immediately before IP completion day—

- (a) exists in—
 - (i) any enactment,
 - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, or
 - (iii) any document relating to anything falling within sub-paragraph (i) or (ii), and
- (b) is a reference to (as it has effect from time to time) any of the EU Treaties, any EU instrument or any other document of an EU entity,

is, if the treaty, instrument or document has effect on or after IP completion day by virtue of section 7A or 7B and so far as required for the purposes of relevant separation agreement law, to be read on or after that day as, or including, a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).

(2) In sub-paragraph (1) “treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).

(3) Sub-paragraphs (1) and (2) are subject to any other provision made by or under this Act or any other enactment.”

- (c) in paragraph 2—
- (i) in sub-paragraph (1) for “which”, where it first appears, substitute “so far as it”, and
 - (ii) in sub-paragraph (2) for “which” substitute “so far as it”.
- (d) after paragraph 2, insert—

“Existing non-ambulatory references

2A.—(1) Any reference which, immediately before IP completion day—

- (a) exists in—
 - (i) any enactment, or
 - (ii) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by virtue of section 3, and
- (b) is a reference to any of the EU Treaties, any EU instrument or any other document of an EU entity as it has effect at a particular time which is earlier than IP completion day,

is to be read, on or after IP completion day, in accordance with one or more of sub-paragraphs (2) to (4).

(2) If the treaty, instrument or document has effect by virtue of section 7A or 7B on or after IP completion day and so far as required for the purposes of relevant separation agreement law, the reference is to be read on or after that day as, or as including, a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).

(3) So far as—

- (a) the reference is a reference to—
 - (i) any EU regulation, EU decision or EU tertiary legislation,

- (ii) any provision of the EEA agreement, or
- (iii) any part of anything falling within sub-paragraph (i) or (ii),
- (b) what has been referred to (“the subject law”) is to form part of domestic law by virtue of section 3 or forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, and
- (c) there has been no relevant modification of the subject law after the particular time and before IP completion day (or, where the subject law forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, before exit day),

the reference is to be read, on or after IP completion day, as a reference to the subject law as it forms part of domestic law by virtue of section 3 or (as the case may be) section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020.

(4) So far as the reference is not to be read in accordance with sub-paragraphs (2) and (3), the reference is to be read, on or after IP completion day, as a reference to the treaty, instrument or document as it had effect in EU law at the particular time.

(5) Sub-paragraph (3) does not determine whether, where the subject law is modified by domestic law on or after IP completion day, the reference is to be read as a reference to the subject law as modified; but, where the subject law forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 and is modified by domestic law before IP completion day, the reference is to be read by virtue of sub-paragraph (3) as a reference to the subject law as so modified.

(6) This paragraph is subject to any provision made by or under this Act or any other enactment.

(7) In this paragraph—

“relevant modification” means any modification in EU law which—

- (a) is to form part of domestic law by virtue of section 3 or forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020, and
- (b) would, if the reference were to the subject law as modified, result in an alteration to the effect of the reference (ignoring any alteration which is irrelevant in the context concerned);

“the subject law” has the meaning given by sub-paragraph (3)(b);

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”.

PART 3

Amendment of the 2019 Regulations

Replacement of references to “exit day” with “IP completion day”

4. In regulation 5(2) of the 2019 Regulations, for “exit day”, substitute “IP completion day”.

PART 4

Scotland

Amendment of Interpretation and Legislative Reform (Scotland) Act 2010

5.—(1) The Interpretation and Legislative Reform (Scotland) Act 2010(a) is amended as follows.

(2) In section 1 (application of Part 1 of the Act), after subsection (1) insert—

“(1A) Subsection (1) is subject to section 14(2A) and (3).”

(3) In section 12 (references to EU instruments), in the heading, after “to” insert “certain”.

(4) In section 14 (references to other legislative provisions)—

(a) after subsection (2), insert—

“(2A) Where—

(a) there is a reference in—

(i) an Act of the Scottish Parliament the Bill for which received Royal Assent on or after IP completion day, or

(ii) a Scottish instrument made on or after IP completion day,

to any treaty relating to the EU or any instrument or other document of an EU entity, and

(b) the treaty, instrument or document referred to has effect by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018 (general implementation of remainder of EU withdrawal agreement etc.),

the reference, so far as required for the purposes of relevant separation agreement law, is a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).”

(b) in subsection (3), at the beginning insert “Subject to subsection (2A).”,

(c) in subsection (5)—

(i) for “subsection (3) or” substitute “subsections (2A) to”, and

(ii) for “that subsection” substitute “the subsection concerned”,

(d) after subsection (5) insert—

“(6) In this section—

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”

Interpretation of “the Treaties”, “the EU Treaties” and “the Communities”

6.—(1) The fact that by virtue of regulation 4(5) of the 2019 Regulations—

(a) the definitions of “the Treaties” and “the EU Treaties” (as defined by section 1(2) of the European Communities Act 1972(b)) in Schedule 2 to the 1999 Order are treated as revoked, and

(a) 2010 asp 10. Section 14 is amended by regulation 4 of S.I. 2019/628 as amended by S.I. 2020/463. Schedule 1 is amended by S.I. 2019/628, paragraph 37 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 4 of Schedule 1 to the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2). There are other amendments not relevant to this instrument.

(b) The definition of “the Treaties” and “the EU Treaties” in section 1(2) of the European Communities Act 1972 (c. 68) was amended by the European Communities (Greek Accession) Act 1979 (c. 57), section 1; the European Communities (Spanish and Portuguese Accession) Act 1985 (c. 75), section 1; the European Communities (Amendment) Act 1986 (c. 58), section 1; the European Communities (Amendment) Act 1993 (c. 32), section 1; the European Parliamentary Elections Act 1993 (c. 41), section 3; the European Economic Area Act 1993 (c. 51), section 1; the European Union (Accessions) Act 1994 (c. 38), section 1; the European Communities (Amendment) Act 1998 (c. 21), section 1; the European Communities

(b) definitions of those expressions are treated as inserted into that Schedule,

does not affect the interpretation of those expressions on and after IP completion day in relation to a time before IP completion day.

(2) In its application to Acts of the Scottish Parliament the Bills for which received Royal Assent before 19th June 2008 or to Scottish subordinate legislation made before that date, the definition of “the Communities”, which by virtue of regulation 4(5) of the 2019 Regulations is treated as inserted into Schedule 2 to the 1999 Order, has effect on and after IP completion day, in its application in relation to a time before 19th June 2008, as if the words from “but” to the end were omitted.

(3) In this regulation—

“the 1999 Order” means the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999(a);

“Scottish subordinate legislation” has the same meaning as in the 1999 Order.

PART 5

Northern Ireland

Amendment of the Interpretation Act (Northern Ireland) 1954

7.—(1) The Interpretation Act (Northern Ireland) 1954(b) is amended as follows.

(2) In section 11 (references in enactments)—

(a) for subsections (1A) and (1B), substitute—

“(1A) Except to the extent provided by subsection (1AA), subsection (1) does not apply to a reference in an enactment to retained direct EU legislation (but, for provision about references to EU legislation, see—

- (a) paragraphs 1 to 2A of Schedule 8 to the European Union (Withdrawal) Act 2018,
- (b) subsections (1B) to (1F), and
- (c) section 11A).

(1AA) A reference in an enactment to a statutory provision which is subordinate legislation made under retained direct EU legislation is a reference to which subsection (1) applies; and “subordinate legislation” here means subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act).

(1B) Subsection (1C) applies to a reference in an enactment so far as the reference is to be read in accordance with paragraph 2A(3) of Schedule 8 to the European Union (Withdrawal) Act 2018 (certain references to certain EU laws to be read as referring to those laws as they form part of domestic law).”,

(b) in subsection (1C), for the words from the beginning to “referred to” substitute “The reference is not only to be read in accordance with paragraph 2A(3) of Schedule 8 to that Act but shall also be construed as referring to the subject law (within the meaning given by paragraph 2A(3)(b) of that Schedule)”,

(c) in subsection (1D)(b), after “domestic law” insert “(to any extent)”,

(Finance) Act 2001 (c. 22), section 1; the European Communities (Amendment) Act 2002 (c. 3), section 1; the European Union (Accessions) Act 2003 (c. 35), section 1; the European Union (Accessions) Act 2006 (c. 2), section 1; the European Union (Amendment) Act 2008 (c. 7), paragraph 1, the Schedule; the European Union Act 2011 (c. 12), section 15; the European Union (Croatian Accession and Irish Protocol) Act 2013 (c. 5), section 3; the European Union (Finance) 2015 (c. 2015 (c. 32), section 1; S.I. 2011/1043.

(a) S.I. 1999/1379; revoked by article 8 of that Order but subject to savings specified in s. 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(b) 1954 c. 33 (N.I.).

(d) in subsection (1E), at the beginning insert “Subject to section 11A,”.

(3) After section 11 insert—

“References to EU instruments etc which have direct effect

11A.—(1) Subsection (2) applies where—

- (a) an enactment passed or made on or after IP completion day refers to any treaty relating to the EU or any instrument or other document of an EU entity, and
- (b) the treaty, instrument or document has effect by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018 (general implementation of remainder of EU withdrawal agreement etc).

(2) So far as required for the purposes of relevant separation agreement law, the reference shall be construed as a reference to the treaty, instrument or document as it so has effect (including, so far as so required, as it has effect from time to time).

(3) In this section—

“EU entity” has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018;

“relevant separation agreement law” has the meaning given by section 7C(3) of the European Union (Withdrawal) Act 2018; and

“treaty” includes any international agreement (and any protocol or annex to a treaty or international agreement).”

PART 6

Wales

Amendment of Legislation (Wales) Act 2019

8.—(1) The Legislation (Wales) Act 2019(a) is amended as follows.

(2) In section 24 (references to direct EU legislation retained in domestic law after EU exit), after subsection (2)—

(a) in the English language text insert—

“(2A) But this is subject to section 25A (references to relevant separation agreement law).”;

(b) in the Welsh language text insert—

“(2A) Ond mae hyn yn ddarostyngedig i adran 25A (cyfeiriadau at gyfraith berthnasol y cytundebau gwahanu).”;

(3) After section 25—

(a) in the English language text insert—

“References to relevant separation agreement law

25A.—(1) This section applies where—

- (a) an Act of Senedd Cymru receives Royal Assent, or a Welsh subordinate instrument is made, on or after implementation period completion day, and
- (b) the Act or instrument refers to any treaty relating to the EU, or any instrument or other document of any EU entity, which has effect by virtue of section 7A or 7B of

(a) 2019 anaw 4. Section 24 is amended by paragraph 59 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1) and S.I. 2020/463. There are other amendments not relevant to this instrument.

the European Union (Withdrawal) Act 2018 (c. 16) (general implementation of remainder of EU withdrawal agreement etc.).

(2) The reference is, so far as required for the purposes of relevant separation agreement law, a reference to the treaty, instrument or document as it has effect by virtue of that section (including, so far as required, as it has effect from time to time).

(3) In this section—

“EU entity” (“*endid o’r UE*”) has the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018;

“relevant separation agreement law” (“*cyfraith berthnasol y cytundebau gwahanu*”) has the meaning given by section 7C(3) of the European Union (Withdrawal) Act 2018;

“treaty” (“*cytuniad*”) includes any international agreement (and any protocol or annex to a treaty or international agreement). ”

(b) in the Welsh language text insert—

“Cyfeiriadau at gyfraith berthnasol y cytundebau gwahanu

25A. —(1) Mae’r adran hon yn gymwys—

(a) pan fo Deddf gan Senedd Cymru yn cael y Cydsyniad Brenhinol, neu pan fo is-offeryn Cymreig yn cael ei wneud, ar neu ar ôl diwrnod cwblhau’r cyfnod gweithredu, a

(b) pan fo’r Ddeddf neu’r offeryn yn cyfeirio at unrhyw gytuniad sy’n ymwneud â’r UE, neu unrhyw offeryn neu ddogfen arall gan unrhyw endid o’r UE, sy’n cael effaith yn rhinwedd adran 7A neu 7B o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16) (gweithredu gweddill y cytundeb ymadael â’r UE etc. yn gyffredinol).

(2) Mae’r cyfeiriad, i’r graddau y mae’n ofynnol at ddibenion cyfraith berthnasol y cytundebau gwahanu, yn gyfeiriad at y cytuniad, yr offeryn neu’r ddogfen fel y mae’n cael effaith yn rhinwedd yr adran honno (gan gynnwys, i’r graddau y mae’n ofynnol, fel y mae’n cael effaith o bryd i’w gilydd).

(3) Yn yr adran hon—

mae i “cyfraith berthnasol y cytundebau gwahanu” yr ystyr a roddir i “relevant separation agreement law” gan adran 7C(3) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018;

mae “cytuniad” (“*treaty*”) yn cynnwys unrhyw gytundeb rhyngwladol (ac unrhyw brotocol neu atodiad i gytuniad neu gytundeb rhyngwladol);

mae i “endid o’r UE” yr ystyr a roddir i “EU entity” gan adran 20(1) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018. ”

(4) In section 26 (references to EU instruments)—

(a) in the English language text—

(i) in the heading after “to” insert “certain”,

(ii) in subsection (3), for “regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628)” substitute “paragraph 2A of Schedule 8 to the European Union (Withdrawal) Act 2018 (c.16)”.

(b) in the Welsh language text—

(i) in the heading for “offerynnau’r UE” substitute “offerynnau penodol gan yr UE”,

(ii) in subsection (3), for “reoliad 2 o Reoliadau Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (Addasiadau Canlyniadol a Diddymiadau a Dirymiadau) (Ymadael â’r UE) 2019 (O.S. 2019/628)” substitute “baragraff 2A o Atodlen 8 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16)”.

PART 7

Repeals and revocations

Repeals

9.—(1) The enactments mentioned in the Schedule are repealed to the extent specified.

(2) Where—

- (a) paragraph (1) and the Schedule repeal an enactment (“the amending enactment”) which inserts or otherwise amends another enactment, and
- (b) the inserted or amended enactment is repealed by the European Union (Withdrawal) Act 2018 and there is related transitional or saving provision,

the repeal of the amending enactment does not affect the operation of that transitional or saving provision.

Revocations

10. In the 2019 Regulations, regulation 2 is omitted.

Date *Name*
Minister for the Cabinet Office
Cabinet Office

SCHEDULE

Regulation 9

Repeals

<i>Short title</i>	<i>Extent of repeal</i>
Criminal Law Act 1977(a)	Section 32(3).
Customs and Excise Management Act 1979(b)	Section 65(10)(e). In Schedule 4, in paragraph 12, in Part 1 of the Table, the entries relating to section 6(5) and (6) of the European Communities Act 1972 (and the heading preceding those entries).
Customs and Excise Duties (General Reliefs) Act 1979(c)	In Schedule 2, paragraphs 3 to 5 (and the heading preceding those paragraphs).
Agricultural Statistics Act 1979(d)	In Schedule 1, paragraph 4 (and the heading preceding that paragraph).
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995(e)	In Schedule 4, paragraph 8 (and the heading preceding that paragraph).
Justice (Northern Ireland) Act 2002(f)	In Schedule 7, paragraph 1(3).
Railways and Transport Safety Act 2003(g)	In section 103(2), the words “or under section 2 of the European Communities

- (a) 1977 c. 45.
- (b) 1979 c. 2.
- (c) 1979 c. 3.
- (d) 1979 c. 13.
- (e) 1995 c. 40.
- (f) 2002 c. 26 (N.I.).
- (g) 2003 c. 20.

	Act 1972 (c.68) (implementation of Community obligations)”. In Schedule 6, in paragraph 1(1)(b), the words “or section 2 of the European Communities Act 1972 (c.68) (implementation of Community obligations)”.
Criminal Justice Act 2003(a)	In Schedule 6, paragraph 10(b) and the “or” before that paragraph. In Schedule 27, paragraph 3 (and the heading preceding that paragraph).
Constitutional Reform Act 2005(b)	In Schedule 9, paragraphs 97 and 110.
Legislative and Regulatory Reform Act 2006(c)	Section 20. Section 26(1). Section 27(1), (2) and (4). Section 28. Section 29.
Wales Act 2017(d)	Section 12(2)(b). Section 20.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 23(1) and (2) of, and paragraphs 21 and 26 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) and section 41(1) and (2) of the European Union (Withdrawal Agreement) Act 2020 (c.1).

Regulation 2 amends the Interpretation Act 1978 (c. 30) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act). It also amends the Interpretation Act 1978 to make it clear that the new definition of “enactment” (i.e. including retained direct EU legislation) which was added by the 2018 Act(e) applies to the interpretation of subordinate legislation (as well as Acts) made or passed before the Interpretation Act 1978 came into force.

Regulation 3 amends Schedule 8 to the 2018 Act to make general provision about what happens on IP completion day to non-ambulatory cross-references to EU instruments and in respect of references to relevant separation agreement law. General provision about what happens on IP completion day to ambulatory references to EU instruments is found at paragraphs 1 and 2 of Schedule 8 to the 2018 Act.

Regulation 4 makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628) (“the 2019 Regulations”) to change certain references to “exit day” to “IP completion day”.

Regulation 5 amends the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act).

(a) 2003 c. 44.

(b) 2005 c. 4.

(c) 2006 c. 51.

(d) 2017 c. 4.

(e) Paragraph 22(d) of Schedule 8 to the European Union (Withdrawal) Act 2018 amended the definition of “enactment” in Schedule 1 to the Interpretation Act 1978.

Regulation 6 makes transitional provision for certain definitions relating to the EU which were added to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) by regulation 4(5) of the 2019 Regulations.

Regulation 7 amends the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act).

Regulation 8 amends the Legislation (Wales) Act 2019 (anaw 4) and makes interpretative provision for references on or after IP completion day to EU instruments which form part of relevant separation agreement law (as defined in the 2018 Act).

