

# Agenda – Legislation, Justice and Constitution Committee

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| Meeting Venue:                | For further information contact:                                   |
| Video conference via Zoom     | <b>Gareth Williams</b>   |
| Meeting date: 7 December 2020 | Committee Clerk  |
| Meeting time: 10.00           | 0300 200 6565  |
|                               | <a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a> |

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

Informal pre-meeting (09.30–10.00)

**1 Introduction, apologies, substitutions and declarations of interest**  
10.00

**2 Instruments previously considered for sifting and now subject to  
scrutiny under Standing Orders 21.2 and 21.3**  
10.00–10.05

Negative Resolution Instruments

**2.1 SL(5)664 – The Food and Rural Affairs (Miscellaneous Amendments) (Wales)  
(EU Exit) Regulations 2020**

(Pages 1 – 20)

CLA(5)–36–20 – Paper 1 – Report

CLA(5)–36–20 – Paper 2 – Regulations

CLA(5)–36–20 – Paper 3 – Explanatory Memorandum

**2.2 SL(5)669 – The Environmental Assessments and Town and Country Planning  
(Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020**

(Pages 21 – 36)

CLA(5)–36–20 – Paper 4 – Report

CLA(5)–36–20 – Paper 5 – Regulations

CLA(5)–36–20 – Paper 6 – Explanatory Memorandum



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

10.05–10.10

(Pages 37 – 39)

CLA(5)–36–20 – Paper 7 – Statutory instruments with clear reports

Negative Resolution Instruments

#### **3.1 SL(5)667 – The Government of Maintained Schools (Wales) (Amendment) Regulations 2020**

#### **3.2 SL(5)668 – The Federation of Maintained Schools (Wales) (Amendment) Regulations 2020**

#### **3.3 SL(5)676 – The Welshpool Church in Wales Primary School (Change to School Session Times) Order 2020**

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

10.10–10.15

Negative Resolution Instruments

#### **4.1 SL(5)662 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) (No. 2) Regulations 2020**

(Pages 40 – 69)

CLA(5)–36–20 – Paper 8 – Report

CLA(5)–36–20 – Paper 9 – Regulations

CLA(5)–36–20 – Paper 10 – Explanatory Memorandum

#### **4.2 SL(5)663 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020**

(Pages 70 – 120)

CLA(5)–36–20 – Paper 11 – Report

CLA(5)–36–20 – Paper 12 – Regulations

CLA(5)–36–20 – Paper 13 – Explanatory Memorandum

**4.3 SL(5)678 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) Regulations 2020**

(Pages 121 – 140)

CLA(5)–36–20 – Paper 14 – Report

CLA(5)–36–20 – Paper 15 – Regulations

CLA(5)–36–20 – Paper 16 – Explanatory Memorandum

CLA(5)–36–20 – Paper 17 – Letter from the Minister for Finance and Trefnydd, 27 November 2020

CLA(5)–36–20 – Paper 18 – Written statement, 26 November 2020

Affirmative Resolution Instruments

**4.4 SL(5)671 – The Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020**

(Pages 141 – 174)

CLA(5)–36–20 – Paper 19 – Report

CLA(5)–36–20 – Paper 20 – Regulations

CLA(5)–36–20 – Paper 21 – Explanatory Memorandum

**4.5 SL(5)675 – The Senedd Cymru (Representation of the People) (Amendment) Order 2020**

(Pages 175 – 213)

CLA(5)–36–20 – Paper 22 – Report

CLA(5)–36–20 – Paper 23 – Order

CLA(5)–36–20 – Paper 24 – Explanatory Memorandum

**5 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU**

10.15–10.20

Negative Resolution Instruments

**5.1 SL(5)665 – The Town and Country Planning (General Permitted Development) (Amendment) (No. 3) (Wales) Order 2020**

(Pages 214 – 242)

CLA(5)–36–20 – Paper 25 – Report

CLA(5)–36–20 – Paper 26 – Regulations

CLA(5)–36–20 – Paper 27 – Explanatory Memorandum

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

10.20–10.25

### **6.1 SL(5)666 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020**

(Pages 243 – 248)

CLA(5)–36–20 – Paper 28 – Report

CLA(5)–36–20 – Paper 29 – Welsh Government response

## **7 Written Statements under Standing Order 30C**

10.25–10.30

### **7.1 WS–30C(5)206 – The Seeds (Amendment etc.) (EU Exit) Regulations 2020**

(Pages 249 – 252)

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

CLA(5)–36–20 – Paper 31 – Commentary

## **8 Papers to note**

10.30–10.35

### **8.1 Letter from the Minister for Housing and Local Government: The Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020**

(Pages 253 – 254)

CLA(5)–36–20 – Paper 32 – Letter from the Minister for Housing and Local Government, 27 November 2020

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

(Page 255)

CLA(5)–36–20 – Paper 33 – Letter from the Counsel General, 1 December 2020

- 8.3 Letter from the First Minister: The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020**  
(Page 256)  
CLA(5)-36-20 – Paper 34 – Letter from the First Minister, 3 December 2020
- 9 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**  
10.35
- 10 Legislative Consent Memorandum on the Financial Services Bill – consideration of draft report**  
10.35–10.45 (Pages 257 – 260)  
CLA(5)-36-20 – Paper 35 – Draft report
- 11 Supplementary Legislative Consent Memorandum on the Medicines and Medical Devices Bill**  
10.45–10.55 (Pages 261 – 264)  
CLA(5)-36-20 – Paper 36 – Supplementary Legislative Consent Memorandum
- 12 Supplementary Legislative Consent Memorandum on the UK Internal Market Bill**  
10.55–11.05 (Pages 265 – 280)  
CLA(5)-36-20 – Paper 37 – Supplementary Legislative Consent Memorandum
- Date of the next meeting – 14 December 2020**

## SL(5)664 – The Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

### Background and Purpose

These Regulations make amendments to subordinate legislation, which apply in relation to Wales in the areas of food and rural affairs, in order to address failures of retained European Union (EU) law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the EU, to reflect the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, and to correct transitional provision.

In particular, these Regulations make minor technical corrections required to the Eggs and Chicks (Wales) Regulations 2010, the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No 3) Regulations 2019. The instrument also revokes the Food Information (Wales) (Amendment) (EU Exit) Regulations 2019.

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

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

A draft of these Regulations was laid before the Senedd for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.



## Implications arising from exiting the European Union

Save for those set out above, no other implications are identified for reporting under Standing Order 21.3 in respect of these Regulations.

## Welsh Government response

A Welsh Government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**2 December 2020**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

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**Legislation, Justice and Constitution Committee**

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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

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**2020 No. 1308 (W. 289)**

**EXITING THE EUROPEAN  
UNION, WALES**

**FOOD, WALES**

**AGRICULTURE, WALES**

The Food and Rural Affairs  
(Miscellaneous Amendments)  
(Wales) (EU Exit) Regulations 2020

**EXPLANATORY NOTE**

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

These Regulations are made in exercise of the powers conferred by paragraphs 1(1) and 11M(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union, to reflect the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, and to make transitional provision.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales, relating to food and rural affairs. They amend the Eggs and Chicks (Wales) Regulations 2010 (S.I. 2010/1671) (W. 158), the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/732) (W. 137), the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/1281) (W. 225) and the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/1376) (W. 242) and revoke the Food Information (Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1418) (W. 253). The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019 amend a number of statutory instruments in the field of food and rural affairs.



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.

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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

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**2020 No. 1308 (W. 289)**

**EXITING THE EUROPEAN  
UNION, WALES**

**FOOD, WALES**

**AGRICULTURE, WALES**

The Food and Rural Affairs  
(Miscellaneous Amendments)  
(Wales) (EU Exit) Regulations 2020

*Sift requirements satisfied* 16 November 2020

*Made* 17 November 2020

*Laid before Senedd Cymru* 19 November 2020

*Coming into force in accordance with  
regulation 1(2) and (3)*

The Welsh Ministers, in exercise of the powers conferred by paragraphs 1(1) and 11M(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(1), make the following Regulations.

The requirements of paragraph 4(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Senedd Cymru(2) procedure for these Regulations) have been satisfied.

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- (1) 2018 c. 16. There are amendments to paragraph 1 of Schedule 2 which are not relevant to these Regulations. Paragraph 11M of Schedule 2 was inserted by section 22 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 21 of Schedule 7 was amended by paragraph 53 of Schedule 5 to that Act.
- (2) The reference in the European Union (Withdrawal) Act 2018 to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

In accordance with paragraph 4 of Schedule 2 to the European Union (Withdrawal) Act 2018, the Welsh Ministers have consulted with the Secretary of State.

There has been open and transparent public consultation during the preparation of these Regulations as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(1)</sup>.

#### **Title and commencement**

**1.**—(1) The title of these Regulations is the Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

(2) Subject to paragraph (3), these Regulations come into force 21 days after the day on which they are laid.

(3) Regulation 2 comes into force on implementation period completion day.

#### **Amendment to the Eggs and Chicks (Wales) Regulations 2010**

**2.** In regulation 11(1) of the Eggs and Chicks (Wales) Regulations 2010<sup>(2)</sup>, for “exclusively in the United Kingdom” substitute “in Great Britain”.

#### **Amendment to the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

**3.**—(1) The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019<sup>(3)</sup> are amended as follows.

(2) In regulation 2(5) (amendment to regulation 4 of S.I. 2009/1551 (W. 151)), for sub-paragraph (a) substitute—

“(a) in paragraph (8), for “the European Union” substitute “Great Britain”;

(3) In regulation 4(2) (amendment to regulation 4 of S.I. 2011/991 (W. 145)), for sub-paragraph (b) substitute—

“(b) after paragraph (3) insert—

“(4) Paragraph (1)(b)(ii) does not apply in relation to a failure to comply with Article

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(1) OJ No. L 31, 1.2.2002, p. 1, to which there are no relevant amendments to Article 9.

(2) S.I. 2010/1671 (W. 158), amended by S.I. 2013/3270 (W. 320); there are other amending instruments but none are relevant.

(3) S.I. 2019/732 (W. 137), amended by S.I. 2019/1376 (W. 242).

2(2)(b) of Regulation (EC) No 1825/2000 of the European Parliament and the Council if the matter constituting the alleged contravention—

- (a) relates to a product that was placed on the market before the end of the period of 21 months beginning on the day on which IP completion day falls, and
- (b) would not have constituted a contravention of that Regulation as it applied immediately before IP completion day.”;

(4) In regulation 7(5) (amendment to regulation 12 of S.I. 2011/1719 (W. 195)), for sub-paragraph (a) substitute—

“(a) in paragraph (9)(a), for “the European Union” substitute “Great Britain”;

(5) In regulation 8(5) (amendment to regulation 5 of S.I. 2017/724 (W. 174)), in sub-paragraph (a), in the inserted text, for “exit day”, in both places it occurs, substitute “IP completion day”.

#### **Amendment to the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

4. Omit regulation 3(3) (amendment to regulation 7(5)(a) of S.I. 2019/732 (W. 137)) of the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019(1).