Regulation 9 and the Schedule to these Regulations repeal primary legislation that has become redundant in consequence of the 2018 Act or this instrument.

Regulation 10 revokes certain provisions of the 2019 Regulations where alternative provision is made in this instrument.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

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EXPLANATORY MEMORANDUM TO
THE EUROPEAN UNION WITHDRAWAL (CONSEQUENTIAL MODIFICATIONS)
(EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office 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 ensure that the UK statute book works coherently and effectively following the end of the transition period.
- 2.2 It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation on or after IP completion day. As part of this, the instrument clarifies how cross references to EU legislation should be read.
- 2.3 The instrument makes technical repeals to redundant provisions within primary legislation arising from the European Union (Withdrawal) Act 2018 (“EUWA”). These are primarily repeals of *amending* provisions, in particular relating to the European Communities Act 1972 (“the ECA”), where EUWA has already provided for the repeal of the *amended* provisions. The purpose of the repeals in these Regulations is to tidy up the statute book and they have no substantive effect.
- 2.4 The instrument amends the Interpretation Act 1978 (and the devolved equivalents) in relation to the interpretation of references to “*relevant separation agreement law*”. The instrument also amends EUWA to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read. It also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019¹(S.I. 2019/628) (“the 2019 Regulations”).
- 2.5 The instrument makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies, whether the retained version or the version applied by the Withdrawal Agreement. The instrument provides a general gloss to ensure that the correct interpretation of the EU instrument applies. SIs being prepared by other departments in order to implement the Withdrawal Agreement, including the Northern Ireland Protocol are relying on these glosses. These SIs are required for IP completion day.

¹ as amended by the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (S.I. 2020/463).

Explanations

What did any relevant EU law do before IP completion day?

- 2.6 This instrument does not amend retained direct EU legislation (“RDEUL”) or relevant separation agreement law, but makes general interpretative provision and makes various repeals to redundant EU-derived domestic legislation.
- 2.7 The EU-derived domestic legislation that is being repealed is domestic law rather than EU law. The provisions being repealed amended the ECA and other Acts repealed by EUWA. More detailed information on the repeals is found in section 7 of this explanatory memorandum.
- 2.8 The interpretation legislation amended by this instrument is not EU law; it is domestic legislation, which is being updated in consequence of EUWA and WAA.

Why is it being changed?

- 2.9 Certain provisions within primary legislation are being repealed because they are redundant in consequence of EUWA. These are primarily repeals of amending provisions, in particular relating to the ECA, where EUWA has already repealed the amended provisions. The repeals are being made to ensure a clean and tidy statute book after IP Completion Day and to ensure that the UK’s legal system continues to function effectively. More information on the changes is included at section 7.
- 2.10 Domestic interpretation legislation is being amended to clarify how certain terms, including EU-related definitions, should be interpreted in domestic legislation on or after IP completion day. Transitional provision is also needed to clarify how ambulatory and non-ambulatory references to EU legislation in pre-exit legislation are to be read after IP completion day.

What will it now do?

- 2.11 These Regulations make a further amendment to the Interpretation Act 1978 to incorporate RDEUL and relevant separation agreement law. Equivalent amendments are being made to the Interpretation and Legislative Reform (Scotland) Act 2010, the Interpretation Act (Northern Ireland) 1954 and Amendment of Legislation (Wales) Act 2019.
- 2.12 The Regulations clarify the interpretation of certain EU-related definitions included in Scottish interpretation legislation by virtue of the 2019 Regulations.
- 2.13 Ambulatory references to direct EU legislation that forms part of relevant separation agreement law are to be read as that legislation applies under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 2.14 Non-ambulatory references to direct EU legislation which does not form part of relevant separation agreement law and which are intended to relate to a time before IP completion day will continue to do so.
- 2.15 Non-ambulatory references to direct EU legislation which forms part of relevant separation agreement law are to be read as that EU legislation applies under the terms of the Withdrawal Agreement.
- 2.16 The EU-derived domestic legislation that is redundant is being repealed and will no longer have effect. It will no longer sit on the UK statute book, reflecting the UK’s status as a non-EU member state.

3. Matters of special interest to Parliament

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

- 3.1 A draft of this SI was laid in Parliament on 8 October. It has since been withdrawn and a revised version has been laid to amend a minor technical error. The revised version of the SI no longer contains Regulation 11 as it is no longer required, and this revised Explanatory Memorandum reflects that.

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 of this instrument is the United Kingdom, subject to the paragraphs 4.2-4.5 below.
- 4.2 Regulations 5 and 6 amend the Interpretation and Legislative Reform (Scotland) Act 2010 and extend and apply to Scotland.
- 4.3 Regulation 7 amends the Interpretation Act (Northern Ireland) 1954 and extends and applies to Northern Ireland.
- 4.4 Regulation 8 amends the Legislation (Wales) Act 2019 and extends and applies to Wales.
- 4.5 Regulation 9 and the Schedule make provision to repeal primary legislation. The extent and application of these provisions is the United Kingdom (given the extent and application of all the legislation being repealed or revoked is the United Kingdom).

5. European Convention on Human Rights

- 5.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office, has made the following statement regarding Human Rights:

“In my view the provisions of the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The UK left the EU on 31 January 2020 at 11pm (“exit day”), following which the supremacy of the EU law over UK law came to an end. EUWA achieved this legal severance through the repeal of the ECA on exit day.
- 6.2 The Withdrawal Agreement agreed between the UK and the EU came into force on exit day. The Withdrawal Agreement aims to ensure an orderly withdrawal of the UK from the EU. WAA implemented the Withdrawal Agreement and provides the vehicle for the Government to give effect to the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement.
- 6.3 The UK and the EU agreed in the Withdrawal Agreement that the UK’s exit from the EU would be followed by a time-limited transition period (“the Transition Period”). The Transition Period started on exit day and ends at 11pm on 31 December 2020 (“IP Completion Day”). Although the ECA was repealed on exit day, certain parts of

the ECA are kept in force by EUWA and EU law continues to apply during the Transition Period under the terms set out in the Withdrawal Agreement.

- 6.4 To ensure that the domestic legal system continues to function correctly outside the EU, EUWA converts and saves particular elements of EU law as it stands at the end of the Transition Period. In doing so, EUWA creates a new body of domestic law, known as “retained EU law”. Retained EU law is made up of three categories, RDEUL, EU derived domestic legislation and other directly effective EU law rights.² Retained EU law was created before the Withdrawal Agreement was agreed and before WAA came into force. Retained EU law was originally due to apply from exit day. WAA amended EUWA to provide for the Transition Period and to provide that retained EU law comes into effect on IP Completion Day instead of exit day.
- 6.5 In addition, WAA establishes “relevant separation agreement law”. Relevant separation agreement law includes (1) provisions of domestic law that give effect to the Withdrawal Agreement or the EEA EFTA Separation Agreement and (2) provisions of the Withdrawal Agreement and the EEA EFTA Separation Agreement (and the EU law applied by them) which take effect directly in domestic law via the provisions of EUWA.
- 6.6 The provisions of EUWA and the amendments made to EUWA by WAA mean that it is possible for EU instruments to form part of retained EU law for some purposes and have effect as relevant separation agreement law for other purposes. This means that after IP Completion Day, references to EU instruments in domestic legislation can have a dual meaning. For example, referring to the original version of the EU instrument that has effect as relevant separation agreement law for some purposes and referring to the domesticated version of the EU instrument that forms part of RDEUL for other purposes.
- 6.7 EUWA and WAA provide temporary powers to make provisions that Ministers consider appropriate in consequence of those Acts. These Regulations are made in exercise of the consequential powers at section 23(1) and (2) of, and paragraphs 21(b) and 26 of Schedule 7 to EUWA and section 41(1) and (2) of WAA.
- 6.8 The 2019 Regulations amended the Interpretation Act 1978, the Interpretation and Legislative Reform (Scotland) Act 2010 and the Interpretation Act (Northern Ireland) 1954, which set out general rules of interpretation for legislation. That instrument also provided for how cross-references to EU legislation post-exit and non-ambulatory cross-references to EU legislation up to the point immediately before exit should be read. It added a number of words and expressions to the Interpretation and Legislative Reform (Scotland) Act 2010 and the Interpretation Act (Northern Ireland) 1954 and provided general rules of interpretation in light of the introduction of “retained EU law”. It also repealed and revoked primary and secondary legislation in consequence of the repeal of the ECA and arising from the withdrawal of the UK from the EU.
- 6.9 These Regulations make further provision relating to the interpretation of certain EU-related definitions and non-ambulatory references. In light of the introduction of “relevant separation agreement law”, these Regulations make provision for how references to EU instruments that have effect as relevant separation agreement law should be interpreted. This includes amendments to the Interpretation Act 1978 and equivalent amendments to the devolved authorities’ interpretive legislation. In

² A definition of retained EU law can be found at section 6(7) of EUWA.

addition, these Regulations make further changes to the Interpretation Act 1978 on the general rules of interpretation to ensure that the rules and definitions apply, as appropriate, to retained EU law.

- 6.10 The Regulations also make consequential amendments to the 2019 Regulations. They make further repeals which are necessary to remove provisions of legislation which are redundant in consequence of EUWA and revoke provisions of the 2019 Regulations which are being replaced by provisions made by these Regulations

7. Policy background

What is being done and why?

- 7.1 These Regulations make various consequential amendments and repeals in respect of retained EU law, relevant separation agreement law and other EU-derived domestic legislation. This is to ensure that the UK statute book operates effectively and coherently in relation to EU-derived domestic legislation, and removes from the statute book domestic legislation that is made redundant as a result of EUWA.

Amendment of Interpretation Act 1978

- 7.2 As discussed above at paragraph 6.4, EUWA ensures that direct EU legislation, which applies to the UK by virtue of the ECA, is converted and saved to the UK statute book as RDEUL. An example of such legislation would be EU Regulations. To ensure that RDEUL functions effectively in UK law, the Interpretation Act 1978 was amended by EUWA to clarify that the definition of “enactment” included RDEUL.
- 7.3 In addition, WAA establishes “relevant separation agreement law” which includes (1) provisions of domestic law that give effect to the Withdrawal Agreement/EEA EFTA Separation Agreement and (2) provisions of domestic law that give effect to the Withdrawal Agreement and the EEA EFTA Separation Agreement. In light of the introduction of relevant separation agreement law, regulation 2 makes amendments to the Interpretation Act 1978 to provide for how references in UK legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be interpreted as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.4 As part of this, regulation 2 amends existing interpretive provisions that have already been made for references to RDEUL. This is to provide for situations where references to EU instruments in domestic legislation have a dual meaning. For example, referring to the original version of the EU instrument that has effect as relevant separation agreement law for some purposes and referring to the domesticated version of the EU instrument that forms part of RDEUL for other purposes. Where there is a dual meaning, the interpretive provision applicable to references to EU legislation that have effect as relevant separation agreement law will apply to the extent that the EU legislation takes effect as relevant separation agreement law. The interpretive provision for references that form part of RDEUL can then apply to the extent the instrument forms part of RDEUL.
- 7.5 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are

being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument cross references to EU legislation was being referred to.

- 7.6 These Regulations make a further amendment to the Interpretation Act 1978, to make it clear that the new definition of “enactment” (including RDEUL) applies to any statutory reference to “enactment”. Without this change, there could have been questions about whether references to “enactment” found in subordinate legislation made *prior* to the Interpretation Act 1978 were covered.

Amendment of European Union (Withdrawal) Act 2018

- 7.7 Regulation 3 makes amendments to EUWA to provide how existing ambulatory references to EU instruments that will have effect as relevant separation agreement law are to be interpreted after IP Completion Day. Ambulatory references are references to EU instruments that automatically update when the EU instrument is updated.
- 7.8 EUWA already makes interpretive provision for ambulatory references to EU instruments that will form part of RDEUL and those instruments that will not form part of RDEUL. The introduction of “relevant separation agreement law” by WAA means that this additional interpretive provision is needed. Regulation 3(2)(b) inserts new paragraph 1A into Schedule 8 of EUWA which sets out that existing ambulatory references to EU instruments that will take effect as relevant separation agreement law are to be read as a reference to the instrument as it has effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.9 As part of the amendments to EUWA, regulation 3 amends existing interpretive provisions for ambulatory references. This is to provide for instances where the EU instrument referred to has a dual meaning. For example, the EU instrument forms part of RDEUL for some purposes and relevant separation agreement law for other purposes. In these instances the interpretive provision for relevant separation agreement law applies to the extent that the legislation referred to takes effect as relevant separation agreement law; the interpretive provision for RDEUL can then apply to the extent that the legislation referred to forms part of RDEUL. If these provisions were not made it would be unclear what version of an EU instrument ambulatory references were referring to, the original version that has effect as relevant separation agreement law or the domestic version that forms part of RDEUL.
- 7.10 The 2019 Regulations made provision for how non-ambulatory cross-references to EU legislation up to the point immediately before “exit” should be read. Non-ambulatory references are references to an EU instrument in the form it was in when the reference was made (regardless of whether the EU instrument has been subsequently amended). This is in contrast to ambulatory references, which are references to EU instruments that automatically update when the EU instrument is updated. This provision made by the 2019 Regulations needs updating as a result of the introduction of relevant separation agreement law and as a result of RDEUL applying from IP Completion Day rather than exit day. Regulation 3(2)(d) inserts new interpretive provisions into EUWA for how non-ambulatory cross-references to EU legislation up to the point of IP Completion Day should be read. This replaces the previous provisions made by the 2019 Regulations. As part of this, regulation 10 of these Regulations revokes the provisions of the 2019 Regulations that are being replaced by these provisions.

- 7.11 Regulation 3(2)(d) inserts new paragraph 2A of Schedule 8 to EUWA to set out that after IP Completion Day, existing non-ambulatory references to EU legislation should be read in accordance with “one or more” of the three interpretive provisions set out (new paragraph 2A(1) of EUWA). The flexibility of “one or more” of the interpretive provisions applying is built in to provide for instances where references to EU instruments have more than one meaning, for example, referring to the EU instrument as it has effect as relevant separation agreement law for some purposes and referring to the EU instrument as incorporated into RDEUL for other purposes.
- 7.12 The three interpretive provisions created by new paragraph 2A(1) of EUWA set out that following IP Completion Day, non-ambulatory cross references to EU instruments that have effect as relevant separation agreement law should be read as a reference to the version of that legislation that has effect under the terms of the Withdrawal Agreement/EEA EFTA separation agreement. Up-to-date non-ambulatory cross references to EU legislation should be read as references to the retained version of that legislation (as retained under section 3 of EUWA or as the case may be retained under section 1 of the Direct Payments to Farmers Act 2020). All other non-ambulatory cross references to EU legislation should be read as a reference to the legislation in the form it was in at the time the reference was made.

Amendment of reference to “exit day” with “IP completion day”

- 7.13 The 2019 Regulations were made before the Withdrawal Agreement was made and before WAA was enacted. WAA contains a number of important provisions that affect the 2019 Regulations, including amending EUWA to provide that retained EU law comes into effect on IP Completion Day instead of exit day and delaying the commencement of EU-exit SIs until IP Completion Day.
- 7.14 Regulation 5(1) of the 2019 Regulations updated the definition of “statutory provisions” in the Interpretation Act (Northern Ireland) 1954 to include retained EU law. The 2019 Regulations made it clear that this didn’t affect any references to “statutory provisions” contained in legislation made before “exit day” unless there was a contrary intention. Regulation 5 of the 2019 Regulations was originally due to come into force on exit day, but commencement was delayed by WAA to IP Completion Day.
- 7.15 Whilst the commencement of regulation 5 of the 2019 Regulations was delayed until IP Completion Day, regulation 5 still refers to “exit day” rather than IP Completion Day. Regulation 4 of these Regulations updates the reference in regulation 5 of the 2019 Regulations so that it refers to “IP Completion Day” rather than “exit day”. This is needed to ensure that the 2019 Regulations operate effectively on IP Completion Day.

Amendment of Interpretation and Legislation Reform (Scotland) Act 2010

- 7.16 Regulation 5 of the Regulations makes amendments to the Interpretation and Legislative Reform (Scotland) Act 2010 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2.
- 7.17 The amendments made to the Interpretation and Legislative Reform (Scotland) Act 2010 provide for how references in Scottish legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion

Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.

- 7.18 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. Again, this is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning. Where there is a dual meaning, the interpretive provision applicable to references to EU legislation that have effect as relevant separation agreement law will apply to the extent that the EU legislation takes effect as relevant separation agreement law. The interpretive provision for references that form part of RDEUL can then apply to the extent the instrument referred to forms part of RDEUL.
- 7.19 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

Interpretation of “the Treaties”, “the EU Treaties” and “the Communities”

- 7.20 Regulation 6 makes transitional provision for certain definitions relating to the EU which were added to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999, which sets out general rules of interpretation for Scottish legislation made before 4 June 2010.³ In essence, this regulation saves the pre-IP Completion Day meaning of terms including “Treaties”, “EU treaties” or “Communities” for a number of limited purposes, for example as such terms may apply to pre-exit matters.
- 7.21 At present, references to EU Treaties will, after IP Completion Day, become references to the EU Treaties as they stood immediately before IP completion day. However, there are certain situations where pre-IP completion day legislation refers to “the Treaties” or “the EU treaties” and on or after IP completion day the expression will need to be interpreted in relation to a time before IP completion day. This regulation retains the existing position and ensures that the interpretation of the reference to the EU Treaties on and after IP completion day is unaffected by the new definition of EU Treaties as applying as they stood immediately before IP completion day.
- 7.22 The new definition of “the Communities” includes the words “but a reference to any or all of those Communities is to be treated as being or including (as the context requires) a reference to the EU”. Those words reflect the effect of the gloss in section 3(6) of the EU (Amendment) Act 2008. But they go wider than that gloss as the section 3(6) gloss does not apply to Acts passed or instruments made before the passing of the 2008 Act (19 June 2008) in their application to a reference to any or all of the Communities in relation to a time before the passing of that Act. Provision is

³ Regulation 1(2)(b)(3), 4(5)(a) and (b) of the 2019 Regulations added these terms to The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of Scottish Parliament) Order 1999 by amending section 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. S.I. 1999/1379 was revoked by article 8 of that Order but subject to savings specified in section 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

needed to ensure that the “but a reference...” wording in the new definition does not apply in such a pre-19 June 2008 case.

Interpretation of the Interpretation Act (Northern Ireland) 1954

- 7.23 Regulation 7 of the Regulations makes amendments to the Interpretation Act (Northern Ireland) 1954 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2.
- 7.24 The amendments made to the Interpretation Act (Northern Ireland) 1954 provide for how references in Northern Ireland legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.25 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. This is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning.
- 7.26 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

Amendment of Legislation (Wales) Act 2019

- 7.27 Regulation 8 of the Regulations makes amendments to the Legislation (Wales) Act 2010 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2(1)-(4) of these Regulations
- 7.28 The amendments made to the Legislation (Wales) Act 2010 provide for how references in Northern Ireland legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.29 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. This is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning.
- 7.30 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without

these provisions it would be unclear what version of an EU instrument was being referred to.

Repeals

- 7.31 Regulation 9 and the Schedule repeal provisions within primary legislation that have become redundant as a result of EUWA. EUWA repealed a number of *amended* provisions of legislation, and these Regulations repeal the *amending* provisions that lay behind them. Their existence in the statute book has no practical effect in light of the repeals already provided for in EUWA. The purpose of the repeals in these Regulations is merely to tidy up the statute book to ensure that it is clear and effective on IP completion day.
- 7.32 Most of the amending enactments repealed by the Schedule to these Regulations amend the ECA. The ECA is repealed by section 1 of EUWA and the continuing effect of regulations made under section 2(2) of the ECA is provided for by section 2 of EUWA. These Regulations include a saving provision in regulation 3(2) to make clear that the repeals are not intended to interfere with the operation of any related saving or transitional provision where the amending enactment is repealed by EUWA.
- 7.33 The following paragraphs explain what is being repealed.
- 7.34 Section 32(3) of the Criminal Law Act 1977 amends paragraph 1(1)(d) of Schedule 2 to the ECA, which sets the maximum daily fine that regulations under section 2(2) of that Act can impose. Section 65(10)(e) sets out the territorial extent of that provision. As the ECA is being repealed, these provisions will be redundant and are being removed from the UK statute book.
- 7.35 Paragraph 12, in Part 1 of the Table, in Schedule 4 to the Customs and Excise Management Act 1979 amends sections 6(5) & (6) of the ECA (agricultural levies of the EU to be levied collected and paid etc as if they were EU customs duties), by updating references to legislation (including replacing a reference to the Customs and Excise Act 1952 with a reference to the Customs and Excise Management Act 1979). As the ECA is being repealed, these amending provisions are redundant and are therefore also being repealed.
- 7.36 Paragraphs 3 to 5 in Schedule 2 to the Customs and Excise Duties (General Reliefs) Act 1979 make several amendments to the ECA, including provisions on the form and procedure for orders made under section 5(1) or (2) of that Act (customs duties) 2 and related reporting requirements to Parliament. Again, the repeal of the ECA makes these sections redundant and so they are also being repealed.
- 7.37 Paragraph 4 of Schedule 1 to the Agricultural Statistics Act 1979 amends section 12 of the ECA (furnishing of information to Communities) by substituting a reference to the Agriculture Act 1947 with a reference to the Agricultural Statistics Act 1979. As the ECA is being repealed, this provision is redundant and is also being repealed.
- 7.38 Paragraph 8 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 amends section 11 of the ECA (offence of making a false statement before the European Court). This provision updates a reference in section 11 of the ECA to the “False Oaths (Scotland) Act 1933” with a reference to the “Criminal Law (Consolidation) (Scotland) Act 1995”. This amending provision is redundant on the repeal of the ECA and so is also being repealed.

- 7.39 Paragraph 1(3) in Schedule 7 to the Justice (Northern Ireland) Act 2002 amends section 12(2) of the Northern Ireland Act 1998, which relates to the procedure to be followed where the Northern Ireland Assembly wishes to reconsider a Bill referred to the ECJ. In particular, it changes references to Northern Ireland Law Officers. As section 12 of the Northern Ireland Act 1998 is repealed by EUWA⁴, this amending provision is redundant and is also being repealed.
- 7.40 Section 103(2), and paragraph 1(1)(b) and 10(b) of Schedule 6 to, the Railways and Transport Safety Act 2003 make references to section 2 of the ECA. These are redundant on the repeal of the ECA and are therefore also being repealed.
- 7.41 Paragraph 3 of Schedule 27 to the Criminal Justice Act 2003 amends para 1 of Schedule 2 to the ECA (maximum term of imprisonment section 2(2) regulations can impose). On the repeal of the ECA, this provision is redundant and is therefore also being repealed.
- 7.42 Paragraphs 97 and 110 of Schedule 9 to the Constitutional Reform Act 2005 amend section 34 of the Scotland Act 1998 and section 12 of the Northern Ireland Act 1998 respectively. These provisions substitute “Supreme Court” for “Judicial Committee” in relation to ECJ references. As section 34 of the Scotland Act 1998 and section 12 of the Northern Ireland Act 1998 are repealed by EUWA⁵, the amending provisions are redundant and so are also being repealed.
- 7.43 Section 20 of the Legislative and Regulatory Reform Act 2006 (“LRRRA 2006”) enables new order-making powers to be exercised together with and by the same instrument as the power to make an order under section 2(2) ECA. Section 29 provides for the procedure which applies. These sections are being repealed, as after the UK leaves the EU, powers under section 2(2) ECA will no longer apply, and the sections will therefore become redundant.
- 7.44 Section 27(1) and (2) makes consequential amendments to the ECA, changing the word “regulations” to “order, rules, regulations or scheme”. Section 28 amends the ECA by inserting a provision to allow subordinate legislation to make ambulatory references to EU legislation. As the ECA is repealed, these provisions are redundant and are also being repealed.
- 7.45 The LRRRA 2006 also amends the Interpretation Act 1978 and the Scotland Act 1998. Section 26(1) inserts definitions of the “EEA agreement” and “EEA state” into the Interpretation Act 1978. As the definitions are being repealed and replaced by EUWA⁶, this provision is redundant and is also being repealed. Section 27(4) makes a consequential amendment to paragraph 15(3) of Schedule 8 to the Scotland Act 1998, reflecting a change made to the ECA, so that the word “regulations” is changed to “order, rules, regulations or scheme”. Paragraph 15 of Schedule 8 to the Scotland Act 1998 is repealed by EUWA making the amending provision redundant too.⁷
- 7.46 Section 12(2)(b) of the Wales Act 2017 amends section 113(2)(a) of the Government of Wales Act 2006 (“GOWA 2006”), which relates to ECJ references, to replace the term “Clerk” with “Presiding Officer”. Section 20 of the Wales Act 2017 gives Welsh Ministers an automatic right to make regulations under section 2(2) of the European

⁴ See paragraph 52 in Part 3 of Schedule 3 to EUWA.

⁵ See paragraphs 11 and 52 of Part 3 of Schedule 3 to EUWA.

⁶ See paragraph 22 of Schedule 8 EUWA.

⁷ Paragraph 15 of the Scotland Act 1998 is repealed by Part 3 of Schedule 3 to EUWA.

Communities Act 1972 implementing EU law by inserting a new section 58B into, and amending section 59 of, the GOWA 2006. Sections 113, 58B and the relevant parts of section 59 of the GOWA 2006 are repealed by Part 3 of Schedule 3 of EUWA, which makes the amending provisions contained in the Wales Act 2017 redundant and so these are also being repealed.

Revocations

- 7.47 Regulation 10 of these Regulations revokes regulation 2 of the 2019 Regulations.
- 7.48 Regulation 2 of the 2019 Regulations made interpretive provision for non-ambulatory references to direct EU legislation. Regulation 2 is not yet in force and was made before the enactment of WAA and the introduction of relevant separation agreement law. These Regulations replace the interpretive provision for non-ambulatory references provided by the 2019 Regulations with updated provisions to include interpretive provision for non-ambulatory references to relevant separation agreement law (regulation 3(2) and new paragraph 2A of Schedule 8 to EUWA).

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

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 23(1) and (2) of, and paragraphs 21 and 26 of Schedule 7 to, EUWA and section 41(1) and 41(2) of WAA. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 This instrument is not consolidating any other provisions.

10. Consultation outcome

- 10.1 No public consultation was required as the Regulations make only limited technical changes to existing legislation with no impact on businesses, charities or voluntary bodies.

11. Guidance

- 11.1 Guidance is not being provided in relation to this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because we expect it to have no impact on businesses.

13. Regulating small business

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

14. Monitoring & review

- 14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the EU Withdrawal Act 2018 and the European Union (Withdrawal Agreement) Act 2020, no review clause is required.

15. Contact

15.1 The Transition Taskforce at the Cabinet Office, email: ttf-legislation@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Marianne Ainsworth-Smith, Deputy Director for Parliamentary Engagement and Legislation within the Transition Taskforce, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office 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 Schedule 7	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), 9 and 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 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 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	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 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	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 Chancellor of the Duchy of Lancaster, Michael Gove MP, at Cabinet Office, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because the instrument ensures that the UK statute book accommodates “retained EU law” coherently and effectively after the UK’s withdrawal from the EU.
- 1.3 Although the instrument repeals some primary legislation, these are of a technical and consequential nature and simply remove provisions made redundant by EUWA and in particular, by the repeal of the ECA.

2. Good reasons

- 2.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office, 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 that without this instrument there would be a lack of clarity about how certain EU-related terms and references to EU legislation in domestic legislation should be interpreted when the UK leave the EU. Also, many provision of EU-derived domestic legislation would remain on the UK statute book, despite being redundant as a result of EUWA

3. Equalities

- 3.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office has made the following statement(s):

“The 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.

4. Explanations

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



Our ref: MA-CG-3212-20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
SeneddLJC@senedd.wales

02 November 2020

Dear Mick,

I am writing to notify you that the UK Government has laid The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020. The regulations are subject to the affirmative procedure and were laid in draft before the UK Parliament on 8 October.

The objective of the statutory instrument is to ensure that the UK statute book works coherently and effectively following the end of the transition period. It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation after the end of the transition period.

The SI amends the Interpretation Act 1978 and the equivalent Interpretation Acts passed by the devolved legislatures (including the Legislation (Wales) Act 2019) in relation to the interpretation of references to "relevant separation agreement law". The SI also amends the European Union (Withdrawal) Act 2018 (EUWA) to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read following the end of the transition period.

The SI makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies and provides a general gloss to ensure that the correct interpretation of the EU instrument applies.

The SI also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 and technical repeals to redundant provisions within primary legislation arising from EUWA.

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

Regulations 2 and 8 of the SI make consequential amendments to the Interpretation Act 1978 (c. 30) and the Legislation (Wales) Act 2019 (anaw 4) to make interpretative provision for references in domestic legislation to EU instruments which form part of relevant separation agreement law following the end of the transition period.

It is the view of the Welsh Government that the provisions described above relate to subject matters that are within the legislative competence of the Senedd. The term “relevant separation agreement law” has a broad definition in section 7C of EUWA. This includes domestic legislation that may be made by a Minister of the Crown or the Welsh Ministers to implement separation issues in Part 3 of the Withdrawal Agreement, such as matters relating to State aid and procurement which fall within the Senedd’s legislative competence. It also captures domestic legislation that may be made to implement the Protocol on Ireland/Northern Ireland, which could include provisions relating to a number of matters that are within the Senedd’s legislative competence, such as fisheries and food.

The SI and accompanying Explanatory Memorandum are available here:
<https://www.legislation.gov.uk/ukdsi/2020/9780348214055>

An earlier draft of the SI, with the same title, was laid on 8 October, then withdrawn, amended (but not in devolved areas) and re-laid. A Written Statement and Statutory Instrument Consent Memorandum for the earlier version of the SI were laid on 14 October.

I can confirm that the SI has no impact on the legislative competence of the Senedd or the executive competence of the Welsh Ministers.

There is no divergence between the Welsh Government and the UK Government on the amendments being made by the SI. It is to be made under section 23 of EUWA and section 41 of WAA which confer powers on a Minister of the Crown to make provision in consequence of both of those Acts. Equivalent powers to make consequential provision are not conferred on the Welsh Ministers and therefore the Welsh Ministers could not make a separate Welsh SI containing provision for the interpretation of legislation that is within the Senedd’s legislative competence.

As such, the SI does not initiate a formal consent process with Ministers of the Devolved Governments. Nevertheless, officials of the Welsh Government contributed to the drafting of the SI and the Counsel General and Minister for European Transition has written to the Chancellor of the Duchy of Lancaster to say that formal consent should have been sought.

However, a Statutory Instrument Consent Motion is being tabled and the Senedd will have the opportunity to consider and consent to the technical changes to the Legislation (Wales) Act 2019. The debate is scheduled for 17 November to be ahead of the consideration in the UK Parliament.

It is our strong preference that laws made in Wales should, as part of the process of withdrawal from the EU, be amended in Wales. In the case of the changes made by this SI, the Welsh Ministers do not have the powers. Consequently, given the requirement for the amendments to be made by the end of the transition period, the only alternative way to make the amendments in Wales would be to take primary legislation through the Senedd and for it to receive Royal Assent by the end of the year. This would not be a proportionate use of time and resources.

The amendments have been considered fully and there is no divergence on them. Given the technical nature of the amendments and the need for interpretative provisions to be in place by the end of the year, it is considered appropriate for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. Furthermore, making the necessary consequential amendments in one instrument helps to promote the accessibility of the law during this period of change.

I am copying this letter to the Counsel General and Minister for European Transition.

Yours sincerely,

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

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The European Union Withdrawal (Consequential Modifications)
(EU Exit) Regulations 2020**

DATE **02 November 2020**

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

The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

The Law which is being amended:

The European Union (Withdrawal) Act 2018
The Interpretation Act 1978
The Legislation (Wales) Act 2019
The Interpretation and Legislative Reform (Scotland) Act 2010
The Interpretation Act (Northern Ireland) 1954
The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019
The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013.

The SI also makes a number of technical repeals to redundant provisions within primary legislation in consequence of repeals made by the European Union (Withdrawal) Act 2018.

The purpose of the amendments

The purpose of the amendments is to ensure that the UK statute book works coherently and effectively following the end of the transition period. It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation after the end of the transition period. The SI amends the Interpretation Act 1978 and the equivalent Interpretation Acts passed by the devolved legislatures (including the Legislation (Wales) Act 2019) in relation to the interpretation of references to “relevant separation agreement law”. The SI also amends the European Union (Withdrawal) Act 2018 (EUWA) to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read

following the end of the transition period.

The SI makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies and provides a general gloss to ensure that the correct interpretation of the EU instrument applies. Finally, the SI makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 and technical repeals to redundant provisions within primary legislation arising from EUWA.

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

<https://www.legislation.gov.uk/ukdsi/2020/9780348214055>

An earlier draft of the SI, with the same title, was laid on 8 October, then withdrawn, amended (but not in devolved areas) and re-laid. A Written Statement for the earlier version of the SI was laid on 14 October.

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

The SI has no impact on the legislative competence of the Senedd or the executive competence of the Welsh Ministers.

Consent requirements

This SI is to be made under section 23 of EUWA and section 41 of WAA, which are the consequential powers in each Act, exercisable by Ministers of the Crown. As such, the SI does not initiate a formal consent process with Ministers of the Devolved Governments.

It is our strong preference that laws made in Wales should, as part of the process of withdrawal from the EU, be amended in Wales. However, equivalent powers are not conferred on the Welsh Ministers. As the SI makes technical amendments, with no policy implications and, given that the amendments have to be in place by the end of the year, it is considered expedient for provision to be made by the UK Government on behalf of all of the nations of the UK to ensure that there is an operable statute book at the end of the transition period. The only alternative would require primary legislation to go through the Senedd and be enacted by the end of the year, which would not be a proportionate use of time and resources. Furthermore, making the necessary consequential amendments in one instrument helps to promote the accessibility of the law during this period of change.

Officials of the Welsh Government contributed to the drafting of the SI and the Counsel General and Minister for European Transition has written to the Chancellor of the Duchy of Lancaster to say that formal consent should have been sought.

However, a Statutory Instrument Consent Memorandum is being laid and the Senedd will have the opportunity to consent to the technical changes to the Legislation (Wales) Act 2019.

UK MINISTERS ACTING IN DEVOLVED AREAS

200 - The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

Laid in the UK Parliament: 21 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 20
SICM under SO 30A (because amends primary legislation)	SICM(5)38
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	27/10/20

Background

These Regulations are proposed to be made by the UK Government under section 23 of the European Union (Withdrawal) Act 2018 and section 41 of the European Union (Withdrawal Agreement) Act 2020.

Summary

The objective of the SI is to ensure that the UK statute book works coherently and effectively following the end of the transition period. It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation after the end of the transition period. The SI amends the Interpretation Act 1978 and the equivalent Interpretation Acts passed by the devolved legislatures (including the Legislation (Wales) Act 2019) in relation to the interpretation of references to “relevant separation agreement law”. The SI also amends the European Union (Withdrawal) Act 2018 (EUWA) to provide for how existing references to EU instruments that form part of relevant separation

agreement law and how existing non-ambulatory references to direct EU legislation should be read following the end of the transition period. The SI makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies and provides a general gloss to ensure that the correct interpretation of the EU instrument applies. The SI also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (the 2019 Regulations) and technical repeals to redundant provisions within primary legislation arising from EUWA

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 2 November 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.

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.

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) in respect of these Regulations on 2 November 2020.