#### **Amendment to the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019**

5.—(1) The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019(2) are amended as follows.

(2) In regulation 2 (insertion of regulation 23 into S.I. 2009/1551 (W. 151)), in the inserted text, for “exit day”, in each place it occurs, substitute “IP completion day”.

(3) Omit regulation 5 (amendment to regulation 4(2) of S.I. 2019/732 (W. 137)).

(4) Omit regulation 6 (amendment to regulation 2 of S.I. 2019/1418 (W. 253)).

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(1) S.I. 2019/1281 (W. 225).

(2) S.I. 2019/1376 (W. 242).

**Revocation of the Food Information (Wales)  
(Amendment) (EU Exit) Regulations 2019**

**6.** The Food Information (Wales) (Amendment) (EU Exit) Regulations 2019<sup>(1)</sup> are revoked.

*Lesley Griffiths*

Minister for Environment, Energy and Rural Affairs,  
one of the Welsh Ministers

17 November 2020

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(1) S.I. 2019/1418 (W. 253), amended prospectively by S.I. 2019/1376 (W. 242). Regulation 6 of S.I. 2019/1418 (W. 253) is being omitted by regulation 5(4) of these Regulations.

## **Explanatory Memorandum to the Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020**

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of 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 Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Lesley Griffiths MS

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

19 November 2020

# Part 1

## 1.0 Description

The Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (the “instrument”) make amendments to subordinate legislation, which apply in relation to Wales in the areas of food and rural affairs, in order to address failures of retained European Union (EU) law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the EU, to reflect the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (“the Protocol), and to correct transitional provision.

In particular, this instrument makes minor technical corrections required to the Eggs and Chicks (Wales) Regulations 2010, the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No 3) Regulations 2019. The instrument also revokes the Food Information (Wales) (Amendment) (EU Exit) Regulations 2019.

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

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) and 11M of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), in order to correct deficiencies in Welsh domestic regulations arising as a result of the UK’s withdrawal from the EU, to reflect the terms of the ‘UK EU Withdrawal Agreement’ (the Withdrawal Agreement), and to ensure provisions continue to operate as intended following the end of the Implementation Period.

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, the instrument is subject to the negative resolution procedure. The instrument makes minor and technical amendments and should therefore be subject to annulment.

The instrument has been subject to scrutiny by the Legislation, Justice and Constitution Committee (LJCC). Sifting took place on the 16 November 2020, whereby the LJCC agreed the appropriate procedure for the instrument is the negative resolution procedure. The report laid by the LJCC can be found at: [LJCC Clear Report – 16 November 2020](#).

### **3.0 Legislative background**

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK's exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before the end of the Implementation Period into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK's withdrawal from the EU. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

Welsh Statutory Instruments (SIs) which correct deficiencies in Welsh domestic legislation due to the UK's withdrawal from the EU and are proposed to be made under the negative resolution procedure will be required to be considered by a sifting committee, in accordance with paragraph 4(2) of Schedule 7 to the Withdrawal Act. The purpose of the sifting committee is to determine whether the proposed negative resolution procedure is the appropriate Senedd procedure for the relevant SI. For the purpose of Welsh SIs, the sifting committee functions are undertaken by the Legislation, Justice and Constitution Committee.

In accordance with the requirements of the Withdrawal Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

### **4.0 Purpose and intended effect of the legislation**

This Instrument makes amendments to existing Welsh domestic secondary legislation, under powers in the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020), to ensure the statute book in Wales is fully operable following the end of the Implementation Period.

The regulations corrected by this Instrument were previously amended on the basis the UK would leave the EU without an agreement and transitional provisions were inserted to support continued trade and minimise border disruptions after EU Exit day, which was on 31 January 2020, in a 'no deal' scenario.

However, the UK withdrew from the EU with an agreement in place and, as such, the regulations now need to be further amended to correct deficiencies that would arise at the end of the Implementation Period and



to reflect the withdrawal agreement, in particular, the Protocol on Ireland / Northern Ireland.

#### 4.1 What Welsh secondary legislation is being amended?

- The Eggs and Chicks (Wales) Regulations 2010
- The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
- The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
- The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No.3) Regulations 2019
- Revocation of the Food Information (Wales) (Amendment) (EU Exit) Regulations 2019

These in turn amend the follow Welsh domestic regulations:

- The Eggs and Chicks (Wales) Regulations 2010

These Regulations make provision for the enforcement and execution of EU marketing standards relating to eggs for hatching and farmyard poultry chicks, and eggs in shell for consumption, contained in Regulation (EC) 617/2008 and Regulation (EC) 589/2008.

- The Poultrymeat (Wales) Regulations 2011

These Regulations make provision for the enforcement and execution of EU marketing standards relating to poultry meat and the registration of slaughterhouses, contained in Regulation (EC) 543/2008.

- The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009

These Regulations provide a statutory framework for the enforcement of European marketing rules in the fresh fruit and vegetable sector, provided for in Regulation (EC) 1234/2007 and Regulation (EC) 1580/2007.

- The Beef and Veal Labelling (Wales) Regulations 2011.

These Regulations provide a statutory framework for the enforcement of Title II of Regulation (EC) 1760/2000 for the identification and registration of bovine animals and regarding the labelling of beef and beef products. They provide for the enforcement of provisions relating to meat and the marketing of meat of bovine animals aged 12 months or less in Regulation (EC) 1234/2007 and Regulation (EC) 566/2008. They also provide for the enforcement of certain provisions in Regulation (EC) 1825/2000.

- The School Milk (Wales) Regulations 2017

Subject to Commission Regulations (EU) 1308/2013, (EU) 2017/39 and (EU) 2017/40, these Regulations allow the Welsh Ministers to make national 'top up' payments to beneficiaries of an EU subsidy for milk and milk products. The regulations also provide for the withholding or recovery of any Union or national aid where the applicant is not entitled or is in breach of commitments or conditions.

- The Food Information (Wales) Regulations 2014

These Regulations enforce certain provisions of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers. Regulation (EU) No 1169/2011 makes provision for food information to consumers, including fair information practices to ensure consumers are not misled by food packaging.

#### 4.2 Why is it being changed?

After the Implementation Period, without amendment, certain provisions would not operate as intended and, as a result, existing law will either be unclear or will not function effectively. This includes transitional provisions which are intended to ensure the legislative framework supports industry to respond to any immediate impacts that may arise from our withdrawal from the EU, such as potential changes in labelling requirements.

This Instrument therefore uses powers in the Withdrawal Act to make technical changes to the above legislation to ensure that it aligns with provisions in the Withdrawal Agreement and continues to function correctly following the Implementation Period. This will provide clarity to producers, enforcement bodies and industry stakeholders.

No policy changes are being introduced by these amendments.

#### 4.3 What amendments are being made?

- Corrections to remove redundant references in Welsh legislation to 'the European Union' and 'the United Kingdom'. These references will be replaced with the term 'Great Britain', in order to align with/reflect provisions of the 'UK-EU withdrawal agreement', in particular, the Protocol on Ireland / Northern Ireland. Any direct EU legislation included in the Protocol will continue to have effect in Northern Ireland and the retained EU legislation will only apply in Great Britain. As such, provision has been made, where applicable, to indicate that Northern Ireland remains aligned with the EU, according to the terms of the Protocol.

These corrections will apply to the *Eggs and Chicks (Wales) Regulations 2010*, *the Poultrymeat (Wales) Regulations 2011* and the *Marketing of Fresh Horticultural Produce (Wales) Regulations 2009*.

- The removal of references to ‘exit day’, which are now out of date, due to the ‘UK-EU withdrawal agreement’ and the Implementation Period. These will be updated by using the term ‘implementation period completion day’ to ensure provisions are coherent and will function as intended following the implementation period.

These corrections will be applied to transitional provisions contained in the *Marketing of Fresh Horticultural Produce (Wales) Regulations 2009* and the *Beef and Veal Labelling (Wales) Regulations 2011*, which ensure businesses are provided with a 21 month grace period to adapt to potential labelling changes arising from our withdrawal from the EU. This correction will also be applied to a definition for ‘aid’ included in the *School Milk (Wales) Regulations 2017*.

- Removal of a redundant transitional provision in the *Food Information (Wales) Regulations 2014*, which was to address possible circumstances, as may have arisen in a ‘no deal’ scenario on EU exit day (31 January 2020), but which are no longer relevant.

## **5. Consultation**

There is a legal duty to consult in relation to ‘food law’, under Article 9 of EU Regulation 718/2002, unless the matter is urgent, and, as such, a two week targeted consultation was undertaken on the proposals. A bi-lingual stakeholder letter was issued on 13 October 2020, to over 90 industry experts and organisations, to fully explain the amendments and to provide an opportunity for comment.

Probably due to the minor, technical and very specific nature of proposals being consulted on, no responses were received.

This engagement was undertaken in addition to previous published bi-lingual consultations, ‘Updating Welsh food law in preparation for Brexit’ and ‘Amendments to Welsh food legislation’, which were open from 11 January to 19 February 2019 and from 20 May to 28 June 2019 respectively. A targeted stakeholder letter was also previously issued on 9 August 2019.

These previous consultations also substantially explained the policy rationale addressed by the 2020 Regulations, such as making minor technical corrections and inserting transitional provisions, as made necessary by the withdrawal of the UK from the EU.

There is a requirement under paragraph 4 of Schedule 7 to the Withdrawal Act to consult with the Secretary of State on any provisions that are due to come into force prior to implementation period completion day. In accordance with this requirement, the Secretary of State has been consulted through a separate letter issued on 14 October 2020.

## **6. Regulatory Impact Assessment (RIA)**

It was not considered necessary to carry out a regulatory impact assessment for this instrument as no impact on the business, public or voluntary sectors are foreseen. The Regulations only introduce minor technical corrections. This is in line with the Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments.

## Annex: Statements under the European Union (Withdrawal) Act 2018

### Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

| Statement        | Where the requirement sits   | To whom it applies   | What it requires  |
|------------------|--|--|---|
| Sifting          | Paragraphs 3(7) and 4(3), Schedule 7<br><br>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders) | The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI<br><br>Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement                   | A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee) |
| Appropriate-ness | Sub-paragraph (2) of paragraph 28, Schedule 7  | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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  | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement                                      | A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.   |

|                   |  |  |   |
|-------------------|--|--|---|
|                   |  | when exercising powers in Schedule 2   |   |
| Equalities        | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | <p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement which the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p> |
| Explanations      | Sub-paragraph (6) of paragraph 28, Schedule 7          | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement to 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 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.   |
| Sub-delegation    | Paragraph 30, Schedule 7                               | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.                      | A statement to explain why it is appropriate to create such a sub-delegated power.  |

|         |  |  |             |
|---------|--|--|-------------|
|         |  | Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority |             |
| Urgency | Sub-paragraph (2) and (8) of paragraph 7, Schedule 7 | Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7  | A statement |

## **Part 2**

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

#### **1. Sifting statement(s)**

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of the Senedd Cymru (i.e. the negative procedure). This is the case because the changes made are minor and technical in nature. There is no change to policy”

#### **2. Appropriateness statement**

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 does no more than is appropriate. This is the case because the Regulations largely correct technical deficiencies in the Welsh legislation that will arise at the end of the Implementation Period. The Regulations ensure that the Welsh statutory instruments included remain up to date and continue to operate effectively in Wales following the Implementation Period. This is in line with government policy.”