A motion to debate the SICM is scheduled for debate in Plenary on Tuesday 17 November 2020.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020
DATE	21 October 2020
BY	Rebecca Evans MS, Minister for Finance and Trefnydd

SI laid in Parliament, which amends secondary legislation in a devolved area

The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

The 2020 Regulations, where necessary, makes technical corrections to retained direct EU law and previously made EU Exit Statutory Instruments (EU Exit SIs), under sections 8, 8B and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The matters addressed by the 2020 Regulations relate to the Common Organisation of Agricultural Markets (“CMO”), and is intended to ensure certain provisions within the CMO work effectively following IP completion day.

The CMO is the framework for the functioning and administration of the Common Organisation of Agricultural Markets and is part of pillar 1 of the Common Agriculture Policy (“CAP”). CMO was set up as a means of meeting the objectives of the CAP (Article 40 Treaty on the Functioning of the European Union), and 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.

Within the CMO, the 2020 Regulations also address matters relating specifically to organic food. The organics sector has been strictly regulated in the UK and in other EU Member States by Council Regulation (EC) No 834/2007 and Commission Regulations (EC) Nos 889/2008 and 1235/2008. The regulations set out the requirements for organic production, processing, labelling and imports, and the inspection systems that must be in place to ensure the requirements are met. The regulations apply to organic food, feed and vegetative propagating material or seeds for cultivation.

This instrument amends retained EU legislation and a UK statutory instrument relating to Organic products within the Common Organisation of Markets (CMO) an area which Defra considers are of reserved competence. It should be read in conjunction with another proposed UK SI, which relates to the CMO, specifically Organic production in areas of devolved competence. The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020 were laid on the 15 October 2020.

The 2020 Regulations amend the following legislation

European legislation

- Regulation (EC) 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries
- Regulation (EC) 1295/2008 on the importation of hops from third countries.
- Commission Delegated Regulation (EU) 2016/1237 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences.

Domestic legislation

- The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019;
- The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019,
- The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019
- The Import and Export Licences (Amendment etc.) (EU Exit) Regulations 2019

Any impact the SI may have on the Senedd'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 relate to the Common Organisation of Agricultural Markets ("CMO"), domestic secondary legislation which implements EU legislation in respect of the CMO, and existing domestic secondary legislation which itself amends retained EU legislation relating to CMO, to enable it to work effectively following the implementation period completion day.

The amendments will correct the retained EU legislation in accordance with the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020), to ensure the implementation of the Northern Ireland Protocol and to remove ambiguities, inconsistencies and typographical mistakes so that the instruments are able to function as intended following the transition period.

The instrument makes provisions in respect of organic production. It will amend retained EU law relating to organic production and existing domestic secondary legislation which itself amends retained EU legislation relating to organics. The amendments will ensure alignment with the Northern Ireland Protocol and provide operability to existing provisions in retained Regulation (EC) No 1235/2008.

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 previous EU Exit SIs. 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, for example:

- the correction of redundant references such as 'the Union' and 'the Commission' by substituting these with the term 'Great Britain', and to correct ambiguities and inconsistencies to align the implementation of the Northern Ireland Protocol. These amendments intend to provide clarity to stakeholders on the requirements for goods placed on the market in GB and moving to NI following IP completion day;

- amendments to domestic secondary legislation and retained EU legislation, which was previously drafted for the UK as a whole rather than just Great Britain, to omit references relating to Northern Ireland, where applicable, so it can remain aligned with the EU;
- the removal of out of date references to 'exit day' and the correction of transitional provisions to reference 'IP completion day', so these provisions remain coherent and continue to function as intended following the implementation period;
- to ensure alignment with the UK Government's Border Operating Model, amendments will be made to the transitional provisions concerning the import of hops and hops products. The transitional arrangements concerning notification requirements for imports of beef and veal from third countries will be omitted because the UK government considers they are no longer required;
- operability fixes to ensure the continuation of the import and trade in organic food, feed and vegetative propagating material or seeds for cultivation;
- the correction of ambiguities, inconsistencies and typographical mistakes so that the instruments are able to function as intended following IP completion day.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213317>

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

191 - The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

Laid in the UK Parliament: 19 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 22
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	3 November 2020

Background

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

Summary

These Regulations amend retained European Union (“EU”) legislation relating to the Common Organisation of Agricultural Markets (“CMO”), domestic secondary legislation which implements EU legislation in respect of the CMO, and existing domestic secondary legislation which itself amends retained EU CMO legislation, to enable it to work effectively following the end of the transition period.

These Regulations amend the following legislation which applies to Wales:

Retained EU legislation

- Commission Regulation (EC) No 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries
- Commission Regulation (EC) No 1295/2008 of 18 Dec 2008 on the importation of hops from third countries
- Commission Delegated Regulation (EU) No 2016/1237 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences

Domestic secondary legislation

- The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019
- The Import and Export Licences (Amendment etc.) (EU Exit) Regulations 2019

The amendments will correct the retained EU legislation in accordance with the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020), to ensure the implementation of the Northern Ireland Protocol and to remove ambiguities, inconsistencies and typographical mistakes so that the instruments are able to function as intended following the transition period.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 21 October 2020 regarding the effect of these Regulations:

1. The Welsh Government and the UK Government have opposing views on whether these Regulations contain provisions which are within the scope of the Senedd's legislative competence. As the UK Government consider that the subject is reserved, they have not

sought the consent of the Welsh Government. The Welsh Government's position is that agriculture and the Common Agriculture Policy are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006.

It is noted that the draft Explanatory Memorandum states that *"Defra has worked collaboratively with the Devolved Administrations to create these instruments and has fully involved the Devolved Administrations in discussion on the measures in these instruments, in relation to both reserved and devolved matters."*

The Welsh Government's statement explains that Welsh Ministers have written to the UK Government to inform them of the Welsh Government's 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."*

2. Other than referring to agriculture and the Common Agriculture Policy, 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 these Regulations. Legal Advisers recommend that clarification is sought on which devolved powers are affected.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

As it is unclear from the Welsh Government's statement dated 21 October 2020 the impact the Regulations may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether 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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020**

DATE **21 October 2020**

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

SO30C –SI laid in Parliament which amends legislation in a devolved area

The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020

The 2020 Regulations amend the following legislation which applies to Wales:

European Directly Applicable legislation

- Commission Regulation (EC) No 1760/2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products
- Commission Regulation (EC) No 1850/2006 laying down detailed rules for the certification of hops and hop products
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products

Domestic Regulations

The Hops Certification Regulations 1979

The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019

The Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019

requirements for imports of beef and veal from third countries and marking requirements for hatching eggs and chicks imported from the EU.

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/2020/9780348213386>

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 at the end of the implementation period.

UK MINISTERS ACTING IN DEVOLVED AREAS

192 - The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020

Laid in the UK Parliament: 19 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 24
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	3 November 2020

Background

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

Summary

These 2020 Regulations amend the following legislation which applies to Wales:

European Directly Applicable legislation (relating to the Common Organisation of Agricultural Markets (“CMO”))

- Commission Regulation (EC) No 1760/2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products
- Commission Regulation (EC) No 1850/2006 laying down detailed rules for the certification of hops and hop products

- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products

Domestic Regulations (which implements EU legislation in respect of the CMO and also amends EU Retained legislation - CMO)

- The Hops Certification Regulations 1979
- The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019
- The Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019
- The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019
- The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019
- The Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019

These Regulations makes operability changes to the instruments referred to above. In particular, to ensure the implementation of the Northern Ireland Protocol and to remove ambiguities, inconsistencies and typographical mistakes so that the instruments are able to function as intended following IP completion day. Amendments are also made to the transitional provisions concerning the import of hops and hops products, notification requirements for imports of beef and veal from third countries and marking requirements for hatching eggs and chicks imported from the EU.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 21 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.

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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Detergents (Amendment) (EU Exit) Regulations 2020**

DATE **21 October 2020**

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

SI laid in Parliament, which amends secondary legislation in a devolved area

The Detergents (Amendment) (EU Exit) Regulations 2020

The 2020 Regulations amend the following legislation:

EU Legislation

- Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents.

Domestic legislation

- The Detergents (Amendment) (EU Exit) Regulations 2019;
- The Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019; and
- The Detergents Regulations 2010.

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

The 2020 Regulations do not impact on the Senedd’s legislative competence or the Welsh Ministers’ executive competence.

The amendments ensure that the United Kingdom (UK) meets its obligations under the Protocol on Ireland/Northern Ireland to the withdrawal agreement (“the Protocol”) and to place the Protocol on a legal footing in relation Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, as required at the end of the Implementation Period (IP).

These amendments also give effect to the unfettered access of detergents from Northern Ireland into Great Britain.

The purpose of the amendments

The 2020 Regulations makes amendments to the Detergents (Amendment) (EU Exit) Regulations 2019; the Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019; and the Detergents Regulations 2010.

The Protocol requires that Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, continues to apply to Northern Ireland in order to correctly define the territorial extent of retained EU legislation at the end of the IP.

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/2020/9780348213331>

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

193 - The Detergents (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 19 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 26
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	3 November 2020

Background

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

Summary

The purpose of these Regulations is to ensure the UK meets its obligations under the Ireland/Northern Ireland Protocol in respect of Regulation (EC) No 648/2004 on detergents (the "EU Detergents Regulation"). The Regulations will ensure that the EU Detergents Regulation applies in Northern Ireland at the end of the Implementation Period on 31 December 2020, as required by the Protocol. The Regulations also provide for the continued access of detergents or surfactants for detergents from Northern Ireland into the Great Britain market.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 21 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.

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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Animal Welfare and Invasive Non-native Species
(Amendment etc.) (EU Exit) Regulations 2020**

DATE **23 October 2020**

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

SI laid in Parliament, which amends secondary legislation in a devolved area

The Animal Welfare and Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2020

The 2020 Regulations amend the following legislation:

EU Legislation

- Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations;
- Council Regulation (EC) No 1255/97 of 25 June 1997 concerning Community criteria for staging points;
- Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing;
- Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps;
- Commission Regulation (EC) 1771/94 on the laying down provisions on the introduction into the Community of pelts and manufactured goods of certain wild animal species;
- Commission Regulation (EC) 35/97 on the laying down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91;
- Council Decision 97/602/EC (as amended by Commission Decision 98/188/EC and Decision 98/596/EC) that provided a 'green list' of approved countries from which imports of pelts and manufactured goods of certain wild animal species into the EU are permitted; and
- Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species.

Domestic secondary legislation

- Animal Welfare (Amendment) (EU Exit) Regulations 2019;
- Animals (Legislative Functions) (EU Exit) Regulations 2019;
- The Leghold Trap and Pelt Imports (Amendment etc.) (EU Exit) Regulations 2019;
- The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019;
- The Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019;
- The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019; and
- The Invasive Alien Species (Enforcement and Permitting) Order 2019.
- The Fisheries (Amendment) (EU Exit) Regulations 2019; and
- The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019.

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

The 2020 Regulations do not impact on the Senedd's legislative competence or the Welsh Ministers' executive competence.

The 2020 Regulations make corrections and technical amendments to a variety of domestic secondary legislation and retained direct European Union (EU) legislation to ensure that the United Kingdom (UK) meets its obligations under the Protocol on Ireland/Northern Ireland to the withdrawal agreement ("the Protocol") in relation to Animal Welfare, Leghold Traps and Pelt Imports and Invasive Non-native Species.

The purpose of the amendments

Previous operability issues in retained EU law and domestic legislation in relation to Animal Welfare, Leghold Traps and Pelt Imports and Invasive Non-native Species were addressed in other instruments in 2018 and 2019. However, additional corrections are required to bring this legislation into line with wider government policy regarding the UK's exit from the EU and to meet its obligations under the Protocol.

The amendments ensure that the retained direct EU legislation and domestic legislation concerned operates effectively at end of the Implementation Period (IP) and that the same standards are met in relation to Animal Welfare, Leghold Traps and Pelt Imports and Invasive Non-native Species.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here:

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

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, expediency and due to the technical nature of the amendments. The amendments have been considered fully and there is no divergence in policy. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

195 - Animal Welfare and Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2020

Laid in the UK Parliament: 21 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 28
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	3 November 2020

Background

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

Summary

The purpose of these Regulations is to ensure the UK meets its obligations under the Ireland/Northern Ireland Protocol (“the Protocol”). The Regulations make corrections and technical amendments to a variety of domestic secondary legislation and retained direct European Union (EU) legislation to ensure that the United Kingdom (UK) meets its obligations under the Protocol in relation to Animal Welfare, Leghold Traps and Pelt Imports and Invasive Non-native Species.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 23 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.

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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Agricultural Products, Food and Drink (Amendment Etc.)
(EU Exit) Regulations 2020**

DATE **23 October 2020**

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

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

The Agricultural Products, Food and Drink (Amendment Etc.) (EU Exit) Regulations 2020

The law which is being amended

Domestic Legislation

The Spirit Drinks Regulations 2008
The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009
The Wine Regulations 2011
The Quality Schemes (Agricultural Products and Foodstuffs) Regulations
The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019
The Food and Farming (Amendment) (EU Exit) Regulations 2019
The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019
The Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019

EU Legislation

Commission Regulation (EC) No 2870/2000 of 19 December 2000 laying down Community reference methods for the analysis of spirits drinks.

Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008.

Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012.

Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013.

Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014.

Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council
Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2018/273 of 11 December 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Commission Implementing Regulation (EU) 2018/274 of 11 December 2017 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Commission Implementing Regulation (EU) 2019/34 of 17 October 2018 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019.

Commission Delegated Regulation (EU) 2019/934 of 12 March 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Commission Implementing Regulation (EU) 2019/935 of 16 April 2019 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 October 2019

Commission Implementing Regulation (EU) 2020/198 laying down rules for the application of Regulation (EU) No 251/2014 of the European Parliament and of the Council

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 conferring functions on the Secretary of State in areas that are within the scope of the Senedd's legislative competence. Functions conferred on the Secretary of State without encumbrance will constitute functions of a Minister of the Crown for the purposes of paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006 ('GoWA'), which restricts the Senedd's legislative competence to remove or modify such functions without consulting the relevant UK government minister.

The 2020 Regulations also contain provision that enables functions conferred on the Welsh Ministers to be exercisable by the Secretary of State in relation to Wales with consent of the Welsh Ministers. Further, certain functions are conferred on the Secretary of State alone, but are exercisable in relation to Wales only with the consent of the Welsh Ministers. These functions 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, Welsh Government officials are in negotiations with the Office of the Secretary of State for Wales in relation to an Order under section 109 of GoWA to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

The purpose of the amendments

The 2020 Regulations provide for the domestic administration and enforcement of UK GIs, which will provide legal protection from imitation for all products recognised by the schemes. This instrument also creates UK operable regulations to administer and enforce the wine and spirit drink sector standards on definition, description, presentation and labelling.

The 2020 Regulations also consolidates (with amendment) the following instruments previously consented to by Welsh Ministers:

- Remaking (with amendments) provision originally contained within the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2019 previously laid before the UK Parliament as an urgent "made affirmative" instrument. 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. It was not approved by Parliament within that period and so has ceased to have effect.
- Remaking (with amendments) provision originally contained within the Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2019 previously laid before the UK Parliament as an urgent "made affirmative" instrument. That instrument was made and laid on 21 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. It was not approved by Parliament within that period and so has ceased to have effect.

- Revoking and remaking (with amendments) elements of the Food and Farming (Amendment) (EU Exit) Regulations 2019, the Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019 and the Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019.

GIs

Currently EU Regulations provide for the registration and protection of GIs in the UK. These cover i) agricultural products and foodstuffs ii) wines iii) spirit drinks and iv) aromatised wines.

There are sixteen Welsh food products registered under the European Scheme, including PGI Welsh lamb and PGI Welsh beef. GI is an important award as it is seen as a mark of quality which can give producers a greater economic benefit for their produce. The schemes provide legal protection from imitation for both regional and traditional specialties, whose authenticity and origin can be guaranteed. This gives assurance to consumers that products are genuine and enables producers to better promote and market their products.

EU regulations have also governed the definition, description, presentation and labelling rules for spirit drinks, as well as the definition, description, presentation, labelling and oenological rules for wines and aromatised wines.

As the UK leaves the EU, it is vital that rules are in place to continue the protection afforded to these products by these EU Regulations. Under the European Union (Withdrawal) Act 2018, the relevant EU regulations will be converted into UK law. This instrument amends those regulations (and existing domestic regulations) on GI schemes and the wine and spirit drink sectors. The amendments made by this instrument will create working UK GI schemes, and domestically enforceable UK regulations for the wine and spirit drink sectors. This will ensure the UK continues to protect the 86 product names from the UK that are registered as GIs under the EU schemes and continues to meet its World Trade Organisation obligations.

The amendments made by this instrument make a number of corrections, for example:

- 1) The GI schemes will be administered as UK schemes, not as European schemes. All GI applications will go through a single UK scrutiny and opposition process, rather than the current two-stage process (the current Member State and European Commission stages will be combined into a single modified UK scheme process);
- 2) Appeals provisions are being introduced as a result of the UK assuming new responsibilities and functions previously belonging to the EU. These allow those

with a legitimate interest to appeal to the First-tier Tribunal where they disagree with decisions made in the administration of the scheme; and

- 3) The instrument paves the way for the creation and use of new UK GI logos, including allowing existing UK agri-food GIs three years to comply with the requirement to use the new UK logo when trading in the UK market.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348214109>

Consent

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. There is no divergence in policy after full and careful consideration of the proposed amendments, assessment of the policy instructions and legal analysis of the drafting. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

In relation to GI schemes, we have a strong interest in ensuring that Welsh GIs are protected throughout the UK (and ideally, through the negotiations on the future partnership, the EU). Previous instruments that are being consolidated into the 2020 Regulations have been the subject of continued correspondence between Defra and the Welsh Government, with Welsh Government officials disputing Defra's position that GIs relate to reserved matters. However, following discussions, it was agreed that Welsh Ministers will have a meaningful role in the governance arrangements for the GI scheme.

UK MINISTERS ACTING IN DEVOLVED AREAS

197 - The Agricultural Products, Food and Drink (Amendment Etc.) (EU Exit) Regulations 2020

Laid in the UK Parliament: 22 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 30
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	3 November 2020

Background

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

Summary

Currently, EU regulations provides for Geographical Indication (GI) schemes, covering: (i) agricultural products and foodstuffs, (ii) wines, (iii) spirit drinks, and (iv) aromatised wines.

There are 16 Welsh food products registered under the European scheme, including Welsh lamb and Welsh beef. The scheme provides legal protection from imitation for both regional and traditional specialties,

whose authenticity and origin can be guaranteed. This gives assurance to consumers that products are genuine and enables producers to better promote and market their products.

EU regulations have also governed the definition, description, presentation and labelling rules for spirit drinks, as well as the definition, description, presentation, labelling and oenological rules for wines and aromatised wines.

The amendments made by these Regulations will create working UK GI schemes, and domestically enforceable UK regulations for the wine and spirit drink sectors. This will ensure the UK continues to protect the 86 product names from the UK that are registered as GIs under the EU schemes and continues to meet its World Trade Organisation obligations.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 23 October 2020 regarding the effect of these Regulations.

We note that the Regulations create concurrent functions exercisable by both the Welsh Ministers and UK Ministers. If the Senedd wishes to remove the UK Minister element of a concurrent function, then the UK Government would have to consent to the removal. To that extent, the Regulations impact on the legislative competence of the Senedd.

However, we also note that the Welsh Government is in discussions with the UK Government regarding a section 109 order (i.e. an Order in Council made under section 109 of the Government of Wales Act 2006). Such an order would negate the impact on the legislative competence of the Senedd by removing the need for UK Government consent in relation to concurrent functions.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

New policy

To the extent that these Regulations enable Great Britain to continue to meet its obligations under the WTO Trade Related Aspects of Intellectual Property Rights agreement, there is no new policy.

Further, to the extent that these Regulations continue to provide legal protection from imitation for products recognised by the UK GI scheme (including 16 Welsh products), there is no new policy.

Beneath those two overarching policies, the Regulations could be seen as enacting new policy, in that they: (i) introduce a new appeals procedure (for example, an appeal against a decision of the Secretary of State to grant a UK GI application), and (ii) provide for a new UK GI logo.

Paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that the UK Government will not use its powers under section 8 of the European Union (Withdrawal) Act 2018 “to enact new policy in devolved areas”.

However, there is disagreement as to whether the subject matter of these Regulations is devolved.

Disagreement as to whether the subject of these Regulations is devolved

The Welsh Government and the UK Government are in disagreement as to whether Geographical Indication schemes are devolved. The Welsh Government’s written statement says:

In relation to GI schemes, we have a strong interest in ensuring that Welsh GIs are protected throughout the UK (and ideally, through the negotiations on the future partnership, the EU). Previous instruments that are being consolidated into the 2020 Regulations have been the subject of continued correspondence between Defra and the Welsh Government, with Welsh Government officials disputing Defra’s position that GIs relate to reserved matters. However, following discussions, it was agreed that Welsh Ministers will have a meaningful role in the governance arrangements for the GI scheme.

We note that, whether GI schemes are devolved or not, the wider the territorial extent of the GI scheme, the more that Welsh products will be protected.

It appears that reassurance as to Wales having a meaningful role in the UK GI scheme has been secured via an (unenforceable) intergovernmental agreement.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Import of, and Trade in, Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020
DATE	27 October 2020
BY	Rebecca Evans MS, Minister for Finance and Trefnydd

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

The Import of, and Trade in, Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

The law which is being amended

EU Legislation

- Commission Decision 1997/152/EC concerning the information to be entered in the computerized file of consignments of animals or animal products from third countries which are re-dispatched
- Commission Decision 2000/572/EC laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the Community from third countries
- Commission Decision 2003/459/EC on certain protection measures with regard to monkey pox virus
- Commission Decision 2003/467/EC establishing the official tuberculosis, brucellosis, and enzootic-bovine-leukosis-free status of certain Member States and regions of Member States as regards bovine herds
- Commission Decision 2003/779/EC laying down animal health requirements and the veterinary certification for the import of animal casings from third countries
- Modification of Commission Regulation (EC) No 136/2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries

- Commission Decision 2006/146/EC on certain protection measures with regard to certain fruit bats, dogs and cats coming from Malaysia (Peninsula) and Australia
- Commission Decision 2006/168/EC establishing the animal health and veterinary certification requirements for imports into the Community of bovine embryos
- Commission Decision 2007/25/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community
- Commission Decision 2007/240/EC laying down new veterinary certificates for importing live animals, semen, embryos, ova and products of animal origin into the Community
- Commission Decision 2007/275/EC concerning lists of composite products to be subject to controls at border control posts
- Commission Decision 2007/777/EC laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries
- Commission Decision 2008/185/EC on additional guarantees in intra-Community trade of pigs relating to Aujeszky's disease and criteria to provide information on this disease
- Commission Decision 2008/636/EC establishing the list of third countries from which Member States authorise imports of ova and embryos of the porcine species
- Commission Regulation (EC) No 798/2008 laying down a list of third countries, territories, zones or compartments from which poultry and poultry products may be imported into and transit through the Community and the veterinary certification requirements
- Commission Regulation (EC) No 119/2009 laying down a list of third countries or parts thereof, for imports into, or transit through, the Community of meat of wild leporidae, of certain wild land mammals and of farmed rabbits and the veterinary certification requirements
- Commission Decision 2009/712/EC implementing Council Directive 2008/73/EC as regards Internet-based information pages containing lists of establishments and laboratories approved by Member States in accordance with Community veterinary legislation

- Commission Regulation (EU) No 206/2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements
- Commission Decision 2010/472/EU on imports of semen, ova and embryos of animals of the ovine and caprine species
- Commission Regulation (EU) No 605/2010 laying down animal and public health and veterinary certification conditions for the introduction into the European Union of raw milk, dairy products, colostrum and colostrum-based products intended for human consumption
- Commission Decision 2011/163/EU on the approval of plans submitted by third countries
- Commission Implementing Decision 2011/630/EU on imports into the Union of semen of domestic animals of the bovine species
- Commission Regulation (EU) No 28/2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products
- Commission Implementing Decision 2012/137/EU on imports into the Union of semen of domestic animals of the porcine species
- Commission Implementing Regulation (EU) No 139/2013 laying down animal health conditions for imports of certain birds into the Union and the quarantine conditions thereof
- Commission Implementing Regulation EU No 743/2013 introducing protective measures on imports of bivalve molluscs from Turkey intended for human consumption
- Commission Implementing Decision 2013/764/EU concerning animal health control measures relating to classical swine fever in certain Member States
- Commission Implementing Decision (EU) 2015/1901 laying down certification rules and a model health certificate for importation into the Union of consignments of live animals and of animal products from New Zealand
- Commission Implementing Decision (EU) 2018/320 on certain animal health protection measures for intra-Union trade in salamanders and the introduction into the Union of such animals in relation to the fungus *Batrachochytrium salamandrivorans*

- Commission Implementing Regulation (EU) 2018/659 on the conditions for the entry into the Union of live equidae and of semen, ova and embryos of equidae

Secondary legislation

The 2020 Regulations also amend the following previously laid EU Exit SIs:

- The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019,
- The Import of and Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019,
- The Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019, and
- The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019

Revocations

- The Import of and Trade in Animals and Animal Products (Amendment Etc.) (EU Exit) Regulations 2019
- Commission Decision 93/444/EC on detailed rules governing intra-Community trade in certain live animals and products intended for exportation to third countries.
- Commission Decision 1995/410/EC laying down the rules for the microbiological testing by sampling in the establishment of origin of poultry for slaughter intended for Finland and Sweden.
- Commission Regulation (EC) No 599/2004 concerning the adoption of a harmonised model certificate and inspection report linked to intra-Community trade in animals and products of animal origin
- Commission Regulation (EC) No 1739/2005/EC laying down animal health requirements for the movement of circus animals between Member States.
- Commission Decision 2006/605/EC on certain protection measures in relation to intra-Community trade in poultry intended for restocking of wild game supplies.
- Commission Decision 2010/470/EU laying down model health certificates for trade within the Union in semen, ova and embryos of animals of the equine, ovine and caprine species and in ova and embryos of animals of the porcine species.
- Council Decision 2011/408/EU laying down simplified rules and procedures on sanitary controls of fishery products, live bivalve molluscs, echinoderms, tunicates, marine gastropods, by-products thereof and products derived from these by-products coming from Greenland.
- Commission Implementing Decision 2013/503/EU recognising parts of the Union as free from varroosis in bees and establishing additional guarantees required in intra-Union trade and imports for the protection of their varroosis-free status.

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

Trade in animals and related products is a devolved function and as such we have equivalence with England and the other DAs with regards to domestic legislation. The intention with the enshrinement of these regulations has been to retain legislative competence in all applicable areas. This instrument confers functions on the Secretary of State to be exercised with the consent of Welsh Ministers, but also on a concurrent basis. The effect of the concurrent 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 OSSfW 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.

Functions transferred so that they are exercisable by the Secretary of State alone or with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006. A future Senedd Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The purpose of the amendments

This EU Exit Regulation, where necessary, makes minor and technical operability changes under section 8 of the European Union (Withdrawal) Act 2018 to retained EU legislation. The EU legislation concerned lays down conditions for imports of live animals, germplasm and products of animal origin. The instrument makes no policy changes.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.legislation.gov.uk/ukdsi/2020/9780348213928>

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, expediency and due to the technical nature of the amendments. There is no divergence in policy after full and careful consideration of the proposed amendments, assessment of the policy instructions and legal analysis of the drafting. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

UK MINISTERS ACTING IN DEVOLVED AREAS

198 - Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

Laid in the UK Parliament: 20 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 32
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	3 November 2020

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 7 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations are made to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

The Regulations amend redundant references to European Union laws and systems which will no longer be relevant at the end of the Transition Period to ensure a functioning system for the importation of live animals (including equines), products of animal origin (including meat), animal by-products, and germplasm whilst maintaining biosecurity and welfare standards. These changes aim to maintain the existing import regime and

the amendments to directly applicable European Union Regulations and Decisions made by this instrument are technical in nature.

The Regulations also amend, and revoke, previously made EU Exit SIs.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 27 October 2020 regarding the effect of these Regulations. These Regulations confer functions on the Secretary of State to be exercised with the consent of Welsh Ministers, but also on a concurrent basis.

If the Senedd wishes to remove the UK Minister element of a concurrent function, then the UK Government would have to consent to the removal. To that extent, the Regulations impact on the legislative competence of the Senedd. We note that the Welsh Government is in discussions with the UK Government regarding a section 109 order (i.e. an Order in Council made under section 109 of the Government of Wales Act 2006 ('GOWA 2006')). Such an order would negate the impact on the legislative competence of the Senedd by removing the need for UK Government consent in relation to concurrent functions.

Functions transferred so that they are exercisable by the Secretary of State alone or with the Welsh Ministers' consent constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GOWA 2006.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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.

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

Agenda Item 6.1

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LG/3455/20

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

SeneddLJC@senedd.wales

30 October 2020

Dear Mick

Thank you for your letter of 5 October relating to the UK Fisheries Bill. I am pleased the Senedd was able to give its agreement to the Legislative Consent Motion (LCM) on 6 October. I covered points raised in your letter during the debate, however, I also agreed to follow up in writing.

Point 1 of your letter seeks an explanation on the need for amendments 144, 145 and 146, made to clause 39, clause 49 and schedule 8, respectively. These were made at the request of Welsh Ministers, during Commons Committee stage. The amendments relate to the scope of Welsh Ministers regulating powers under Schedule 8, the Welsh Ministers powers under Schedule 8 are defined by reference to the legislative competence of the Senedd. The previous drafting referred to legislative competence of the Senedd disregarding, and therefore placing outside of the Senedd's competence, any provision which depends upon UK Ministerial consent to be within competence. If these amendments had not been made these Bill provisions would have narrowed the scope of an important Welsh Ministers' regulation making power and widened the scope of the corresponding Secretary of State power, into a devolved policy area.

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

Point 2 requests more information on the amendments tabled, and now agreed to, at Report Stage. I will take each in turn:

2. a) The Legislation (Wales) Act 2019 is (broadly speaking) intended to apply to all legislation made by the devolved institutions in Wales. Without amendment, the Act would not apply to Welsh Ministers' SIs made under the Act. The Fisheries Bill amends the Legislation (Wales) Act 2019 to provide that it does apply to Welsh Ministers' SIs made under the Act. The extension of the Senedd's legislative competence to cover fisheries matters in the whole of the Welsh zone will automatically extend the application of Parts 1 and 2 of the 2019 Act to cover Acts of the Senedd made under the wider competence (because they apply to all Welsh primary legislation).

2. b) Under section 83 of the Government of Wales Act 2006 the Welsh Ministers may enter into an arrangement with a relevant authority for the functions for one of them to be exercised by the other. A relevant authority includes a Minister of the Crown and any public authority in England or Wales. Section 83 does not therefore allow the Welsh Ministers to enter into an arrangement with the Scottish Ministers or the Northern Ireland department. It is hoped this sort of arrangement could be efficient and cost saving. The amendments made at report stage enable the Welsh Ministers to enter into administrative arrangements with the Scottish Ministers, Northern Ireland department and the Marine Management Organisation (MMO) for the exercise of fisheries functions and fishery product movement functions.

We can envisage situations in future where we could want other Devolved Administrations to carry out functions on our behalf, for example, on control and enforcement, digital and science, geographically (for example joint enforcement patrols, and science trips, with Northern Irish bodies).

2. c) and d) The amendments to Schedule 3 and 8, and to Schedule 10 (relating to consultation requirements), were not tabled, as this has been superseded by work with UK Government on bringing forward an Order under section 109 of the Government of Wales Act 2006. The Secretary of State for Wales has confirmed to me in writing the concurrent functions in the Bill will be dealt with in the forthcoming Order, subject to some specific exceptions which reflect the complexities of regulating fishing vessels.

2. e) We sought these amendments at an early stage from UK Government but as I noted in my letter to you and in my opening to the LCM debate, due to delays by UK Government it was not possible to finalise some of the necessary amendments prior to this debate.

Point 3 of your letter relates to the Supplementary Legislative Consent Memorandum (No. 2).

3. a) In light of the recent exchange of letters, I am satisfied with the response from the Parliamentary Secretary of State, Victoria Prentis MP, and am confident we will be able to agree the final wording for the Memorandum of Understanding, within the parameters set out in the letters, thus providing the necessary level of consultation and engagement relating of the use of the Secretary of State's power.

I have noted the strength of feeling on this matter and Welsh Government continues to press for swift progress and resolution of the commitments made on the MoU, which is being developed now through co-production between officials from each fisheries administration.

3. b) My commitment to a biennial report to the Senedd on the implementation of the provisions in the Bill which relate only to Wales, until such time as a Welsh Fisheries Bill is introduced, was made in response to the Climate Change, Environment and Rural Affairs Committee recommendation. My position remains a sunset clause is not in the best interests of the Welsh fishing industry and I consider this to be a pragmatic way forward.

3. c) In relation to powers in Schedule 3, you have asked why I consider it necessary and appropriate to take powers which may be part of the statute book for decades in a UK Bill which is only meant to be an interim arrangement for managing fisheries in Wales?

The fisheries licensing powers are part of the framework powers and it is the non-framework powers in the Bill which we consider to be interim. They apply to the licensing of both Welsh fishing boats and foreign fishing boats fishing in Wales and the Welsh zone. The framework enables a joined up approach to licensing fishing activities across the UK in relation to UK and foreign fishing boats.

It is my view these powers are drafted appropriately for the effective functioning of our fisheries licensing system, now and in the future. The use of the Welsh Ministers' regulation making powers in Schedule 3 will be subject to Senedd scrutiny.

Further to your recommendations 6 and 7 in your report on the Supplementary Legislative Consent Memorandum (Memorandum No.2) on retained direct EU legislation, you note in your letter you remain concerned the Senedd may be losing powers. I can assure the Committee we will not be losing powers. It is my view I have given a full explanation in my letters of 3 September and 1 October, which sets out a detailed analysis of these provisions.

I will write separately to you, and to the Climate Change, Environment and Rural Affairs Committees and to all Members, to confirm the outcome of Commons Report Stage and Third Reading.

I have copied this letter to Mike Hedges MS, Chair of Climate Change, Environment and Rural Affairs Committee.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Mick Antoniwi, MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
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30 October 2020

Dear Mick

I wrote to you on 10 September regarding the Stage 2 amendments I intended to table, and that have since been made to the Local Government and Elections (Wales) Bill. In that letter I introduced some matters relating to potential Stage 3 Government amendments. This letter provides confirmation that I have tabled those amendments and more details of what they contain.

Whilst a high proportion of the amendments I have tabled are minor or technical in nature, or intended to clarify provisions, some could be considered to be more extensive than generally brought forward at Stage 3.

These amendments largely result from the Government's response to the pandemic and making sure the necessary provision continues in place to enable local government to continue to function during the remainder of the pandemic and beyond. The development of these amendments has been informed by ongoing engagement with, and feedback from, key stakeholders throughout local government.

Remote Attendance

I have tabled amendments in respect of remote attendance which will have the effect of extending remote attendance, on a permanent basis, to the range of local government bodies covered by the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (the '2020 Regulations').

Section 48 of the Bill, which amended section 4 of the Local Government Measure (Wales) 2011, is replaced with a new section making the relevant provision in respect of remote attendance for all bodies, not solely principal councils, on the face of the Bill.

The new section requires local authorities to make arrangements to ensure that meetings can be held on a fully, or partially, virtual basis. Local authorities in the context of these

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provisions are principal councils, community councils, fire and rescue authorities, National Park authorities, and port health authorities (for a port health district in Wales constituted under section 2 of the Public Health (Control of Disease) Act 1984). A principal council will also be required to make arrangements in respect of meetings of the executive, committees, sub committees and so on.