#### **3. Good reasons**

The Minister for Environment, Energy and Rural Affairs 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. This is because the provisions ensure that the Welsh regulations amended by this instrument continue to be operable following the end of the Implementation Period”.

#### **4. Equalities**

The Minister for Environment, Energy and Rural Affairs has made the following statement:



“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.”

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

## **5. Explanations**

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

## **6. Criminal offences**

Not applicable/required.

## **7. Legislative sub-delegation**

Not applicable/required.

## **8. Urgency**

Not applicable/required.

## **SL(5)669 – The Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020**

### **Background and Purpose**

The Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (“the Regulations”) are made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”) in order to address failures of retained EU law to operate effectively arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to two statutory instruments:

- The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the first Brexit SI”).
- The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the second Brexit SI”).

The first Brexit SI and the second Brexit SI made various amendments to legislation dealing with environmental impact assessment and town and country planning to ensure that the statute book remains operable following the UK’s exit from the EU, and addressed deficiencies in domestic legislation arising from EU Exit. The first Brexit SI also made minor amendments to existing legislation deriving from EU requirements.

The amendments made by these Regulations reflect the transition period in Article 127 of the Withdrawal Agreement. References to 31 January 2020, which currently read “exit day”, will be changed to “IP Completion Day” referring to 11pm on 31 December 2020.

### **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 point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

A draft of these Regulations was laid before the Senedd for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

## Implications arising from exiting the European Union

None.

## Welsh Government response

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**1 December 2020**



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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

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**2020 No. 1324 (W. 292)**

**EXITING THE EUROPEAN  
UNION, WALES**

**ENVIRONMENTAL  
PROTECTION, WALES**

**AGRICULTURE, WALES**

**TOWN AND COUNTRY  
PLANNING, WALES**

The Environmental Assessments  
and Town and Country Planning  
(Miscellaneous Amendments)  
(Wales) (EU Exit) Regulations 2020

**EXPLANATORY NOTE**

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

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to the Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and to the Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019. They amend references to exit day so as to refer instead to IP completion day.

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

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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

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**2020 No. 1324 (W. 292)**

**EXITING THE EUROPEAN  
UNION, WALES**

**ENVIRONMENTAL  
PROTECTION, WALES**

**AGRICULTURE, WALES**

**TOWN AND COUNTRY  
PLANNING, WALES**

The Environmental Assessments  
and Town and Country Planning  
(Miscellaneous Amendments)  
(Wales) (EU Exit) Regulations 2020

*Sift requirements satisfied* 16 November 2020

*Made* 19 November 2020

*Laid before Senedd Cymru* 23 November 2020

*Coming into force in accordance with  
regulation 1(2)*

The Welsh Ministers, in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018<sup>(1)</sup>, make the following Regulations.

The requirements of paragraph 4(a) of Schedule 2 to the European Union (Withdrawal) Act 2018 (relating to the requirement for consultation in certain circumstances) and of paragraph 4(2) of Schedule 7 to that Act (relating to the appropriate Senedd Cymru

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(1) 2018 c. 16. See section 20(1) of that Act for the definition of “devolved authority”.

scrutiny procedure for these Regulations) have been satisfied.

#### **Title and commencement**

**1.**—(1) The title of these Regulations is the Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

(2) These Regulations come into force immediately before IP completion day.

#### **Amendment to the Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

**2.**—(1) The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019<sup>(1)</sup> are amended as follows.

(2) In regulation 5(11)(a)(ii), for “exit day” substitute “IP completion day”.

(3) In regulation 6(16)(a), for “exit day” substitute “IP completion day”.

#### **Amendment to the Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

**3.**—(1) The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019<sup>(2)</sup> are amended as follows.

(2) In regulation 5(2)—

- (a) in sub-paragraph (a), for “exit day” substitute “IP completion day”;
- (b) in sub-paragraph (b), for “exit day”, in both places it occurs, substitute “IP completion day”.

(3) In regulation 6—

- (a) in paragraph (1), for “exit day” substitute “IP completion day”;
- (b) in paragraph (2), for “exit day”, in both places it occurs, substitute “IP completion day”.

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(1) S.I. 2019/245 (W. 60).

(2) S.I. 2019/456 (W. 109).

*Julie James*

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

19 November 2020

## **Explanatory Memorandum to the Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020**

This Explanatory Memorandum has been prepared by the Planning Directorate 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 Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Julie James MS  
Minister for Housing and Local Government  
23 November 2020



## **PART 1**

### **1 Description**

- 1.1 This instrument makes amendments to two statutory instruments:
  - The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the first Brexit SI”).
  - The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the second Brexit SI”).
- 1.2 The first Brexit SI and the second Brexit SI made various amendments to legislation dealing with environmental impact assessment and town and country planning to ensure that the statute book remains operable following the UK’s exit from the EU and addressed deficiencies in domestic legislation arising from EU Exit. The first Brexit SI also made minor amendments to existing legislation deriving from EU requirements.
- 1.3 The amendments made by this instrument reflect the transition period in Article 127 of the Withdrawal Agreement. References to 31 January 2020 which currently read “exit day” will be changed to “IP Completion Day” referring to 11pm on 31 December 2020.

### **2 Matters of special interest to the Legislation, Justice and**

**Constitution Committee** This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”), and was therefore required to be laid for sifting by the Legislation, Justice and Constitution Committee.

- 2.2 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it was proposed that the instrument be subject to the negative procedure. The proposed negative instrument was laid for sifting on 3 November and the Committee agreed that the appropriate procedure for these Regulations is the negative resolution procedure. The Committee’s report can be found on the Senedd Cymru website at: <https://senedd.wales/laid%20documents/cr-ld13815/cr-ld13815-e.pdf>

### **3 Legislative background**

- 3.1 This instrument is being made using the power conferred on a devolved authority in paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively arising from the withdrawal of the United Kingdom from the European Union. The Welsh Ministers are a devolved authority for these purposes (see section 20(1) of that Act). In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

- 3.2 These Regulations are being made under the negative resolution procedure.

#### **4 Purpose and intended effect of the legislation**

##### ***What did any relevant EU law do before exit day?***

- 4.1 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the "EIA Directive"), as amended by Directive 2014/52/EU, applies to a wide range of public and private projects, which are listed in Annexes I and II of the Directive. The EIA Directive sets out a formal process intended to ensure decisions on large, complex projects are taken with the full knowledge of their possible environmental effects. Those projects which fall within a project category in Annex 1 to the EIA Directive automatically require Environmental Impact Assessment (EIA). Whether projects listed in Annex 2 require EIA is dealt with on a case by case basis. This screening process considers whether the project is likely to have significant effects on the environment and if so, it must be subject to EIA. The EIA Directive is transposed by separate regulations for each sector.
- 4.2 Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC seeks to prevent major accidents involving chemical storage and to limit their consequences for human health and the environment. The Directive, commonly known as the Seveso Directive has three strands, the first of which is to ensure on site safety controls are in place to prevent major accidents occurring. The second aspect of the Directive is to ensure emergency plans are prepared to respond to accidents if they happen. Thirdly, the Directive requires member states to use its land use planning policies and controls to keep development sufficiently away from establishments, so if an accident were to occur, the deaths, injuries, damage to buildings and to the environment are minimised. This third strand is a devolved matter which is transposed by a number of town and country planning statutory instruments.
- 4.3 Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area (recast) was transposed by the Railway (Licensing of Railway Undertakings) Regulations 2005 ("the 2005 Regulations"). The main effect of the 2005 Regulations was to create the "European licence". Any operator established in Great Britain could be granted a European licence, subject to the Office of Railway Regulation being satisfied that the applicant met certain conditions regarding their professional competence, financial fitness and insurance cover. Once granted, the licence was valid for the holder to provide train services in any EEA Member State. This was within the context of a long term European programme to establish a "single European Railway Area"

within which train operators would have equal access to infrastructure and competition, and be subject to common safety and operating rules.

### ***Why is it being changed?***

- 4.4 This instrument uses powers conferred by the 2018 Act to update the first and second Brexit SIs to ensure they reflect Article 127 of the Withdrawal Agreement. As the statutory instruments were made to facilitate EU exit prior to the Withdrawal Agreement, they need minor technical corrections to ensure that references which are intended to refer to the last moment on which the UK is required to comply with EU law are changed to reflect the transition period. This will ensure the following Welsh legislation relating to environmental impact assessment and town and country planning will continue to operate effectively after the UK has left the EU.

### **The first Brexit SI**

- 4.5 The first Brexit SI amends Welsh legislation in respect of environmental assessment. This instrument updates the first Brexit SI by amending references that currently read to “exit day” (31 January 2020) which will be changed to “IP Completion Day” (11pm on 31 December 2020). The domestic legislation affected by this amendment to the first Brexit SI is:
- The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017
  - The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

### **The second Brexit SI**

- 4.6 The second Brexit SI amends Welsh legislation in respect of town and country planning. This instrument updates the second Brexit SI by again amending references from “exit day” to “IP Completion Day”. The domestic legislation affected by this amendment to the second Brexit SI is:
- The Town and Country Planning (Control of Advertisements) Regulations 1992 (which contain references to a railway undertaking licence)
  - The Planning (Hazardous Substances) (Wales) Regulations 2015

### ***What will it now do?***

- 4.8 The instrument will address deficiencies in domestic legislation arising from the withdrawal of the UK from the EU, and ensures that environmental impact assessment, advertisement consent and land use planning for hazardous substances continue to operate effectively on EU exit to protect public health and the environment.

## **5 Consultation**

- 5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable by the withdrawal of the United Kingdom from the European Union.

## **6 Regulatory Impact Assessment (RIA)**

- 6.1 A Regulatory Impact Assessment has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

# 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 of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

| Statement        | Where the requirement sits  | To whom it applies   | What it requires  |
|------------------|---|--|---|
| Sifting          | Paragraphs 3(7) and 4(3), Schedule 7<br><br><i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i> | The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI<br><br>Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement                   | A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee) |
| Appropriate-Ness | Sub-paragraph (2) of paragraph 28, Schedule 7   | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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   | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.  | A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.   |

|                   |  |  |  |
|-------------------|--|--|--|
|                   |  | Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2   |  |
| Equalities        | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | <p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p> |
| Explanations      | Sub-paragraph (6) of paragraph 28, Schedule 7          | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement to 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 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.  |
| Sub-delegation    | Paragraph 30, Schedule 7                               | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved                                 | A statement to explain why it is appropriate to create such a sub-delegated power.   |

|         |  |   |  |
|---------|--|---|--|
|         |  | <p>Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p> |  |
| Urgency | Sub-paragraph (2) and (8) of paragraph 7, Schedule 7 | Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7   | A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion. |

## Part 2

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

#### 1. Sifting statement(s)

The Minister for Housing and Local Government, Julie James MS has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of Senedd Cymru (i.e. the negative procedure). This is the case because the changes being made are technical in nature to reflect the fact that although the UK left the EU on 31 January 2020, it continued to abide by relevant EU law during the implementation period until 11pm on 31 December 2020.”

#### 2. Appropriateness statement

The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

#### 3. Good reasons

The Minister for Housing and Local Government, Julie James, 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. This is because the provisions ensure that protections provided by the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017, the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, the Town and Country Planning (Control of Advertisements) Regulations 1992 and the Planning (Hazardous Substances) (Wales) Regulations 2015 continue to be operate effectively after the UK leaves the European Union.”



#### **4. Equalities**

- 4.1 The Minister for Housing and Local Government, Julie James, 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.”

- 4.2 The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Julie James, 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.”

- 4.3 Little or no impact on equalities is expected.

#### **5. Explanations**

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

#### **6. Criminal offences**

Not applicable/required.

#### **7. Legislative sub-delegation**

Not applicable/required.

#### **8. Urgency**

Not applicable/required.

## Statutory Instruments with Clear Reports 07 December 2020

### SL(5)667 – The Government of Maintained Schools (Wales) (Amendment) Regulations 2020

#### Procedure: Negative

The Government of Maintained Schools (Wales) (Amendment) Regulations 2020 (“the 2020 Amendment Regulations”) amends The Government of Maintained Schools (Wales) Regulations 2005 (“the 2005 Regulations”).

These Regulations remove the provision disqualifying a person from holding or continuing in office as a governor when he or she is liable to be detained under the Mental Health Act 1983.

They provide for governing bodies to conduct their meetings by remote access as well as face to face. They also provide for school governing bodies to make electronic records of their meetings and decisions with the aim of facilitating better record keeping, and bring the regulations up to date in respect of the persons whose employment is prohibited or restricted.

Specifically, the 2020 Amendment Regulations amend the 2005 Regulations in the following ways:

- Regulations 45 and 60 are amended to allow meetings to take place by remote access. This change clarifies that virtual, remote access meetings (that is tele or video-conference) are permitted, bringing regulations up to date with current common practice. The conditions permitting remote access meetings are as follows:

- (1) participants will be fully able to make representations/discharge functions;
- (2) participants agree to the meeting being held using remote access;
- (3) each participant has access to the electronic means to allow them to hear/be heard, see/be seen;
- (4) meeting is capable of being held fairly and transparently.

- Regulations 47 and 61 are amended to allow minutes, records, etc. to be kept electronically. This change will facilitate better record keeping and bring regulations up to date with current common practice.



- Schedule 5 is amended so that the disqualification criteria relating to the Mental Health Act 1983 is removed, thereby precluding discrimination against people who are liable to be detained under the Act.

**Parent Act:** Education Act 2002

**Date Made:** 20 November 2020

**Date Laid:** 23 November 2020

**Coming into force date:** 18 December 2020

## **SL(5)668 - The Federation of Maintained Schools (Wales) (Amendment) Regulations 2020**

### **Procedure: Negative**

These Regulations amend the Federation of Maintained Schools (Wales) Regulations 2014.

These Regulations provide that meetings of governing bodies and of governing body committees may be held by remote access if the requisite conditions are met. These Regulations enable governing bodies and committees to keep the minutes and agenda in electronic form and for the minutes to be signed electronically.

These Regulations remove the provision disqualifying a person from holding or continuing in office as a governor when he or she is liable to be detained under the Mental Health Act 1983.

Specifically, the 2020 Amendment Regulations amend the 2014 Regulations in the following ways:

- Regulations 57 and 72 are amended to allow meetings to take place by remote access. This change clarifies that virtual, remote access meetings (that is tele- or video-conference) are permitted, bringing regulations up to date with current common practice.
- Regulations 59 and 73 are amended to allow minutes, records, etc. to be kept electronically. This change will facilitate better record keeping and bring regulations up to date with current common practice.
- Schedule 7 is amended by removal of the disqualification criteria relating to the Mental Health Act 1983, thereby precluding discrimination against people who are liable to be detained under the Act.

**Parent Act:** Education Act 2002

**Date Made:** 20 November 2020



**Date Laid:** 23 November 2020

**Coming into force date:** 18 December 2020

## **SL(5)676 – The Welshpool Church in Wales Primary School (Change to School Session Times) Order 2020**

### **Procedure: Negative**

The Welshpool Church in Wales Primary School (Change to School Session Times) Order 2020 disapplies the requirements in regulation 4(2), (3) and (4) of the Changing of School Session Times (Wales) Regulations 2009 (“the Regulations”) to the governing body of Welshpool Church in Wales Primary School.

This will allow the governing body to make alterations to when the school sessions start and end, including when the school day starts and ends at any time in the school year without having to wait for the start of a school term or academic year or give a minimum period of notice. Article 3 specifies that the Order shall have effect until 31 August 2021.

Welshpool Church in Wales Primary School is moving to a new site in January 2021, bringing together all its pupils from three sites to one. The school wishes to bring the start of the school day forward by five minutes and to end classes for junior pupils 20 minutes earlier. The governing body has applied for exemption of regulation 4(2), (3) and (4) of the Regulations to allow the them to make alterations to the timing of school session times including the timing of the end of the school day, without having to give three months’ notice or to wait until the start of the academic year for the new arrangements to come into force.

The need to change session times is two-fold:

- a) to unify the session times for all pupils in both the Foundation Phase and Key Stage 2; and
- b) to avoid the start and finish of the high school day which is in close proximity to the new school building and which could cause health and safety issues for Welshpool Church in Wales Primary School pupils walking to school.

Given the urgency of the situation in terms of immediate health and safety concerns and the commensurate need to implement the changes in time for the new site opening in January 2021, the governing body does not consider that it can give three months notice of the changes and wait until the 1 September 2021 to implement them hence the need for this Order.



**Parent Act:** Education Act 2002  
**Date Made:** 24 November 2020  
**Date Laid:** 25 November 2020  
**Coming into force date:** 01 January 2021



# Agenda Item 4.1

## **SL(5)662 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) (No. 2) Regulations 2020**

### **Background and Purpose**

These Regulations provide for rules on penalties in relation to infringements of Regulation (EU) 2016/2031 on protective measures against pests of plants and Regulation (EU) 2017/625 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. These Regulations do so by making provision for civil sanctions.

The civil sanctions will sit alongside existing criminal sanctions. The civil sanctions consist of compliance, restoration and stop notices, fixed and variable monetary penalties, as well as the ability to accept third party undertakings and enforcement undertakings.

### **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 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.**

We note that civil penalties paid under these Regulations will be paid into the Welsh Consolidated Fund.



## Implications arising from exiting the European Union

The substantive provisions of the EU Regulations mentioned above do not need to be implemented in the United Kingdom because they automatically have direct effect in the United Kingdom until the end of the transition period on 31 December 2020. However, domestic legislation (i.e. these Regulations) is required to supplement the EU Regulations. For example, these Regulations provide for the enforcement of the EU Regulations.

After the transition period ends on 31 December 2020, these Regulations and the EU Regulations will form part of retained EU law and, therefore, will continue to apply in Wales.

## Welsh Government response

A Welsh Government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**30 November 2020**



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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

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**2020 No. 1303 (W. 288)**

**PLANT HEALTH, WALES**

**The Official Controls (Plant Health  
and Genetically Modified  
Organisms) (Wales) (Amendment)  
(No. 2) 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).

These Regulations make provision for civil sanctions in respect of offences set out in Part 11 of the 2020 Regulations. The suite of sanctions available to the appropriate authority (the Welsh Ministers are the “appropriate authority” in Wales) consists of compliance, restoration and stop notices, fixed and variable monetary penalties, as well as the ability to accept third party undertakings and enforcement undertakings.

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.



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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

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**2020 No. 1303 (W. 288)**

**PLANT HEALTH, WALES**

**The Official Controls (Plant Health  
and Genetically Modified  
Organisms) (Wales) (Amendment)  
(No. 2) Regulations 2020**

*Made* 16 November 2020

*Laid before Senedd Cymru* 18 November 2020

*Coming into force* 15 December 2020

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

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

**Title and commencement**

1. The title of these Regulations is the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) (No. 2) Regulations 2020 and they come into force on 15 December 2020.

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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.

**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<sup>(1)</sup> are amended as follows.

(2) For regulation 31(3) substitute—

“(3) Paragraph (1) does not apply—

- (a) to any premises which are used wholly or mainly as a private dwelling unless 24 hours’ notice has been given to the occupier, or
- (b) in relation to any notice served under Schedule 4A.”

(3) In regulation 36(1), at the end insert “or Schedule 4A”.

(4) In regulation 37—

- (a) in paragraph (3), after “plant health inspector” insert “or the appropriate authority”;
- (b) in paragraph (6), in the definition of “notice”, after “plant health inspector” insert “or the appropriate authority”.

(5) In regulation 39—

- (a) the unnumbered paragraph becomes paragraph (1) of that regulation;
- (b) after paragraph (1) as renumbered, insert—  
“(2) Paragraph (1)(a) does not apply in relation to any notice served under Schedule 4A.”

(6) In regulation 46(1), after “this Part” insert “or paragraph 22 of Schedule 4A (failure to comply with a stop notice)”.

(7) In regulation 47(1), after “this Part” insert “or paragraph 22 of Schedule 4A (failure to comply with a stop notice)”.

(8) After regulation 48 insert—

**“PART 11A**

**Civil Sanctions**

**Civil sanctions**

**48A.** Schedule 4A (which provides for civil sanctions) has effect.”

(9) After Schedule 4, insert the Schedule contained in the Schedule to these Regulations.

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

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

**SCHEDULE** Regulation 2(9)

**Insertion of new Schedule 4A**

**“SCHEDULE 4A** Regulation 48A

**Civil sanctions**

**PART 1**

**Power to impose civil sanctions**

**Compliance notice**

**1.**—(1) This paragraph applies where the appropriate authority is satisfied on the balance of probabilities that a person has committed an offence under Part 11 of these Regulations.

(2) The appropriate authority may by notice (a “compliance notice”) impose on that person a requirement to take such steps as the appropriate authority may specify, within such period as it may specify, to secure that the offence does not continue or recur.

(3) A compliance notice may not be imposed on more than one occasion in relation to the same act or omission.

**Restoration notice**

**2.**—(1) This paragraph applies where the appropriate authority is satisfied on the balance of probabilities that a person has committed an offence under Part 11 of these Regulations.

(2) The appropriate authority may by notice (a “restoration notice”) impose on that person a requirement to take such steps as the appropriate authority may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed.

(3) A restoration notice may not be imposed on more than one occasion in relation to the same act or omission.

**Imposition of a fixed monetary penalty**

**3.**—(1) This paragraph applies where the appropriate authority is satisfied on the balance of probabilities that a person has committed an offence under Part 11 of these Regulations.

(2) The appropriate authority may by notice impose on that person a requirement to pay a monetary penalty to the appropriate authority of £250 where the person is an individual and £2000 where the person is a body corporate, partnership or unincorporated association (a “fixed monetary penalty”).