Local authority meetings and proceedings

As I set out in my previous letter, the pandemic exposed how out-of-date current provisions in respect of local authority meetings are, in particular the procedural and technical provisions which govern how meetings are recorded, how summonses are sent to members, and how documents including notices, agendas and minutes are published.

I have tabled an amendment to replace the current Schedule 4 to the Bill, with a new Schedule with the heading “Notice of Local Authority Meetings, Access to Documents and Attendance at Meetings” to reflect the expanded subject matter.

Part 1 of the new Schedule makes a number of amendments to existing legislation, including Part 5A of, and Schedule 12 to the LGA 1972 and the Public Bodies (Admission to Meetings) Act 1960 in respect of a range of matters, including:

- (a) notices of meetings of local authorities in Wales,
- (b) access to, and publication of, documents relating to those meetings and the meetings of committees and sub-committees;
- (c) the publication of public notices by local authorities not relating to local authority meetings; and
- (d) the issuing of summons to members to attend meetings of local authorities.

These amendments will apply to principal councils, National Park authorities, fire and rescue authorities, joint boards, joint committees and the Swansea Bay Port Health Authority (including their committees and sub-committees). Some of the amendments will also apply to community councils (including in relation to the content of notices and how they are given, and how summonses are issued).

Part 2 of the Schedule provides for the necessary consequential amendments resulting from the remote attendance amendments including the repeal of section 4 of the 2011 Measure.

Regulation making powers

In order to complete the modernisation of local authority meetings and proceedings arrangements, and fundamental to supporting authorities in moving forward in the post Covid-19 world, it is necessary to provide the Welsh Ministers with Regulation making powers, including the ability to amend and repeal primary legislation, in relation to:

- (a) the conduct of local authority meetings, documents relating to meetings and the publication of information
- (b) community meetings
- (c) making further or different provision about the manner of giving public notice required to be given by a local authority (paragraph 17 of Schedule 4 to the Bill).

The swathes of provisions about these matters, set out in primary legislation dating back to 1960, 1972 and 1985, are extensive, complex and very out-dated. The wording and content of the provisions clearly reflect a world and way of doing business which pre-date

the internet and electronic communication. The experience of having to take through the 2020 Regulations because of the pandemic has exposed how daunting it is to update and change these provisions, not least because they are set out in primary legislation - surely the main reason why these long-needed and much-needed reforms have never been undertaken. It is noteworthy that the arrangements for local government are not consistent with equivalent provisions for other democratic bodies, whereby such procedural arrangements are set out in secondary legislation, or indeed standing orders.

Providing for the amendment of these provisions through subordinate legislation, rather than in primary legislation, would allow, in due course, a comprehensive review of the updated council meeting arrangements to be undertaken and revised as need be. The review will be able to take into account the experience of working with the new arrangements put in place for the pandemic and continued by way of my proposed amendments.

These powers, which I intend to make subject to the affirmative Senedd procedure, would leave local government procedural arrangements in a form which can be more readily updated and revised as necessary in the future.

I anticipate that the first uses of the powers are likely to be modest in nature, with new Regulations being mostly confined to rationalisation and simplification. The 2020 Regulations, together with the provisions proposed for insertion in the Bill at Stage 3 will substantially modernise the rules and procedures. I therefore consider that any comprehensive new Regulations made under these powers would, to a very large extent, be a consolidation of by then existing provision into a set of Regulations, with some further refinements.

Electronic broadcasts of meetings of local authorities

Following further consideration of the matters raised by the Committees and stakeholders at Stage 1, I have also decided to bring forward amendments to the provisions in respect of the electronic broadcasting of local authority meetings.

The broadcasting provisions, as drafted for introduction, required a principal council to make arrangements ensuring that all meetings of the council (including meetings of the executive), or of a committee or sub-committee of the council, were, where they were open to the public, broadcast whilst the meeting was taking place. The broadcast was also required to be available electronically for a reasonable period of time after the meeting.

During Stage 1 concerns were raised regarding the demands this requirement would place on local authorities. Local authorities have also raised concerns about how the provisions will impact on community outreach where council meetings are held across the county area in places which could not support live broadcasting.

I have tabled amendments which remove the requirement for all meetings to be broadcast live, with principal councils instead only required to make arrangements for the broadcast of meetings of the full council as the meeting takes place. This will enable members of the public to see and hear the contributions made by their local councillors in full council meetings.

The amendments will enable the Welsh Ministers, through the making of Regulations, to add other meetings to the list of those required to be broadcast. Regulations may also be made specifying conditions for broadcast, which could include matters such as specifying which meetings must be broadcast live and which may be recorded live and broadcast at a later date. These are subject to the affirmative Senedd procedure.

I have also written to the Chair of the Equality, Local Government and Communities Committee about these amendments.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

John Griffiths, MS
Chair
Equality, Local Government and Communities Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

30 October 2020

Dear John

Having tabled the Government amendments to the Local Government and Elections (Wales) Bill I wanted to write to the Committee to provide more details of what these amendments contain.

Whilst a high proportion of the amendments I have tabled are minor or technical in nature, or intended to clarify provisions, some could be considered to be more extensive than generally brought forward at Stage 3.

These amendments largely result from the Government's response to the pandemic and making sure the necessary provision continues in place to enable local government to continue to function during the remainder of the pandemic and beyond. The development of these amendments has been informed by ongoing engagement with, and feedback from, key stakeholders throughout local government.

Research services

At Stage 2 a non-Government amendment was tabled in the name of Delyth Jewell MS seeking to require principal councils to '*make arrangements to provide a research and advice service to its members*'. As I stated during the Stage 2 Committee proceedings I understand the intent behind this amendment and agree that in order for members of principal councils to undertake their role effectively they must have access to timely, up to date, accurate and well researched information.

I was unable to support this amendment as provisions in the Local Government (Wales) Measure 2011, in respect of the role of the Head of Democratic Services, already include the function of providing advice and support to members which is intended to include research services. During Committee proceedings I committed to explore the potential of using guidance to ensure principal councils are aware this advice and support should include research services

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Back Page 152
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Under section 8 of the 2011 Measure a principal council is required to provide their Head of Democratic Services with such staff, accommodation and other resources as are, in its opinion, sufficient to allow them to discharge their functions. I have tabled an amendment which will require principal councils to have regard to any guidance issued by the Welsh Ministers in relation to the provision of such resources.

I anticipate this guidance could detail the benefits of a well-funded members' research service and set out that councils should consider how they could allocate resources in order to support the provision of such a service.

Remote Attendance

I have tabled amendments in respect of remote attendance which will have the effect of extending remote attendance, on a permanent basis, to the range of local government bodies covered by the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (the '2020 Regulations'). Section 48 of the Bill, which amended section 4 of the Local Government Measure (Wales) 2011, is replaced with a new section making the relevant provision in respect of remote attendance for all bodies, not solely principal councils, on the face of the Bill.

The new section requires local authorities to make arrangements to ensure that meetings can be held on a fully, or partially, virtual basis. Local authorities in the context of these provisions are principal councils, community councils, fire and rescue authorities, National Park authorities, and port health authorities (for a port health district in Wales constituted under section 2 of the Public Health (Control of Disease) Act 1984). A principal council will also be required to make arrangements in respect of meetings of the executive, committees, sub committees and so on.

Local authority meetings and proceedings

As I set out in my previous letter, the pandemic exposed how out-of-date current provisions in respect of local authority meetings are, in particular the procedural and technical provisions which govern how meetings are recorded, how summonses are sent to members, and how documents including notices, agendas and minutes are published.

I have tabled an amendment to replace the current Schedule 4 to the Bill, with a new Schedule with the heading "Notice of Local Authority Meetings, Access to Documents and Attendance at Meetings" to reflect the expanded subject matter.

Part 1 of the new Schedule makes a number of amendments to existing legislation, including Part 5A of, and Schedule 12 to the LGA 1972 and the Public Bodies (Admission to Meetings) Act 1960 in respect of a range of matters, including:

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These amendments will apply to principal councils, National Park authorities, fire and rescue authorities, joint boards, joint committees and the Swansea Bay Port Health Authority (including their committees and sub-committees). Some of the amendments will

also apply to community councils (including in relation to the content of notices and how they are given, and how summonses are issued).

Part 2 of the Schedule provides for the necessary consequential amendments resulting from the remote attendance amendments including the repeal of section 4 of the 2011 Measure.

Regulation making powers

In order to complete the modernisation of local authority meetings and proceedings arrangements, and fundamental to supporting authorities in moving forward in the post Covid-19 world, it is necessary to provide the Welsh Ministers with Regulation making powers, including the ability to amend and repeal primary legislation, in relation to:

- (a) the conduct of local authority meetings, documents relating to meetings and the publication of information
- (b) community meetings
- (c) making further or different provision about the manner of giving public notice required to be given by a local authority (paragraph 17 of Schedule 4 to the Bill).

The swathes of provisions about these matters, set out in primary legislation dating back to 1960, 1972 and 1985, are extensive, complex and very out-dated. The wording and content of the provisions clearly reflect a world and ways of doing business which pre-date the internet and electronic communication. The experience of having to take through the 2020 Regulations because of the pandemic has exposed how daunting it is to update and change these provisions, not least because they are set out in primary legislation - surely the main reason why these long-needed and much-needed reforms have never been undertaken. It is noteworthy that the arrangements for local government are not consistent with equivalent provisions for other democratic bodies, whereby such procedural arrangements are set out in secondary legislation, or indeed standing orders.

Providing for the amendment of these provisions through subordinate legislation, rather than in primary legislation, would allow, in due course, a comprehensive review of the updated council meeting arrangements to be undertaken and revised as need be. The review will be able to take into account the experience of working with the new arrangements put in place for the pandemic and continued by way of my proposed amendments.

These powers, which I intend to make subject to the affirmative Senedd procedure, would leave local government procedural arrangements in a form which can be more readily updated and revised as necessary in the future.

I anticipate that the first uses of the powers are likely to be modest in nature, with new Regulations being mostly confined to rationalisation and simplification. The 2020 Regulations, together with the provisions proposed for insertion in the Bill at Stage 3 will substantially modernise the rules and procedures. I therefore consider that any comprehensive new Regulations made under these powers would, to a very large extent, be a consolidation of by then existing provision into a set of Regulations, with some further refinements.

Electronic broadcasts of meetings of local authorities

Following further consideration of the matters raised by the Committees and stakeholders at Stage 1, I have also decided to bring forward amendments to the provisions in respect of the electronic broadcasting of local authority meetings.

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I have tabled amendments which remove the requirement for all meetings to be broadcast live, with principal councils instead only required to make arrangements for the broadcast of meetings of the full council as the meeting takes place. This will enable members of the public to see and hear the contributions made by their local councillors in full council meetings.

The amendments will enable the Welsh Ministers, through the making of Regulations, to add other meetings to the list of those required to be broadcast. Regulations may also be made specifying conditions for broadcast, which could include matters such as specifying which meetings must be broadcast live and which may be recorded live and broadcast at a later date. These are subjected to the affirmative Senedd procedure.

I have also written to the Chair of the Legislation, Justice and Constitution Committee regarding these amendments.

Yours sincerely



Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Agenda Item 6.3

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee

03 November 2020

Dear Mick

Thank you for your letter of 22 October regarding the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020.

Regarding the two points you make in relation to the timing of the regulations being laid, as you indicate in your letter, there are very significant demands being placed on the Welsh Government's resources as a consequence of coronavirus, Brexit and the importance placed on completing the revised legislative programme. Once it became clear this meant the regulations could not be laid in as timely a manner, as would normally be the case, I made a clear statement in the Senedd about the scope of the regulations we intended making before the end of September. This information was also communicated directly to landlords by Rent Smart Wales following the statement.

In relation to your request for full reasons for the Welsh Government view that the Regulations are compliant with Article 1 Protocol 1 of the European Convention on Human Rights, we have nothing further to add to the statement already provided. The Welsh Government remains satisfied the Regulations are compatible with the Convention and I would refer you to the rationale for the changes as set out in the purpose and effect section of the Explanatory Memorandum to the Regulations.

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

Yours sincerely

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Julie James AS/MS

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Julie James MS
Minister for Housing and Local Government

22 October 2020

Dear Julie

The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020

We scrutinised **The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020** at our meeting on 12 October 2020, reporting on the same day, and considered the Welsh Government's response at our meeting on 19 October.

The first point in our **report** said that we were not clear why it was necessary for these Regulations to come into force so urgently as to breach the 21-day rule. While we note the two factors cited in the Welsh Government response as reasons for the delay in laying the Regulations, we still remain unclear as to why these Regulations could not have been given a higher priority and brought forward earlier.

The Welsh Government **response** states:

“...the Regulations were responding to a rapidly changing set of circumstances, including the evolving nature of the pandemic, the lifting of the stay on possession proceedings in the courts, and the UK Government's amendments to Schedule 29 to the Coronavirus Act. These matters all needed to be taken into account before the Regulations could be laid.”

We would be grateful to receive further clarity and detail on why these stated reasons led you to not make the Regulations until 25 September 2020, given that you were aware that the legislation in force at the time stated that the period during which increased notice must be given to tenants was coming to an end on 30 September.

Furthermore, and given that the policy intention behind the Regulations was announced in the Plenary meeting on 15 September 2020 as part of your statement on Housing, Poverty and Communities, we would be grateful for an explanation as to why the



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Regulations were then not laid before the Senedd until 28 September 2020. While we acknowledge that this timetable would still have resulted in a breach of the 21 day rule, and we recognise the demands being placed on the Welsh Government's capacity to legislate, an almost two week delay between the announcement and the laying of the regulations is unsatisfactory, particularly as regards the impact of the Regulations on relevant stakeholders.

Our second reporting point asked the Welsh Government to set out how it considers that these Regulations are compliant with Article 1 Protocol 1 of the European Convention on Human Rights. The Welsh Government response did not address this point; it only said "We consider that the Regulations are compatible with the European Convention on Human Rights." We do not consider this to be a satisfactory response and we would therefore be grateful if you could set out your full reasons for considering that the Regulations are compliant with Article 1 Protocol 1 of the European Convention on Human Rights.

Yours sincerely



Mick Antoniw AM
Chair

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



Government Response: *The Coronavirus Act 2020 (Residential Tenancies Protection from Eviction) (Wales) Regulations 2020*

Merit Scrutiny point 1: As the Committee has already noted from the letter sent by the Minister for Finance and Trefnydd to the Llywydd, there was an absolute requirement to bring the Regulations into force before 30 September so that the provisions of Schedule 29 to the Coronavirus Act 2020 continued to apply after that date. The Welsh Government is always keen to ensure as much advanced warning as is possible and appropriate is given before it introduces new legislation. For that reason, the intention to extend the relevant period to March 2021 was announced by the Minister for Housing and Local Government in her statement on Housing, Poverty and Communities given in Plenary on 15 September 2020.

However, two factors combined to mean that it was not possible to lay the Regulations 21 days before they were required to come into force. Firstly the demands placed on the Welsh Government by the need to respond to pandemic has had a significant impact on our capacity for making legislation, and the Government has had to take difficult decisions about the legislative programme in order to prioritise resources. Secondly, the Regulations were responding to a rapidly changing set of circumstances, including the evolving nature of the pandemic, the lifting of the stay on possession proceedings in the courts, and the UK Government's amendments to Schedule 29 to the Coronavirus Act. These matters all needed to be taken into account before the Regulations could be laid.

Whilst the Welsh Government accepts that it has had the power to make these Regulations for many months, that does not mean that it could or should have acted sooner to make them.

Merit Scrutiny point 2: We consider that the Regulations are compatible with the European Convention on Human Rights.

Merit Scrutiny point 3: The Welsh Government notes the Committee's comment and has nothing further to add in relation to this point.

Merit Scrutiny point 4: This point raises concerns about the amount of notice given to landlords and others, the lack of consultation and the absence of a quantified regulatory impact assessment.

As noted in response to point 1 above, the intention to extend until March 2021, the relevant period during which increased notice periods apply, was announced in Plenary by the Minister for Housing and Local Government on 15 September. The announcement was publicised on the same day through: an update sent to all registered landlords in Wales via Rent Smart Wales, the issuing of a press notice, and relevant posts issued through the Welsh Government's social media accounts.

This was done in order to provide landlords and others with as much notice as possible of the intended changes.

Whilst it was not possible to conduct a formal consultation in the time available prior making this emergency legislation, the Welsh Government has strong relationships with stakeholders from across the housing sector, and received various representations and evidence from them in relation to notice periods. That evidence helped to inform the development of the Regulations, including, for example, the decision to revert to the pre-Covid arrangements for notices relating to anti-social behaviour and domestic violence.

The Explanatory Memorandum explains at paragraph 6.1 that *The COVID-19 emergency and the urgency to make these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment*. Even though there was a period of two months between the making of these Regulations and the previous regulations made in July, the decision to extend the relevant period was still taken at relatively short notice in response to a situation that was rapidly evolving, so there was no significant additional time available in which to conduct a full regulatory impact assessment. Furthermore, with the stay on possession proceedings in the courts only coming to an end on 20 September, longer notice periods have thus far had little impact that is capable of being assessed. Importantly though, the Explanatory Memorandum points out at paragraph 6.4 that if there are additional costs to landlords arising from the extra delay to making a claim to the court and the arrears that may build up during that time, this is now mitigated by the introduction of the Tenancy Saver Loan scheme. As paragraph 6.4 states, *“funds from these loans will be paid directly to landlords, and should help considerably with easing any financial burden on them resulting from rent arrears”*. The Committee may also wish to note that an integrated impact assessment has been completed, a summary of which will be published in the near future.