(3) A fixed monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) The appropriate authority may recover any fixed monetary penalty imposed under this paragraph as if payable under an order of the court.

(5) A fixed monetary penalty paid to the appropriate authority under this paragraph must be paid into the Consolidated Fund.

#### **Imposition of a variable monetary penalty**

**4.**—(1) This paragraph applies where the appropriate authority is satisfied on the balance of probabilities that a person has committed an offence under Part 11 of these Regulations.

(2) The appropriate authority may by notice impose on that person a requirement to pay a monetary penalty to the appropriate authority in such amount as it may determine (a “variable monetary penalty”).

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) The amount of a variable monetary penalty must not exceed £250,000.

(5) Before serving a notice relating to a variable monetary penalty, the appropriate authority may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

(6) The appropriate authority may recover any variable monetary penalty imposed under this paragraph as if payable under an order of the court.

(7) A variable monetary penalty paid to the appropriate authority under this paragraph must be paid into the Consolidated Fund.

#### **Notice of intent**

**5.**—(1) If the appropriate authority proposes to serve on a person a compliance notice, a restoration notice or a notice imposing a fixed

or variable monetary penalty under this Part, it must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for serving the proposed notice;
- (b) the requirements of the proposed notice and, in the case of a penalty, the amount to be paid and how payment may be made;
- (c) in the case of a fixed monetary penalty—
  - (i) a statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was served, and
  - (ii) information as to the effect of discharging the penalty;
- (d) information as to—
  - (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was served, and
  - (ii) the circumstances in which the appropriate authority may not serve the proposed notice.

### **Combination of penalties**

**6.**—(1) The appropriate authority may not serve a notice of intent relating to a fixed monetary penalty if, in relation to the same offence—

- (a) a compliance notice, restoration notice or stop notice has been served on that person (see paragraphs 1, 2 and 17),
- (b) a variable monetary penalty has been imposed on that person (see paragraph 4), or
- (c) a third party or enforcement undertaking has been accepted from that person (see paragraphs 9 and 23).

(2) The appropriate authority may not serve a notice of intent relating to a compliance notice, a restoration notice or a variable monetary penalty, or serve a stop notice, on any person if, in relation to the same offence—

- (a) a fixed monetary penalty has been imposed on that person, or

- (b) that person has discharged liability for a fixed monetary penalty following service of a notice of intent to impose that penalty.

### **Discharge of liability – fixed monetary penalties**

7. A fixed monetary penalty is discharged if a person on whom a notice of intent is served pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was served.

### **Making representations and objections**

8. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice is served make written representations and objections to the appropriate authority in relation to the proposed service of a compliance notice, restoration notice or notice imposing a fixed or variable monetary penalty.

### **Third party undertakings**

9.—(1) A person on whom a notice of intent relating to a compliance notice, a restoration notice or a variable monetary penalty is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence (a “third party undertaking”).

(2) The appropriate authority may accept or reject a third party undertaking.

(3) The appropriate authority must take into account any third party undertaking that it accepts in its decision as to whether or not to serve a final notice, and, if it serves a notice imposing a variable monetary penalty, the amount of the penalty.

### **Final notice**

10.—(1) After the end of the period for making representations and objections, the appropriate authority must decide whether to impose the requirements described in the notice of intent, with or without modifications.

(2) Where the appropriate authority decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 11 (for compliance or restoration notices) or 12 (for fixed or variable monetary penalties).

(3) The appropriate authority may not impose a final notice on a person where it is satisfied that the person would not, by reason of any defence, permit or licence, be liable to be convicted of the offence to which the notice relates.

(4) Where the appropriate authority serves a final notice relating to a fixed monetary penalty in respect of any offence, the appropriate authority may not in relation to that offence serve—

- (a) a compliance notice,
- (b) a restoration notice,
- (c) a notice imposing a variable monetary penalty, or
- (d) a stop notice.

(5) This paragraph does not apply to a person who has discharged a fixed monetary penalty in accordance with paragraph 7.

**Contents of final notice: compliance and restoration notices**

**11.** A final notice relating to a compliance notice or a restoration notice must include information as to—

- (a) the grounds for serving the notice,
- (b) what compliance or restoration is required and the period within which it must be completed,
- (c) rights of appeal, and
- (d) the consequences of failing to comply with the notice.

**Contents of final notice: fixed and variable monetary penalties**

**12.** A final notice relating to a fixed or variable monetary penalty must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount to be paid,
- (c) how payment may be made,
- (d) the period within which payment must be made (the “payment period”), which must be not less than 56 days beginning with the day on which the notice is served,
- (e) in the case of a fixed monetary penalty, details of the early payment discount (see paragraph 13) and late payment penalties (see paragraph 15(2) and (3)),



- (f) rights of appeal, and
- (g) the consequences of failing to comply with the notice.

**Fixed monetary penalty: discount for early payment**

**13.** If a person who was served with a notice of intent relating to a proposed fixed monetary penalty made representations or objections concerning that notice within the time limit specified in paragraph 8, that person may discharge the final notice by paying 50% of the final penalty within 28 days beginning with the day on which the final notice was served.

**Appeals against a final notice**

**14.**—(1) The person on whom a final notice is served may appeal against it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
- (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
- (e) that the decision was unreasonable for any other reason;
- (f) that the decision was wrong for any other reason.

**Fixed monetary penalty: non-payment within the stated payment period**

**15.**—(1) This paragraph applies to a final notice relating to a fixed monetary penalty.

(2) If the final penalty is not paid within the stated payment period, the amount payable is increased by 50%.

(3) In the case of an appeal which is unsuccessful, the penalty is payable within 28 days of the determination of the appeal, and if it is not paid within 28 days, the amount of the penalty is increased by 50%.

**Criminal proceedings**

**16.**—(1) If—

- (a) a compliance notice or restoration notice is served on any person,

- (b) a third party undertaking is accepted from any person,
- (c) a notice imposing a variable monetary penalty is served on any person, or
- (d) a fixed monetary penalty is served on any person,

that person may not at any time be convicted of an offence under Part 11 of these Regulations in respect of the act or omission giving rise to the compliance notice, restoration notice, third party undertaking, variable monetary penalty or fixed monetary penalty except in a case falling within paragraph (a) or (b) (and not also falling within paragraph (c)) where the person fails to comply with a compliance notice, restoration notice or third party undertaking (as the case may be).

(2) Criminal proceedings for offences to which a notice or third party undertaking in subparagraph (1) relates may be instituted at any time up to 6 months from the date from when the appropriate authority notifies the person against whom the proceedings are to be taken that the person has failed to comply with that notice or undertaking.

## PART 2

### Stop notices

#### **Stop notices**

**17.**—(1) The appropriate authority may serve a notice (a “stop notice”) on any person prohibiting that person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) A stop notice may only be served where—

- (a) the person is carrying on the activity or the appropriate authority reasonably believes that the person is likely to carry on the activity,
- (b) the appropriate authority reasonably believes that the activity is causing, or is likely to cause, economic or environmental harm, or adverse effects to plant health, and
- (c) the appropriate authority reasonably believes that the activity carried on, or likely to be carried on, by that person involves or is likely to involve, the commission of an offence under Part 11 of these Regulations.

(3) The steps referred to in sub-paragraph (1) must be steps to eliminate the risk of the offence being committed.

### **Contents of a stop notice**

**18.** A stop notice must include information as to—

- (a) the grounds for serving the stop notice,
- (b) the activity which is prohibited,
- (c) the steps the person must take to comply with the stop notice and the period within which they must be completed,
- (d) rights of appeal, and
- (e) the consequences of failing to comply with the notice.

### **Appeals**

**19.—**(1) The person on whom a stop notice is served may appeal against the decision to serve it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) that any step specified in the notice is unreasonable;
- (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
- (f) that the person would not, by reason of any defence, permit or licence have been liable to be convicted of the offence had the stop notice not been served;
- (g) that the decision was wrong for any other reason.

### **Completion certificates**

**20.—**(1) The appropriate authority must issue a certificate (a “completion certificate”) if, after service of a stop notice, the appropriate authority is satisfied that the person on whom it was served has taken the steps specified in the notice.

(2) A stop notice ceases to have effect on the issue of a completion certificate.

(3) The appropriate authority may require the person on whom the stop notice was served to provide sufficient information to determine that the steps specified in the notice have been taken.

(4) A person on whom a stop notice is served may at any time apply for a completion certificate.

(5) The appropriate authority must decide whether to issue a completion certificate and give written notice of the decision to the applicant (including information as to the right of appeal) within 14 days of the application.

(6) The applicant may appeal against a decision not to issue a completion certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

### **Compensation**

**21.**—(1) The appropriate authority must compensate a person for loss suffered as the result of the service of the stop notice or the refusal of a completion certificate if that person has suffered loss as a result of the notice or refusal and—

- (a) the stop notice is subsequently withdrawn or amended by the appropriate authority because the decision to serve it was unreasonable or any step specified in the notice was unreasonable,
- (b) the appropriate authority is in breach of its statutory obligations,
- (c) the person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable, or
- (d) the person successfully appeals against the refusal of a completion certificate and the First-tier Tribunal finds that the refusal was unreasonable.

(2) A person may appeal against a decision not to award compensation or the amount of compensation on the grounds that—

- (a) the appropriate authority's decision was unreasonable,
- (b) the amount offered was based on incorrect facts, or

- (c) the decision was wrong for any other reason.

### **Offences**

**22.** If a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable on summary conviction to a fine.

## **PART 3**

### **Enforcement undertakings**

#### **Enforcement undertakings**

**23.** Where the appropriate authority has reasonable grounds to suspect that a person has committed an offence under Part 11 of these Regulations, the appropriate authority may accept a written undertaking (an “enforcement undertaking”) given by that person to take such action as may be specified in the undertaking within such period as may be specified.

#### **Contents of an enforcement undertaking**

**24.—(1)** An enforcement undertaking must specify—

- (a) action to be taken by the person to secure that the offence does not continue or recur,
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed, or
- (c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the offence.

(2) It must specify the period within which the action must be completed.

(3) It must include—

- (a) a statement that the undertaking is made in accordance with this Schedule,
- (b) the terms of the undertaking, and
- (c) information as to how and when the person is to be considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both the

appropriate authority and the person who gave the undertaking agree in writing.

#### **Acceptance of an enforcement undertaking**

**25.**—(1) If the appropriate authority has accepted an enforcement undertaking from a person—

- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates, and
- (b) the appropriate authority may not serve on that person a compliance notice, restoration notice or stop notice, or impose a fixed or variable monetary penalty on that person, in respect of that act or omission.

(2) Paragraph (1) does not apply if a person who gave the undertaking has failed to comply with it or any part of it.

#### **Discharge of an enforcement undertaking**

**26.**—(1) If the appropriate authority is satisfied that an enforcement undertaking has been complied with, it must issue a certificate (a “discharge certificate”) to that effect.

(2) An enforcement undertaking ceases to have effect on the issue of a discharge certificate.