SL(5)623 – The Coronavirus Act 2020 (Residential Tenancies Protection from Eviction) (Wales) Regulations 2020

Background and Purpose

The Coronavirus Act 2020 (the “2020 Act”) section 81 and Schedule 29 provide protection from eviction by increasing the notice period a landlord is required to give a tenant when seeking possession.

These Regulations extend until 31 March 2021 the period during which increased notice must be given to tenants granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. Previously, the end date was 30 September 2020.

Additionally, these Regulations increase from 3 months to 6 months the period of notice required for most notices served in respect of protected and statutory tenancies, secure tenancies, introductory and demoted tenancies. This brings those tenancies into line with the period of six months notice already required for assured and assured shorthold tenancies.

However, in respect of all tenancies, where the ground or reason for giving notice relates to antisocial behaviour, or domestic violence, the Regulations suspend the longer notice periods required under Schedule 29 of the 2020 Act.

Section 88(1) of the 2020 Act provides a power for a relevant national authority (in this case the Welsh Ministers) to suspend the operation of any provision of that Act by regulations. Regulations may also be made to revive a suspended provision (section 88(3)), and the provisions in 88(1) and (3) may be used more than once (see section 88(4)).

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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



We note the breach of the 21-day rule in respect of these Regulations (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force). This Minister for Finance and Trefnydd, Rebecca Evans provides an explanation for the breach in a letter to the Llywydd dated 28 September 2020:

There remains an urgent need to ensure that the number of tenants under threat of eviction from their homes is kept as low as possible, so as to continue with the containment of Coronavirus, ease the burden on frontline staff, and ensure tenants are provided with appropriate support. The Regulations make an important contribution to meeting that urgent need. In order to ensure that the provisions of Schedule 29 continue to apply after 30 September, the Regulations come into force on 29 September 2020.

Likewise, paragraph 2.1 of the Welsh Government’s Explanatory Memorandum (“EM”) states as follows:

There is an urgent need to ensure that the relevant period is extended beyond the 30 September. The number of people under immediate threat of eviction from their homes must be kept low, in order to continue to contribute to the range of measures in place that respond to the virus. Consequently, the Regulations come into force on 29 September 2020 and do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force.

Whilst we recognise that a number of measures have had to be put in place urgently during the Coronavirus pandemic, we are not clear why it was necessary for these Regulations to come into force so urgently as to breach the 21-day rule. Since earlier, similar, provision was made, in July by the Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020 (the “previous Regulations”), there has been a period of two months for the Welsh Ministers to consider and put into place provision beyond 30 September. Despite this, these Regulations were made on 25 September, laid on 28 September and came into force on 29 September. We noted in our report on the previous Regulations, that the Welsh Ministers have had the power to make such regulations since 25 March 2020 (when the 2020 Act was passed).

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

These Regulations engage a landlord’s rights under Article 1 Protocol 1 of the European Convention on Human Rights (“A1P1”). A1P1 states:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance



with the general interest or to secure the payment of taxes or other contributions or penalties.

The Regulations extend, in certain cases, the notice period that a landlord must give a tenant from three months to six months, after 29 September 2020. The Regulations have the effect of restricting a landlord's use and enjoyment of their property for this additional period of time. A1P1 is a qualified right and so controlling the landlord's use of their property is permitted if it is deemed necessary in the general interest.

In considering whether an interference is justified, the State must show that the Regulations have a legitimate aim sufficient to justify the limitation of landlords' rights, that the Regulations are rationally connected to that aim, that a less intrusive measure couldn't be used, and that there is a reasonable relationship of proportionality between the means employed to achieve that aim, and the aim pursued.

In our report on the previous Regulations, we noted that there was no analysis in the Welsh Government's EM of landlords' A1P1 rights and how interference with these rights is justified. The Government response to the Committee's report on those previous Regulations did not provide any detail about the rationale for the Government's decision.

The EM accompanying these Regulations also does not contain an analysis of the impact on human rights. As such, it is not possible for a reader of the Regulations to understand how the Government has weighed up the competing rights of landlords, tenants and the wider public.

The Welsh Government is asked to set out how it considers that these Regulations are compliant with A1P1 of the ECHR.

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

Paragraph 2.3 of the Welsh Government's Explanatory Memorandum discusses the issue of retrospectivity:

Even though the Regulations apply prospectively (i.e. on or after the date the amendments come into force) there is an element of retrospectivity to the Regulations in that notice periods in existing tenancies are temporarily altered. However, the extended notice period will apply to notices given on or after the date the Regulations come into force.

Whilst we appreciate that the Regulations will apply prospectively, in that only notices given after the date the Regulations come into force will be affected by the provisions, the Regulations will apply to existing tenancies, made between landlords and tenants.



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

Paragraph 6.1 of the EM explains that the Welsh Government has not been able to carry out a quantified regulatory impact assessment, but that the EM provides a qualitative assessment of the likely impacts of the Regulations. However, these Regulations were laid on 28 September 2020 and came into force on 29 September 2020 giving landlords and other stakeholders only a matter of hours notice of this (extension to a) substantive change to the law and their rights.

In regard to the potential economic effects of the Regulations on landlords, paragraph 6.11 of the EM states as follows:

...whilst landlords would still be able to recover possession if a tenant fails to pay rent, or otherwise breach the terms of their tenancy, and lenders may still be able to recover possession in the event of the landlord defaulting on the mortgage, there is a potential additional cost to them arising from increased notice periods. However, the financial impact of this may be balanced out by the additional time landlords, tenants and support agencies have to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears. Any negative economic impact caused should therefore be slight...

The Committee are concerned that the lack of consultation and the absence of a quantified regulatory impact assessment makes it harder to ascertain if the Regulations represent a proportionate response by the Welsh Government. There has also been a period of two months since the previous Regulations were made, which could have provided an opportunity for further assessment to be made by the Welsh Government into the impacts of the provisions.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response 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.





Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

3 November 2020

Dear Chair

I am writing to let you know the 34th summit of the British-Irish Council will be held later this week. Member Administrations agreed to postpone the summit scheduled earlier in the year. It will be hosted virtually by the Scottish Government.

The Minister for Economy Transport and North Wales and I will be representing the Welsh Government. The summit will focus on recent political developments, including our economic recovery from coronavirus.

A communiqué will be agreed by the council at the summit and I will update Members about its publication and the outcome of the summit, in due course.

The summit will be preceded by a BIC Environment work sector Ministerial meeting to review collaboration on the marine environment, climate change and invasive non-native species. The Minister for Environment Energy and Rural Affairs will represent the Welsh Government at this meeting.

In a statement on intergovernmental relations last week, accompanied by the Welsh Government's first annual report to the Senedd on intergovernmental relations for the period April 2019 to March 2020, laid on 27 October, I underscored the importance of our relationships with our British-Irish Council partners. I hope this relationship will continue to grow in significance as the council continues to demonstrate what can be achieved through dialogue and collaboration.

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

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

I have also written to the chair of the External Affairs and Additional Legislation Committee, David Rees MS and the chair of the Climate Change, Environment and Rural Affairs Committee, Mike Hedges MS.

Best wishes

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD



Mick Antoniw AS
Chair Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

4 November 2020

Dear Mick

Thank you for your letter of 23 October concerning our decision to not table a motion with regard to the Cross-Border Healthcare (Amendment etc.) (EU Exit) Regulations 2020.

Last year I gave a commitment that the government would go beyond the requirements of Standing Orders and routinely table motions for debate in relation to Statutory Instrument Consent Memorandums (SICMs) laid under Standing Order 30A. In line with that commitment we have scheduled debates except where there has been good reason not to do so. One recent example of not scheduling a debate was the above Regulations, which were uncontroversial from a policy perspective. In that particular case, the changes were technical in nature, and there was no divergence in policy between the Welsh Government and the UK Government.

It has become clear there is very little appetite for detailed debate in the chamber for what are usually technical measures. Consequently, and not least because plenary time is at a premium, we propose no longer routinely to table such motions for debate.

We will continue to comply with Standing Orders and lay SICMs when required. We will also give consideration to tabling a government motion where appropriate (eg where the issues are substantive or novel and potentially contentious). We will work closely with the Legislation, Justice and Constitution Committee in making such decisions. It will of course remain open for any member of the Senedd to table a motion seeking the Senedd's agreement to the inclusion of a relevant provision in a relevant statutory instrument.

Best Wishes

MARK DRAKEFORD

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

Rt Hon Mark Drakeford MS
First Minister of Wales

23 October 2020

Dear Mark

Statutory Instrument Consent Memorandum – The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020

At our meeting on 19 October 2020 we considered the Welsh Government's **Statutory Instrument Consent Memorandum for The Reciprocal and Cross-Border Healthcare (Amendment etc) (EU Exit) Regulations 2020** (the Regulations), that was laid before the Senedd on 5 October by Vaughan Gething MS, the Minister for Health and Social Services (the Minister).

We are disappointed to see that the Minister has indicated that he will not be tabling a motion under Standing Order 30A.10 so that the Senedd may give its consent to the inclusion of the relevant provision in the Regulations.^{1 2} You will be familiar with our view that this is a wholly unsatisfactory position for any Welsh Minister to adopt.

We have **previously raised concerns** with you that the Statutory Instrument Consent process is being used as a means for the Welsh Ministers to provide consent by default, thus bypassing the Senedd, and that the consent process has taken on the features of the negative procedure process for the consideration of statutory instruments where consent is deemed to have been given unless a Senedd Member intervenes. We again repeat that this is neither appropriate nor within the spirit of Standing Order 30A.

Furthermore, we said in February 2019 that if by not tabling motions under Standing Order 30A.10 the Welsh Government has established the principle with the UK

¹ Letter from the Minister for Health and Social Services – 2 October 2020

² While not yet considered by the Committee, the Minister for Health and Social Services has also said that he will not be tabling a motion under Standing Order 30A.10 in respect of the **Statutory Instrument Consent Memorandum for The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2020**.



Government that the consent of the Senedd is not generally required, then it is not clear what effect a decision of the Senedd to vote down a consent motion (ie to refuse consent) would have. Given the current state of intergovernmental relations and broad concerns about infringements on the devolution settlements, we do not understand the Welsh Government's current rationale on these matters.

You will recall the many exchanges of correspondence between us, yourself and other Welsh Ministers on this matter over the past two years.³ You will also be aware that the Llywydd has expressed the following view:

"...the tabling and passing of such a motion is the only way that the [Senedd]'s consent to such provisions can be sought and given. If no such motion has been considered – let alone passed - by the [Senedd] in relation to a relevant provision in a UK Bill or Statutory Instrument, the [Senedd] cannot be said to have given its consent to that provision."⁴

Even in the current difficult circumstances, we do not consider that debates on statutory instrument consent motions are an inappropriate use of the time and resources of either the Welsh Government or the Senedd. Further, we do not see that there is a difference in principle between the provision of consent for relevant provisions in UK Bills, as provided for in Standing Order 29, and the provision of consent for relevant provisions in statutory instruments made by UK Ministers, as provided for in Standing Order 30A.

While we acknowledge there are practical considerations to be made in terms of co-ordinating the Senedd's vote on a consent motion within the timescales set by the UK Parliament's consideration of the relevant statutory instrument, this is possible and has been shown to work in recent months when the Deputy Minister for Housing and Local Government did table a motion to seek the Senedd's consent for the UK Ministers to make **The Waste (Circular Economy) (Amendment) Regulations 2020**. Further, while not yet considered by the Committee, we are aware that the Welsh Government is **seeking a consent debate** on the **Statutory Instrument Consent Memorandum on The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020**, which suggests that problems regarding competing inter-Parliamentary timescales are not insurmountable.

I would also like to remind you of the background to the changes made to the Standing Orders in 2013 which the Llywydd helpfully set out in her letter in May 2019:

"...the provision for a Member other than a member of the government to table a consent motion was introduced in 2013 alongside removing the requirement for the government to table a motion in relation to each and every memorandum laid. The procedure was designed to be used in circumstances where the government's memorandum indicated that the government does not consider it appropriate for consent to be given, and enables other Members then to make the opposite case and to table a consent motion to that effect. It was

³ Letters to the First Minister – 11 July 2019, 30 July 2019; Letter from the First Minister – 23 August 2019; Letter from Minister for Economy and Transport – 17 December 2019

⁴ Letter to the Llywydd – 25 March 2019; Letter from the Llywydd – 7 May 2019



not anticipated it would be needed in situations where the government supports the proposed UK legislation, as in those circumstances the expectation is that government would table their own motion seeking the Assembly's consent for the legislation to proceed."

We remain of the view that it is the responsibility of the Welsh Government to bring forward the necessary consent motions when a Welsh Minister lays a Statutory Instrument Consent Memorandum.

This letter is copied to the Minister for Health and Social Services, the Counsel General, and to the Llywydd, Elin Jones MS.

Your sincerely,



Mick Antoniw AM
Chair

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





Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: EJ/AJ

07 May 2019

Dear Mick,

Thank you for your letter regarding the application of Standing Order 30A.

As you are aware, it is a long-established convention that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Assembly. Within that context, Standing Orders 29 and 30A set out the Assembly's procedures for signifying consent to provisions in Bills and Statutory Instruments before the UK Parliament that make provision either within, or modifying, the Assembly's legislative competence.

While the practical operation of the convention relies much on inter-governmental working, the convention is fundamentally an inter-Parliamentary one in that it is the Assembly that gives consent for the UK Parliament to legislate within its competence. That inter-Parliamentary dimension is reflected in the fact that since 2013 the Clerk of the Assembly has notified her peers in the Commons and Lords when the Assembly has passed or rejected a consent motion, so that Members of Parliament can be informed of the Assembly's decision via the order paper.

While neither Standing Order 29 nor 30A require a member of the government, nor anyone else, to table a consent motion in relation to relevant provisions in any UK Bill or Statutory Instrument, the tabling and passing of such a motion is the only way that the Assembly's consent to such provisions can be sought and given. If no such motion has been considered – let alone passed – by the Assembly in relation to a relevant provision in a UK Bill or Statutory Instrument, the Assembly cannot be said to have given its consent to that provision. I would be concerned if the UK Parliament were proceeding to legislate in those circumstances, as it would seem to me to breach the convention of only legislating with the Assembly's express consent.



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

On your final point, the provision for a Member other than a member of the government to table a consent motion was introduced in 2013 alongside removing the requirement for the government to table a motion in relation to each and every memorandum laid. The procedure was designed to be used in circumstances where the government's memorandum indicated that the government does not consider it appropriate for consent to be given, and enables other Members then to make the opposite case and to table a consent motion to that effect. It was not anticipated it would be needed in situations where the government supports the proposed UK legislation, as in those circumstances the expectation is that government would table their own motion seeking the Assembly's consent for the legislation to proceed.

I hope that provides clarity for the Committee on my interpretation of the relevant Standing Orders.

Yours sincerely,

Elin Jones AM
Llywydd

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

Agenda Item 9

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

Document is Restricted

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO 2)

TRADE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29(iii)(a) prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the Senedd if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Trade Bill (“the Bill”) was introduced in the House of Commons on 19 March 2020. The Bill completed Committee stage in the House of Lords on 15 October 2020. The Bill can be found at: [Bill documents - Trade Bill 2019-21 - UK Parliament](#)

Policy Objectives

3. The UK Government’s stated policy objectives are to provide continuity for businesses, workers and consumers across the UK and establish the UK as an independent global trading nation. To support this the Bill makes provision about the implementation of international trade agreements with third countries that have pre-existing trade agreements with the EU; establishing a Trade Remedies Authority (TRA) and conferring functions on it; and makes provision about the collection and disclosure of information relating to trade.

Summary of the Bill

4. The Bill is sponsored by the Department for International Trade.
5. The Bill has four main functions:
 - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement the Agreement on Government Procurement in the event that the UK is an independent member of that Agreement after the end of the transition period;
 - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement international trade agreements with third countries who have pre-existing trade agreements with the EU;
 - It establishes a TRA to deliver the new UK trade remedies framework;
 - It establishes a data sharing gateway between Her Majesty’s Revenue and Customs and other public and private bodies.

6. The provisions in the Bill of particular relevance to Wales are:
- Part 1, Clause 1 – (implementation of the Agreement on Government Procurement).
 - Part 1, Clause 2 – (implementation of international trade agreements with third countries who have pre-existing trade agreements with the EU).
 - Part 2 – (establishing the TRA) – The Welsh Government does not believe that the provisions in Part 2 of the Bill relating to the TRA are making provision for any purpose within, or which modifies the legislative competence of the Senedd. However, the establishment of a TRA could have an impact on devolved areas such as agriculture and fisheries.
 - Part 3 – (Collection and sharing of trade information).

Provisions in the Bill for which consent is required

7. The Welsh Government laid a legislative consent memorandum on 2 April 2020, based on the Bill as introduced into Parliament on 19 March 2020. That legislative consent memorandum covered Part 1, Clauses 1 to 4 and Schedules 1, 2 and 3 of the Bill. The Welsh Government did not consider that the provisions in Parts 2 or 3 of the Bill as introduced engaged SO29.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required

8. The following amendments, which make provision in relation to Wales and contain provision within the Senedd's legislative competence, were made to Part 3 of the Bill at House of Commons Report Stage.
9. **Part 3, Clause 9** – Clause 9(1) confers a power on specified public authorities to disclose information to a Minister of the Crown for the purposes of facilitating the exercise of a Minister of the Crown's functions relating to trade. The specified public authorities in clause 9(3) that may disclose information to a Minister of the Crown are a Secretary of State, the Minister for the Cabinet Office, a strategic highways company appointed under section 1 of the Infrastructure Act 2015 and a port health authority constituted under section 2 of the Public Health (Control of Disease) Act 1984. Most of the specified authorities falling within this data-sharing gateway are reserved authorities. However, the definition of a port health authority captures Welsh port health authorities that exercise functions in relation to Wales and is broad enough to enable such authorities to disclose information relating to non-reserved matters to a Minister of the Crown.
10. Clause 9(9) also confers a regulation making power on a Minister of the Crown which enables the list of specified authorities in clause 9(3) to be amended. That power is capable of being exercised to add or remove devolved Welsh authorities from the list.