(3) The appropriate authority may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(4) The person who gave the undertaking may at any time apply for a discharge certificate.

(5) The appropriate authority must decide whether to issue a discharge certificate, and give written notice of the decision to the applicant (including information as to the right of appeal), within 14 days of such an application.

(6) The applicant may appeal against a decision not to issue a discharge certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

**Inaccurate, incomplete or misleading information**

27.—(1) A person who has given inaccurate, incomplete or misleading information in relation to an enforcement undertaking is to be regarded as not having complied with it.

(2) The appropriate authority may by notice in writing revoke a discharge certificate issued under paragraph 26 if it was issued on the basis of inaccurate, misleading or incomplete information.

**Non-compliance with an enforcement undertaking**

28.—(1) If a person does not comply with an enforcement undertaking, the appropriate authority may, in the case of an offence committed under Part 11 of these Regulations—

- (a) serve a compliance notice, restoration notice, variable monetary penalty, stop notice or non-compliance penalty, or
- (b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for offences to which an enforcement undertaking relates may be instituted at any time up to 6 months from the date on which the appropriate authority notifies the person that the person has failed to comply with the undertaking.

**PART 4**

**Non-compliance penalties**

**Non-compliance penalties**

29.—(1) The appropriate authority may serve a notice on a person imposing a monetary penalty (a “non-compliance penalty”) if that person fails to comply with—

- (a) a compliance notice, restoration notice or third party undertaking, irrespective of whether a variable monetary penalty was also imposed, or
- (b) an enforcement undertaking.

(2) The amount of the non-compliance penalty must be determined by the appropriate authority, and must be a percentage of the costs

of fulfilling the remaining requirements of the compliance notice, restoration notice, third party undertaking or enforcement undertaking.

(3) The percentage must be determined by the appropriate authority having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must include information as to—

- (a) the grounds for imposing the non-compliance penalty,
- (b) the amount to be paid,
- (c) how payment must be made,
- (d) the period in which payment must be made, which must not be less than 28 days beginning with the day on which the notice is served,
- (e) rights of appeal,
- (f) the consequences of failure to comply with the notice, and
- (g) any circumstances in which the appropriate authority may reduce the amount of the penalty.

(5) If the requirements of the compliance notice, restoration notice, third party undertaking or enforcement undertaking are fulfilled before the time specified for payment of the non-compliance penalty, the penalty is not payable.

(6) Following expiry of the specified payment period, the appropriate authority may recover the non-compliance penalty as if payable under an order of the court.

(7) A non-compliance penalty paid to the appropriate authority under this paragraph must be paid into the Consolidated Fund.

### **Appeals**

**30.**—(1) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(2) The grounds of appeal are—

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable for any reason;
- (d) that the amount of the penalty is unreasonable;



- (e) that the decision was wrong for another reason.

## PART 5

### Withdrawal and amendment of notices

#### **Withdrawing or amending a notice**

**31.** The appropriate authority may at any time in writing—

- (a) withdraw a compliance notice, restoration notice or stop notice, or amend the steps specified in such a notice in order to reduce the amount of work necessary to comply with it,
- (b) withdraw a notice imposing a fixed monetary penalty, or
- (c) withdraw a notice imposing a variable monetary penalty or a non-compliance penalty, or reduce the amount of the penalty specified in the notice.

## PART 6

### Cost recovery

#### **Recovery of enforcement costs**

**32.—**(1) The appropriate authority may serve a cost recovery notice if any of the conditions in sub-paragraph (3) are met.

(2) A cost recovery notice is a notice requiring the person to pay the appropriate authority's costs.

(3) The conditions are that the appropriate authority has—

- (a) imposed on the person a compliance notice under paragraph 1,
- (b) imposed on the person a restoration notice under paragraph 2,
- (c) imposed on the person a variable monetary penalty under paragraph 4, or
- (d) served on the person a stop notice under paragraph 17.

(4) In sub-paragraph (2), the reference to costs is a reference to any costs relating to preparing and giving the compliance notice, restoration notice, variable monetary penalty, or stop notice, as the case may be, and includes a reference to the costs of any related

investigation or expert advice (including legal advice).

(5) The cost recovery notice must include information as to—

- (a) the amount of the costs which must be paid,
- (b) the period in which payment must be paid, which must not be less than 28 days beginning with the day on which the notice is served,
- (c) how payment must be made,
- (d) the consequences of failing to make payment within the specified payment period, and
- (e) rights of appeal.

(6) Following expiry of the specified payment period, the appropriate authority may recover the costs referred to in the cost recovery notice as if payable under an order of the court.

(7) The person on whom the cost recovery notice is served may appeal against it.

(8) The grounds of appeal are—

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable for any reason;
- (d) that the amount of the penalty was unreasonable;
- (e) that the decision was wrong for any other reason.

## PART 7

### Appeals

#### **Appeals**

**33.**—(1) Any appeal under this Schedule must be made to the First-tier Tribunal.

(2) In any appeal the Tribunal must determine the standard of proof.

(3) An appeal against a notice served under this Schedule (other than a stop notice) suspends the effect of the notice appealed against until the appeal is determined or withdrawn.

(4) The Tribunal may, in relation to the imposition of a requirement or service of a notice—

- (a) withdraw the requirement or notice;
- (b) confirm the requirement or notice;
- (c) vary the requirement or notice;
- (d) take such steps as the appropriate authority could take in relation to the act or omission giving rise to the requirement or notice;
- (e) remit the decision whether to confirm the requirement or notice, or any other matter relating to that decision, to the appropriate authority.

## PART 8

### Guidance and publicity

#### **Guidance as to the use of civil sanctions**

**34.**—(1) The appropriate authority must publish guidance about its use of civil sanctions.

(2) The appropriate authority must revise and update guidance where appropriate.

(3) The appropriate authority must have regard to the guidance or revised and updated guidance in exercising its functions.

(4) In the case of guidance about compliance notices, restoration notices, fixed monetary penalties, variable monetary penalties, stop notices and non-compliance penalties, the guidance must contain information as to—

- (a) the circumstances in which the civil sanction is likely to be imposed,
- (b) the circumstances in which it is not likely to be imposed,
- (c) where relevant, rights to make representations and objections,
- (d) rights of appeal, and
- (e) in the case of guidance about variable monetary penalties and non-compliance penalties, the matters likely to be taken into account by the appropriate authority in determining the amount of the penalty (including voluntary reporting by a person of their own non-compliance).

(5) In the case of guidance about enforcement undertakings, the guidance must contain information as to—

- (a) the circumstances in which the appropriate authority is likely to accept an enforcement undertaking, and

- (b) the circumstances in which the appropriate authority is not likely to accept an enforcement undertaking.

#### **Consultation on guidance**

**35.** The appropriate authority must consult such persons as it considers appropriate before publishing—

- (a) any guidance, or
- (b) any significant revisions or updates to guidance which has already been published.

#### **Publication of enforcement action**

**36.—**(1) The appropriate authority must publish annually—

- (a) the cases in which civil sanctions have been imposed;
- (b) where the civil sanction is a compliance notice, a restoration notice or variable monetary penalty, the cases in which a third party undertaking has been accepted;
- (c) the cases in which an enforcement undertaking has been accepted.

(2) In sub-paragraph (1)(a), the reference to cases in which civil sanctions have been imposed does not include cases where a sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply in cases where the appropriate authority considers that publication would be inappropriate.”

**Explanatory Memorandum to the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) (No. 2) 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) (No. 2) Regulations 2020.

**Lesley Griffiths,**

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

**18 November 2020**

## **PART 1**

### **1. Description**

1.1. The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) (No. 2) Regulations 2020 (“this instrument”) amends the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (S.I. 2020/206) (W. 48) (“the 2020 Regulations”). It provides for rules on penalties in relation to infringements of Regulation (EU) 2016/2031 on protective measures against pests of plants (“the EU Plant Health Regulation”) and Regulation (EU) 2017/625 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 (“the EU Official Controls Regulation”), by making provision for civil sanctions in relation to the offences set out in Part 11 of the 2020 Regulations.

1.2. This instrument introduces a more targeted sanctioning regime for offences set out in Part 11 of the 2020 Regulations, which will help to increase compliance with the EU Plant Health Regulation and the EU Official Controls Regulation (“the EU Regulations”) and the 2020 Regulations and, in so doing, strengthen our biosecurity framework. The new regime will sit alongside the existing criminal sanctions regime, with criminal prosecution remaining as an option as a last resort for habitual/serious cases of non-compliance.

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

2.1. 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 this instrument amends Regulations that were subject to the negative procedure.

### **3. Legislative Background**

3.1. The EU Plant Health Regulation establishes controls and restrictions which apply to the import (from third countries), and movement within and between EU Member States, of certain plants, plant pests and other material (such as soil). The EU Official Controls Regulation provides for official controls and other official activities to ensure the application of rules in relation to various areas, including plant health.

3.2. The EU Regulations and the implementing legislation made under them 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 plant health authorities to carry out their obligations under the EU Regulations, enforce those Regulations and

implement derogations to various provisions in the EU legislation that are available to Member States. The 2020 Regulations contain these supplementary domestic provisions. Separate but parallel legislation is in place in England, Northern Ireland, and Scotland.

3.3. This instrument amends the 2020 Regulations to make provision for civil sanctions in respect of offences set out in Part 11 of those Regulations.

#### **4. Purpose and intended effect of the legislation**

4.1. The EU Official Controls Regulation sets out the general obligations of the plant health and other authorities as regards enforcement action and identifies actions in the event of non-compliance. The EU Regulations require Member States to lay down the rules on penalties applicable to infringements and take measures necessary to ensure that they are implemented to provide effective, proportionate and dissuasive sanctions.

4.2. The 2020 Regulations, which replaced the Plant Health (Wales) Order 2018 and the Plant Health (Forestry) Order 2005 (as applicable in Wales) in January 2020, give effect to the EU Regulations. As a review of alternative sanctions was not possible at the time the 2020 Regulations were made, it was decided to maintain the previous approach to enforcement and include the same mechanisms and penalties for non-compliance that were set out in the Plant Health (Wales) Order 2018 and the Plant Health (Forestry) Order 2005 (as applicable to Wales) and to review this approach in 2020. In practice, the Animal and Plant Health Agency's ("APHA") Plant Health and Seeds Inspectors take action to prevent the import of pests and diseases and to ensure compliance by serving statutory plant health notices on consignments that do not comply with the 2020 Regulations. Serious breaches can lead to prosecution.

4.3. The historic lack of prosecutions in the plant health regime suggests that the current enforcement tools are inadequate for targeted and proportionate enforcement. Many offences have historically been dealt with by way of a statutory plant health notice where criminal prosecution is not pursued, whereas a broader range of options would allow a flexible and proportionate enforcement response and help create a level-playing field between those who routinely comply with regulatory requirements and those who do not.

4.4. The suite of civil sanctions introduced by this instrument consist of compliance, restoration and stop notices, fixed and variable monetary penalties, as well as the ability to accept third party undertakings and enforcement undertakings. There are provisions that will enable APHA to recover its costs when imposing civil sanctions, in order to facilitate effective action. This instrument creates, as part of the civil sanctions regime, an offence in relation to a failure to comply with a stop notice. Failure to comply with a restoration or compliance notice may result in the person being criminally prosecuted for the original offence, set out in Part 11 of the 2020 Regulations, provided a variable monetary penalty was not also imposed.

Alternatively, APHA may, irrespective of whether a variable monetary penalty was also imposed, serve a notice on that person imposing a non-compliance penalty.

4.5. During the transition period following the UK's exit from the EU, the Welsh Ministers are under a duty to implement and apply EU legislation. Introducing these sanctions strengthens our biosecurity framework.

4.6. Although a civil sanctions regime will be introduced by this instrument, it will not be immediately employed. Work will begin on developing detailed guidance on how the sanctions will be applied and the Welsh Government will seek wider views from industry on draft guidance in 2021. Following this, and consideration of the responses received, the guidance will be published so that APHA are able to begin applying civil sanctions by the end of 2021.

4.7. In addition to allowing Welsh Government officials the time to draft detailed guidance and to consult upon it, this approach will also allow industry time to familiarise themselves with the civil sanctions regime before it is employed.

## **5. Consultation**

5.1. The UK Government carried out an initial engagement with stakeholders, representing interests in England and Wales, on the introduction of a civil sanctions regime and the range of sanctions, as well as the proposed thresholds for fixed and variable monetary penalties. The UK Government shared the responses they received with the Welsh Government. Stakeholders were in favour of the introduction of civil sanctions and the proposed phased implementation plan. Further engagement with stakeholders was conducted by the Welsh Government to, in part, ascertain whether there were any Wales-specific issues the stakeholders wished to raise. No further responses have been received.

5.2. As set out above, in 2021 the Welsh Government will consult on draft guidance regarding how the civil sanctions will be applied.

## **6. Regulatory Impact Assessment (RIA)**

6.1. 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.

6.2. There are no significant financial implications. The legislation applies equally to all businesses. The new measures apply to activities that are already subject to APHA inspection and surveillance programmes.

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

6.4. 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).



6.5. A Justice System Impact Identification has been completed and no significant impacts were identified.

# Agenda Item 4.2

## **SL(5)663 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020**

### **Background and Purpose**

The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (“the 2020 Regulations”) revoke and replace the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019 (together “the 2019 Regulations”).

The purpose of the Regulations is to ensure that existing student finance policy is continued for the academic year 2020/21 and is not adversely affected by the end of the transition period. The Regulations will therefore replicate the provisions in the 2019 Regulations. In addition, the Regulations will ensure EU nationals, and other groups who are settled under the EU Settlement Scheme, or who are to be treated as such under provisions of the Withdrawal Agreement, the EEA separation agreement and the Swiss citizens’ rights agreement are able to access the same support and home fee status as they would have been able to before the end of the transition period.

The Regulations will also amend the provisions which relate to the eligibility for student support of those settled in the UK but who exercise a right of residence elsewhere in the EU after IP completion day and then return to the UK and start a course before 1 August 2021. Due to UK nationals no longer being able to exercise this right of residence after IP completion day, were the provisions not amended, EU nationals would receive a more favourable treatment than UK nationals. An amendment will ensure that they receive equal treatment.

### **Procedure**

Negative.

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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



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

The Committee notes that these Regulations are made using enabling powers in education law, rather than under the European Union (Withdrawal) Act 2018 as is usually the case for statutory instruments relating to the United Kingdom's exit from the European Union. However, the Committee notes that the Minister for Education previously wrote to the Committee on 15 February 2019 in relation to the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, stating that:

*"Paragraph 1(1) of Schedule 2 to the Withdrawal Act contains a power for the Welsh Ministers to make regulations to "prevent, remedy or mitigate" any failure of "retained EU law" to operate effectively arising from the UK's withdrawal from the EU. There is an argument to be made that the proposed amendment regulations should be made under this power. However, I believe that the usual education law powers cited above are more appropriate for these purposes."*

The letter from the Minister went on to state that:

*"An important consideration in this decision was accessibility of the law. The Committee noted the importance of maintaining the accessibility of the law in the EU Exit SI programme in its recent report on scrutiny of legislation to leave the EU. Student support legislation is extremely complex and often amended. Regulations made under the Withdrawal Act will not be directly connected to education legislation, making discovery of the appropriate legislation more difficult than it ought to be for the public. Equally, in terms of accessibility, the title of the regulations will include "EU Exit" therefore making it clear that there is a link to the departure of the UK from the EU."*

The Welsh Government is asked to confirm whether the above reasoning also applies to these Regulations and, if not, why these Regulations are made using enabling powers in education law, rather than under the European Union (Withdrawal) Act 2018 as is usually the case for statutory instruments relating to the United Kingdom's exit from the European Union.

## **Implications arising from exiting the European Union**

These Regulations will form part of EU retained law even though they are not being made under the European Union (Withdrawal) Act 2018. The procedure is negative in accordance with the enabling powers.

## **Welsh Government response**

These Regulations revoke and replace (with additions and amendments) the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019. The same reasoning regarding the enabling powers as outlined above therefore applies to these Regulations.



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



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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

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**2020 No. 1302 (W. 287)**

**EXITING THE EUROPEAN  
UNION, WALES**

**EDUCATION, WALES**

**The Education (Student Finance)  
(Miscellaneous Amendments)  
(Wales) (EU Exit) Regulations 2020**

**EXPLANATORY NOTE**

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

These Regulations make amendments to—

- (a) the Education (Fees and Awards) (Wales) Regulations 2007,
- (b) the Education (European University Institute) (Wales) Regulations 2014,
- (c) the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015,
- (d) the Education (Student Support) (Wales) Regulations 2017,
- (e) the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017,
- (f) the Education (Student Support) (Wales) Regulations 2018 (“the Student Support Regulations”),
- (g) the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018, and
- (h) the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

Regulation 2 revokes the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019 which were prepared for a “no-deal” Brexit and do not reflect amendments required to implement the EU withdrawal

agreement, EEA EFTA separation agreement and the Swiss citizens' rights agreement.

The principal amendments which these Regulations make to the Student Support Regulations ensure that the provisions continue to operate effectively following the withdrawal of the United Kingdom from the European Union and are as follows.

Regulations 31 and 32 amend definitions and references relating to the European Economic Area and the European Union used in Schedules 2 and 3 to the Student Support Regulations.

Regulation 32 also amends references to "Member state" in Schedule 3.

Regulation 31(9) amends the definition of "right of permanent residence" in paragraph 11 of Schedule 2 to the Student Support Regulations. The amended definition will capture those who would have had a right of permanent residence under Directive 2004/38/EC as it had effect immediately before implementation period completion day but who, after implementation period completion day, will instead have such rights under the EU withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement, as implemented by the residence scheme immigration rules (defined in section 17(1) of the European Union (Withdrawal Agreement) Act 2020).

Regulation 31(2)(a) amends paragraph 1(2) of Schedule 2 to the Student Support Regulations to ensure that students who would have had a right of permanent residence under Directive 2004/38/EC but who now meet the requirements in Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens' rights agreement are eligible for student support on the same basis as if they had a right of permanent residence.

Regulation 31(3)(b) amends paragraph 4 of Schedule 2 to ensure that a person who would have been eligible for support under this paragraph before implementation period completion day will continue to be eligible on and after implementation period completion day. Regulation 31(5) makes equivalent amendments to paragraph 6 of Schedule 2 and regulation 31(6) makes equivalent amendments to paragraph 7 of Schedule 2.

Regulations 29(a) and 33(2)(a) are consequential on regulation 31(5)(c) and amend regulation 80 of, and paragraph 4 of Schedule 5 to, the Student Support Regulations respectively. Regulation 80(2)(a)(iii) and paragraph 4(2)(c) of Schedule 5 provide that a student who becomes a family member of an EU national during the course of an academic year may qualify for

support in respect of that academic year. The amendments made by regulations 29 and 33 extend this provision to a student who becomes a family member of a person who is eligible by virtue of the new paragraph 6(1A) of Schedule 2.

Regulations 29(b), 30 and 33(2)(b) are consequential on regulation 31(2)(a) and amend regulations 80 and 81 of, and paragraph 4 of Schedule 2 to, the Student Support Regulations. Where those provisions currently refer to a person acquiring the right of permanent residence, they will instead refer to a student becoming a person described in paragraph 1(2)(a) of Schedule 2.

Regulation 31(4) makes amendments to paragraph 5 of Schedule 2 to the Student Support Regulations to reflect the fact that Directive 2004/38/EC will no longer have force in the United Kingdom on and after implementation period completion day.

Regulations 3 to 5 make equivalent amendments to the Education (Fees and Awards) (Wales) Regulations 2007.

Regulations 6 to 8 make equivalent amendments to the Education (European University Institute) (Wales) Regulations 2014.

Regulation 9 makes equivalent amendments to the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015.

Regulations 10 to 23 make equivalent amendments to the Education (Student Support) (Wales) Regulations 2017.

Regulations 24 to 27 make equivalent amendments to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017.

Regulations 34 to 37 make equivalent amendments to the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018.

Regulations 38 to 41 make equivalent amendments to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

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.

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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

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**2020 No. 1302 (W. 287)**

**EXITING THE EUROPEAN  
UNION, WALES**

**EDUCATION, WALES**

**The Education (Student Finance)  
(Miscellaneous Amendments)  
(Wales) (EU Exit) Regulations 2020**

*Made* 17 November 2020

*Laid before Senedd Cymru* 18 November 2020

*Coming into force in accordance with  
regulation 1(2) and (3)*

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State under sections 1 and 2 of the Education (Fees and Awards) Act 1983<sup>(1)</sup> and sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998<sup>(2)</sup>

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(1) 1983 c. 40; section 1 was amended by the Education Reform Act 1988 (c. 40), Schedule 12, paragraph 91; the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 19; the Education Act 1994 (c. 30), Schedule 2, paragraph 7; the Education Act 1996 (c. 56), Schedule 37, paragraph 57; the Learning and Skills Act 2000 (c. 21), Schedule 9, paragraphs 1 and 11; the Education Act 2002 (c. 32), Schedule 21, paragraph 5 and Schedule 22; the Education Act 2005 (c. 18), Schedule 14, paragraph 9; S.I. 2005/3238, Schedule 1, paragraph 9; S.I. 2010/1158, Schedule 2, paragraph 1; the Education Act 2011 (c. 21), Schedule 5, paragraph 5 and Schedule 16, paragraph 5; and the Deregulation Act 2015 (c. 20), Schedule 14, paragraph 33. Section 2 was amended by the Teaching and Higher Education Act 1998 (c. 30), section 44 and Schedule 4.