11. **Part 3, Clause 10** – A new clause has been included which would make it a criminal offence for a person to disclose identifiable personal information in breach of the requirements in clause 9 in certain specified situations. Such an offence is punishable by a fine and/or a term of imprisonment of up to a period of two years on indictment or up to 12 months on summary conviction. As this provision needs to be considered alongside clause 9, we consider that consent is also required for this provision.

Reasons for making these provisions for Wales in the UK Trade Bill

12. The UK Government requires a legal mechanism to enable it to request access to, and share information held by a wide range of public authorities. Gaining access to a wider range of devolved and reserved data could improve the UK Government's capability to respond to border issues, design traffic management initiatives and enhance trade flows.
13. The Welsh Government is supportive of the rationale for the amendments. However, to ensure benefits can be accrued in Wales, we have sought assurances that;
 - a) The UK Government will share any analysis relevant to the delivery of devolved responsibilities with the Welsh Ministers. Clause 9(5) is relevant in this context because it makes provision for the onward disclosure of data by a Minister of the Crown, with the consent of the public authority from which that data had been obtained. This could enable a Minister of the Crown to disclose data to the Welsh Ministers in circumstances where the data is relevant to the Welsh Ministers' devolved functions relating to trade, such as traffic management around key ports;
 - b) The UK Government will consult with the Welsh Ministers before adding or removing any Welsh public authorities from the data sharing gateway in clause 9.
14. The Welsh Government considers that it has received sufficient assurances from the UK Government in response to these requests.
15. In addition, two despatch box commitments were made at House of Lords Committee stage on 15 October:

‘First, the data shared under Clause 9 will be used by the border impact centre and the Cabinet Office to develop strategic insights. They are committed to sharing strategic analysis related to flow of trade, where it will support the more effective management of flow through the border.

I understand that Cabinet Office officials have been working closely with counterparts in the devolved Administrations to ensure that relevant analysis and information relating to trade and management of the border can be shared to support devolved functions. Examples of the types of information that the border impact centre intends to share with relevant parties in the devolved nations are flow patterns through ports.

The Cabinet Office will continue to work with the devolved Administrations to ensure that the border impact centre provides strategic benefit to management of flow through key ports.

Secondly, the UK Government commit to consulting the devolved administrations before any devolved authorities are added to, or removed from, the list of specified authorities that can share data under Clause 9.'

16. We believe the assurances provided are sufficient to ensure that the Welsh Ministers will be able to access more detailed information to increase border management capabilities and enhance trade flow data, benefitting Wales.
17. On this basis, we would recommend that the Senedd grants legislative consent.

Financial implications

18. While there are no direct financial implications for the Welsh Government or the Senedd arising from the powers under the Bill, there will be significant financial implications for Wales from our future trade relationships in its overall economic effect.

Conclusion

19. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, the Welsh Government considers that legislating via a UK-wide Bill is the most effective and proportionate legislative vehicle for creating an independent trade policy for the UK following the transition period. Devolved areas may be heavily impacted by future trade agreements therefore it is important Welsh interests are adequately reflected in the Trade Bill.

Jeremy Miles MS

Counsel General and Minister for European Transition

November 2020

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

Document is Restricted



Mick Antoniw MS
Chair of Legislation, Justice and Constitution Committee

11 September 2020

Dear Mick,

**Legislation, Justice and Constitution Committee Report on the Welsh Government's
Legislative Consent Memorandum on the Trade Bill**

Thank you for providing a copy of the Legislation, Justice and Constitution Committee's report and recommendations on the legislative consent memorandum (LCM) for the Trade Bill.

Please find the Welsh Government's response to the report's recommendations at Annex A.

I would like to thank the Committee for its scrutiny of the Trade Bill LCM. I share your concerns about the potential impact of new trade deals on Wales however, as you are aware, the scope of this Bill relates only to rolling over existing trade agreements rather than new trade deals.

I acknowledge your concerns about securing concessions on the face of this Bill but I would emphasise that doing so in the context of a UK Government with a large majority in the House of Commons is very challenging. Whilst there is much in the Bill which I would prefer was amended, I would also point out that previous efforts to amend the Bill in the last parliamentary session resulted in intergovernmental agreements being reached with the UK Government on key areas of concern. This position was accepted by the Senedd at a time when the then Government had more reason to compromise.

This is why my approach has been to work with UK Ministers to secure concessions via intergovernmental agreements, a technique frequently used by Ministers across the devolved administrations to hold the UK Government to account.

As you will know, the Bill has completed its passage through the Commons. The first reading in the House of Lords took place on 21 July and the second reading is scheduled for 8 September. The UK Government's aim is to obtain Royal Assent for the Bill by the end of the transition period.

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

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

The forthcoming House of Lords stages will provide a further opportunity for legislative amendments to be debated and potentially secured. With this in mind, and in order to partly address several of your recommendations I will:

- Write to the Speaker of the House of Lords requesting an amendment is tabled to clause 2 which would have the effect of preventing the regulation making powers from being exercised by UK Ministers to make amendments to the Government of Wales Act 2006.
- Write to the Minister of State for Trade Policy requesting that a despatch box commitment is restated in the House of Lords by UK Ministers that the UK Government will engage with the devolved administrations in advance of any decision to use the clause 2(7) powers to extend the sunset provision.

I can assure you that protecting Wales' interests in international matters is one of my key priorities. I will continue to make representations to the UK Government on all trade policy matters via the Ministerial Forum for Trade where I am able to influence discussions and make Wales' voice heard.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan MS/AS

Minister for International Relations and the Welsh Language
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol

Annex A

Welsh Government Responses to Recommendations from the Legislation, Justice and Constitution Committee on the Legislative Consent Memorandum for the UK Trade Bill

Recommendation	Welsh Government Response
<p data-bbox="199 499 539 537">Recommendation 1</p> <p data-bbox="199 573 539 831">The Minister should make representations to the UK Government seeking a review of the procedure to be applied to regulations made under clause 1.</p>	<p data-bbox="561 499 831 537">Decision – Reject</p> <p data-bbox="561 573 1477 757">The Welsh Government has not previously raised objections to regulations made under clause 1 being subject to the negative procedure and this was the basis on which it recommended that the Senedd provided legislative consent to the Trade Bill 2017-19.</p> <p data-bbox="561 792 1485 1196">In coming to this position, the Welsh Government has taken into account the fact that this power would be exercised to make largely technical changes to existing domestic legislation in order to implement the GPA once the UK is an independent member. For example, this could include amendments to the Procurement Contract Regulations 2015 to ensure that the list of central government contracting authorities covered by those regulations is consistent with the UK’s obligations under the GPA. It could also include amendments to domestic legislation in response to another party joining the GPA or in response to a current member leaving the GPA.</p> <p data-bbox="561 1232 1465 1453">As the extent of discretion that could be exercised by either UK Ministers or the Welsh Ministers is very limited in practice, and accepting that the UK parliament has already had the opportunity to scrutinise the UK’s membership of the GPA, the Welsh Government reached a view where it was comfortable with the provision being subject to the negative procedure.</p> <p data-bbox="561 1489 1465 1711">The Senedd accepted this position when it agreed a legislative consent motion (LCM) on 12 March 2019, and subsequently on 21 May 2019 in light of two supplementary LCMs. It was accepted there was very little chance of successfully securing an amendment from the UK Government to change the proposed procedure from negative to affirmative at that time.</p> <p data-bbox="561 1747 1469 2004">The current UK Government is in a strengthened position, having won a significant majority in parliament, and has made it clear that it has no intention of changing the procedure to be applied to regulations made under clause 1. It is therefore extremely unlikely that any representations we should make to the UK Government on this matter would receive serious consideration.</p> <p data-bbox="561 2040 1023 2078">Financial Implications – None.</p>

<p>Recommendation 2</p> <p>The Minister should write to the Committee notifying us of the outcome of the representations made to the UK Government as a result of recommendation 1.</p>	<p>Decision – Reject</p> <p>Due to the reasons outlined in recommendation 1, it is not considered appropriate for the Minister to make representations to the UK Government on this matter.</p> <p>Financial Implications – None.</p>
<p>Recommendation 3</p> <p>The Minister should seek an amendment to the Bill so that the regulation-making power in clause 1 can be exercised when Ministers consider it ‘necessary’, rather than where Ministers consider it ‘appropriate’.</p>	<p>Decision – Accept in Principle</p> <p>We agree with the Committee that the choice between ‘necessary’ or ‘appropriate’ is important and must be carefully considered in relation to each specific Bill and its circumstances. In this particular situation, we are mindful of the time-limited nature of this legislation, in that the Bill only relates to implementing international agreements that were already in place before the UK exited the EU, and the already very limited scope of the powers in practice.</p> <p>The Welsh Government agrees that the term ‘necessary’ would be preferable in the context where changes should only be made where they are necessary to ensure that international obligations are complied with. However, since any amendment to the Bill would require the same standard to be applied to the regulation making powers conferred on UK Ministers, it is highly unlikely that such an amendment can be carried – and again, in considering the 2017-19 Trade Bill the Senedd did not consider this an issue which should impede the granting of legislative consent.</p> <p>We do not therefore believe it appropriate for us to proactively seek an amendment which would restrict these powers, although we would not oppose efforts in the House of Lords to bring forward such an amendment.</p> <p>Financial Implications – None.</p>
<p>Recommendation 4</p> <p>The Minister should seek an amendment to clause 2(6)(a) of the Bill to the effect that it cannot be used by UK Ministers to make regulations that amend the <i>Government of Wales Act 2006</i>.</p>	<p>Decision – Accept</p> <p>Whilst it is technically possible that the UK Government could use clause 2(6)(a) to make regulations that amend the Government of Wales Act 2006 (GoWA), in practice, it is extremely unlikely that this would happen, as the clause 2 powers are very limited in scope.</p> <p>To mitigate the risk of clause 2 being used by UK Ministers in this way, the Welsh Government has worked to secure commitments from the UK Government, albeit intergovernmental, non-legislative and non-binding, that clause</p>

	<p>2 powers will not be used in areas of devolved competence. As such, on 23 June 2020, at the Trade Bill Committee meeting in the House of Commons, the Minister of State for Trade Policy restated assurances made by predecessors during the passage of the Trade Bill 2017-19 that the UK Government would not normally legislate within devolved areas without the consent of the relevant devolved administrations and never without consultation first. In addition, and further to representations from the Minister for International Relations, the Minister for Trade Policy also made a new commitment that his department will work closely with the devolved administrations at all stages of trade negotiations.</p> <p>However, whilst the UK Government has previously indicated that it is not minded to exercise the clause 2 powers to make amendments to GoWA and has made commitments at the despatch box that it will not normally do so, and we do not envisage a situation when this action would ever be required, we do recognise that there is a small risk that UK Ministers could utilise these powers. We agree with the Senedd that it is not acceptable for UK Ministers to use secondary powers to amend the core primary legislation underpinning the devolution settlement.</p> <p>The Welsh Government will therefore write to the Speaker of the House of Lords requesting an amendment is tabled to clause 2 which would have the effect of preventing the regulation making powers from being exercised by UK Ministers to make amendments to GoWA.</p> <p>Financial Implications – None.</p>
<p>Recommendation 5</p> <p>The Minister should seek an amendment to the Bill so that the regulation-making power in clause 2 can be exercised when Ministers consider it ‘necessary’, rather than where ministers consider it ‘appropriate’.</p>	<p>Decision – Accept in Principle</p> <p>Please see the response provided to Recommendation 3 which also addresses Recommendation 5.</p> <p>Financial Implications – None</p>
<p>Recommendation 6</p> <p>The Minister should seek an amendment to the Bill to secure a requirement on the UK Government to obtain the Welsh Ministers’ consent before it</p>	<p>Decision – Reject</p> <p>The Welsh Government previously tabled amendments to the 2017-19 Bill along with the Scottish Government that would have required UK Ministers to obtain the consent of the Welsh and Scottish Ministers before making regulations under clauses 1 and 2 that made provision within devolved competence.</p>

<p>makes regulations under clauses 1(1) and 2(1).</p>	<p>These amendments were rejected, but concessions were secured from the UK Government, in the form of non-legislative commitments made at the despatch box, that it would not normally legislate in areas of devolved competence without consultation. These commitments have been restated by the Minister for Trade Policy in relation to the 2019-21 Bill as detailed in the response to Recommendation 4.</p> <p>The Welsh Government reached a position on the previous Bill where it accepted that a requirement for the UK Government to obtain consent on the face of the Bill would lead to devolved administrations effectively having a veto over international agreements negotiated by the UK Government. The Welsh Government decided that securing non-legislative commitments at the despatch box rather than pushing for a veto was consistent with its objectives set out in its published trade policy document, 'Trade Policy: the issues for Wales'. In addition, it was accepted that this compromise was the only way to move the Trade Bill forward to achieve continuity for Welsh businesses and citizens at the end of the transition period. The Senedd was previously content to provide legislative consent on this basis.</p> <p>The Committee states in the report that other UK Bills such as the Environment Bill include concurrent plus powers, requiring the consent of the Welsh Ministers before UK Ministers may make regulations in devolved areas. The Welsh Government accepts that both the Environment Bill and the Fisheries Bill include concurrent plus powers, but in these cases the core subject matter of the Bills is clearly devolved. The Trade Bill differs from the Environment and Fisheries Bills in that only limited parts of the Bill make provision in devolved areas. Other UK Bills relating to international agreements needed as a result of the UK leaving the EU, such as the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019, have passed through parliament with despatch box commitments being accepted as a legitimate, although not ideal device which devolved governments can use to hold the UK Government to account.</p> <p>Financial Implications – None.</p>
<p>Recommendation 7.</p> <p>The Minister should seek an amendment to the Bill to secure a requirement on the UK Government to obtain the Senedd's consent before it makes regulations under clause 2(7).</p>	<p>Decision – Reject</p> <p>The Welsh Government previously reached a position where it was content to recommend legislative consent to clause 2(7) on the basis of the non-legislative commitments secured from the UK Government during the passage of the Trade Bill 2017-19, which included a despatch box commitment to engage with devolved administrations before extending the period during which clause 2 powers can be used under the Bill. The Senedd accepted this position and provided legislative consent on this basis.</p>

	<p>As detailed in the response to Recommendation 6, despatch box commitments have been accepted as a legitimate, although not ideal device that devolved governments can use to hold the UK Government to account in relation to UK Bills. It would therefore be consistent with the approach taken to other legislation to rely on a despatch box commitment in this instance.</p> <p>It is noted however, that this commitment was made on 17 July 2018 and has not been explicitly restated by the Minister for State for Trade Policy in relation to extending the sunset period. The Welsh Government will therefore write to the UK Government requesting that this commitment is explicitly restated by Ministers at the despatch box during the House of Lords stages.</p> <p>Financial Implications – None.</p>
<p>Recommendation 8</p> <p>The Minister should seek urgent discussions with the UK Government regarding the commitments made on the operation of the TRA, specifically as regards consulting the Welsh Government on the TRA's recommendations, and seek changes to the agreed commitments so that they properly reflect the Welsh Government's status as the Government in Wales, and not as a department of the UK Government.</p>	<p>Decision – Reject</p> <p>Matters relating to the Trade Remedies Authority (TRA) are not within the competence of the Senedd although this is an area where Welsh businesses and citizens clearly have an interest. The Welsh Government has recommended supporting the proposed measures for establishing a new independent body, the TRA, to investigate trade disputes on the basis that Welsh Government is involved in the investigatory process but that the UK Government will act on behalf of the UK in its entirety.</p> <p>It is important to note that it will be a legal obligation for the UK to have an authority in place to manage and deliver trade remedies once the UK accedes to the World Trade Organisation (WTO). As Wales is not a member of the WTO in its own right, the legal obligation lies with the UK Government and not the Welsh Government.</p> <p>The Welsh Government's position is that we would not expect to be involved in the operational activities of the TRA, as it is an independent body. The Welsh Government believes that being able to act as a contributor in any case being investigated by the TRA, and at the same time as other UK Government departments, ensures that our views are fed into the process at the most appropriate time, when recommendations are being considered and developed. If we are consulted on the recommendations at the stage when they are made to the Secretary of State, rather than being involved in the process at an early stage of an investigation, this would present a risk that the UK Government could come to an established, collective view without our involvement. In practice, this would provide us with a very limited chance of influencing the outcome or reopening discussions, should we wish to do so. Involvement at an earlier stage of the process, at a point when different competing interests within the UK Government will be being exposed and resolved will be more beneficial as this will enable</p>

	<p>greater leverage. This process is already working in practice as officials have received several invitations to contribute to investigations from the Trade Remedies Investigations Directorate (TRID) within the UK Government, which is managing investigations during the transition period.</p> <p>The Welsh Government previously secured non-legislative commitments from the UK Government on the ways in which we will be able to interact with the Authority and maintain a level of involvement in the investigation process on 4 February 2019. A Written Statement providing more detail about the commitments made by the UK Government was published on 30 April 2019.</p> <p>The view of Welsh Government is that these commitments, alongside the detailed information about how the UK Government will involve the Welsh Government in proceedings provided in the Written Statement, provide satisfactory assurance that we will be involved in the investigatory process at the most appropriate time, in the most appropriate way. The evidence to date is that the assurances are being implemented in practice.</p> <p>Financial Implications – None</p>
<p>Recommendation 9</p> <p>The Minister should seek urgent discussions with the UK Government regarding the commitments made on the operation of the TRA, specifically as regards a duty on the TRA to provide advice to the Welsh Ministers, and seek changes to the agreed commitments so that they properly reflect the Welsh Government’s role in implementing international trade agreements.</p>	<p>Decision – Reject</p> <p>Please see the response provide to Recommendation 8 which also addresses Recommendation 9.</p> <p>Financial Implications – None</p>