(2) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000 (c. 21), section 146 and Schedule 11; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6; the Finance Act 2003 (c. 14), section 147; the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7; the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257; the Education Act 2011 (c. 21), section 76; S.I. 2013/1181 and the Higher Education and Research Act 2017 (c. 29), section 88. See section 43(1) of the Teaching and Higher Education Act 1998 for the definition of “prescribed” and “regulations”.



now exercisable by them<sup>(1)</sup> and powers conferred on them under sections 5(5)(b) and 55(2) of the Higher Education (Wales) Act 2015<sup>(2)</sup> make the following Regulations.

## PART 1

### TITLE, COMMENCEMENT AND APPLICATION

#### **Title, commencement and application**

**1.**—(1) The title of these Regulations is the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

(2) This regulation and regulation 2 come into force immediately before implementation period completion day.

(3) The remainder of these Regulations come into force on implementation period completion day.

(4) These Regulations apply in relation to Wales.

## PART 2

### REVOCATION OF REGULATIONS

**2.** The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019<sup>(3)</sup> and the Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019<sup>(4)</sup> are revoked.

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(1) The functions of the Secretary of State in section 1 of the 1983 Act were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 2006/1458 with effect from 8 June 2006. The functions of the Secretary of State in section 2 of the 1983 Act were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 1999/672. The Secretary of State's functions in section 22(2)(a) to (i) and (k) of the 1998 Act were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8), with functions under subsection (2)(a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State's function in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. All the above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(2) 2015 anaw 1.

(3) S.I. 2019/424 (W. 98).

(4) S.I. 2019/1039 (W. 182).

## PART 3

### AMENDMENT OF REGULATIONS

#### **Amendments to the Education (Fees and Awards) (Wales) Regulations 2007**

**3.** The Education (Fees and Awards) (Wales) Regulations 2007<sup>(1)</sup> are amended as follows.

#### **Amendments to regulation 2**

**4.** In regulation 2 (interpretation)—

- (a) in paragraph (1), in the definition of “overseas territories”, after “French Southern and Antarctic Territories;” insert “Gibraltar;”;
- (b) in paragraph (4)—
  - (i) for “the territory comprising the European Economic Area and Switzerland” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland”;
  - (ii) for “the territory comprising the European Economic Area, Switzerland and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories”;
  - (iii) for “the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland, Turkey and the overseas territories”;
- (c) in paragraph (5)(b) and (c), after “the territory comprising” insert “the United Kingdom, Gibraltar;”;
- (d) in paragraph (6)—
  - (i) for “the territory comprising the European Economic Area and Switzerland” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland”;
  - (ii) for “the territory comprising the European Economic Area, Switzerland

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<sup>(1)</sup> S.I. 2007/2310 (W. 181), amended by S.I. 2008/1259 (W. 126), S.I. 2010/1142 (W. 101), S.I. 2011/1978 (W. 218), S.I. 2013/1792 (W. 179), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54) and S.I. 2019/1192 (W. 209); there are other amending instruments but none is relevant.

- and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories”;
- (iii) for “the territory comprising the European Economic Area, Switzerland and Turkey” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area, Switzerland and Turkey”;
- (e) in paragraph (7), after “an area” insert “other than the United Kingdom or Gibraltar”.

### Amendments to the Schedule

5.—(1) The Schedule is amended as follows.

(2) In paragraph 1—

- (a) at the appropriate place insert—
- ““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020(1);”;
- ““EU national” (“*gwladolyn o’r UE*”) means a national of a Member State of the European Union;”;
- ““residence scheme immigration rules” (“*rheolau mewnfudo’r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;
- ““Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaidd*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
- (b) omit the definition of “EC national”;
- (c) omit “other than the United Kingdom” in each place it occurs;
- (d) in the definition of “family member”, for “EC national” substitute “EU national” in each place it occurs;
- (e) for the definition of “right of permanent residence” substitute—
- ““right of permanent residence” (“*hawl i breswyllo’n barhaol*”) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where,

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(1) 2020 c. 1.

had the facts pertaining to the determination of A's right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”.

(3) In paragraph 3 (persons who are settled in the United Kingdom)—

(a) for sub-paragraph (a) substitute—

“(a) who, on the first day of an academic year of the course, either—

(i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence, or

(ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens' rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person's right to reside fallen to be considered immediately before implementation period completion day;”;

(b) in sub-paragraph (d), after “the territory comprising” insert “the United Kingdom,”.

(4) In paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members), after “the territory comprising” insert “the United Kingdom,”.

(5) In paragraph 7 (workers, employed persons, self-employed persons and their family members)—

(a) sub-paragraphs (a), (b) and (c) are renumbered as sub-paragraph (1)(a), (b) and (c);

(b) in sub-paragraph (1)(b) as so renumbered, after “the territory comprising” insert “the United Kingdom,”;

(c) after sub-paragraph (1) as so renumbered insert—

“(2) Any description of person who would have fallen within this paragraph immediately before implementation period completion day is to be treated as falling within this paragraph on

and after implementation period completion day.”

(6) In paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—

(a) in sub-paragraph (1)—

(i) in paragraph (b), after “right of residence” insert “before implementation period completion day”;

(ii) in paragraph (d), after “the territory comprising” insert “the United Kingdom,”;

(iii) in paragraph (e), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

(b) in sub-paragraph (2)—

(i) for “has a right” substitute “had the right” in each place it occurs;

(ii) for “goes” substitute “has gone”;

(c) after sub-paragraph (2) insert—

“(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”

(7) In paragraph 9 (EC nationals)—

(a) in the heading, for “EC nationals” substitute “EU nationals”;

(b) in sub-paragraph (1)—

(i) in paragraph (a)(i), for “EC national” substitute “EU national”;

(ii) in paragraph (c), after “the territory comprising” insert “the United Kingdom,”;

(c) for sub-paragraph (1A) substitute—

“(1A) Paragraph (c) of sub-paragraph (1) does not apply to a family member of a person who—

(a) is—

(i) a United Kingdom national who has exercised a right to reside in the territory of a Member State under Article 7(1) of Directive 2004/38; or

(ii) an EU national; and

(b) has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year

period preceding the first day of the first academic year of the course.”;

(d) after sub-paragraph (2) insert—

“(3) Any description of person who would have fallen within this paragraph immediately before implementation period completion day is to be treated as falling within this paragraph on and after implementation period completion day.”

(8) In paragraph 10 (EC nationals)—

(a) in sub-paragraph (1)(a), for “an EC national other than a United Kingdom national” substitute “an EU national”;

(b) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom,”;

(c) in sub-paragraph (2), for “an EC national other than a United Kingdom national” substitute “an EU national”.

(9) For paragraph 11 (children of Swiss nationals) substitute—

“**11.**—(1) A person who—

(a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;

(b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;

(c) has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and

(d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have fallen within this paragraph immediately before implementation period completion day is to be treated as falling within this paragraph on and after implementation period completion day.”

(10) In paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom,”.

### **Amendments to the Education (European University Institute) (Wales) Regulations 2014**

6. The Education (European University Institute) (Wales) Regulations 2014(1) are amended as follows.

#### **Amendments to Schedule 1**

7.—(1) Schedule 1 (eligible students) is amended as follows.

(2) In Part 1 (interpretation), paragraph 1—

(a) in sub-paragraph (1)—

(i) at the appropriate place insert—

““EEA EFTA separation agreement” (*“cytundeb gwahanu EFTA yr AEE”*) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;

““residence scheme immigration rules” (*“rheolau mewnfudo’r cynllun preswyllo”*) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;

““Swiss citizens’ rights agreement” (*“cytundeb ar hawliau dinasyddion Swisaidd”*) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;

(ii) in the definition of “EEA national”, omit “other than the United Kingdom”;

(iii) for the definition of “right of permanent residence” substitute—

““right of permanent residence” (*“hawl i breswyllo’n barhaol”*) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”;

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(1) S.I. 2014/3037 (W. 303), amended by S.I. 2016/211 (W. 84), S.I. 2018/814 (W. 165) and S.I. 2019/235 (W. 54).

- (b) in the following sub-paragraphs, omit “other than the United Kingdom” in each place it occurs—
    - (i) sub-paragraph (2)(b);
    - (ii) sub-paragraph (3)(b);
    - (iii) sub-paragraph (4)(b);
    - (iv) sub-paragraph (5)(b);
  - (c) in sub-paragraphs (7) and (8), after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs.
- (3) In Part 2 (categories)—
- (a) in paragraph 3 (persons who are settled in the United Kingdom)—
    - (i) for sub-paragraph (a) substitute—
      - “(a) who, on the relevant date, either—
        - (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence; or
        - (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before implementation period completion day;”;
      - (ii) in sub-paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
  - (b) in paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
  - (c) in paragraph 7 (workers, employed persons, self-employed persons and their family members)—
    - (i) sub-paragraphs (a), (b) and (c) are renumbered as sub-paragraph (1)(a), (b) and (c);
    - (ii) in sub-paragraph (1)(b) as so renumbered, after “the territory



- comprising” insert “the United Kingdom, Gibraltar,”;
- (iii) after sub-paragraph (1) as so renumbered insert—
- “(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (d) in paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
- (i) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day”;
- (ii) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (iii) in sub-paragraph (2)—
- (aa) for “has the right” substitute “had the right”;
- (bb) for “has a right” substitute “had the right”;
- (cc) for “goes” substitute “has gone”;
- (iv) after sub-paragraph (2) insert—
- “(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”;
- (e) in paragraph 9 (EU nationals)—
- (i) for sub-paragraph (1)(a) substitute—
- “(a) on the relevant date is—
- (i) an EU national;
- (ii) a United Kingdom national who has exercised a right of residence; or
- (iii) the family member of a person in sub-paragraph (i) or (ii);”;
- (ii) in sub-paragraphs (1)(c) and (d) and (2), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (iii) in sub-paragraph (4), after “that person” insert “resided in Gibraltar or”;
- (iv) after sub-paragraph (4) insert—
- “(5) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

- (f) in paragraph 10 (EU nationals)—
  - (i) in sub-paragraph (a), omit “other than a United Kingdom national”;
  - (ii) in sub-paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar”;
- (g) for paragraph 11 (children of Swiss nationals) substitute—

“**11.**—(1) A person who—

- (a) on the relevant date, is the child of a Swiss national who is entitled to support from the Secretary of State by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in Wales on the relevant date;
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

- (h) in paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”.

## **Amendments to Schedule 2**

**8.**—(1) Schedule 2 (student’s contribution) is amended as follows.

(2) In Part 1 (interpretation), paragraph 1(1), in the definition of “taxable income”—

- (a) in paragraph (b), for “another EEA State” substitute “an EEA State”;
- (b) for paragraph (c) substitute—

“(c) where the legislation of—

- (i) the United Kingdom and one or more EEA State or Switzerland;
- (ii) more than one EEA State; or
- (iii) an EEA State and Switzerland,

applies to the period, the legislation under which the Welsh Ministers consider the person will pay the largest amount of tax in that period (except as otherwise provided in paragraph 4).”.

(3) In Part 2 (calculation of contribution)—

- (a) in paragraph 3(1)(b) (calculation of the student’s residual income), for “another Member State” substitute “a Member State”;
- (b) in paragraph 4 (calculation of eligible student’s partner’s residual income), for “another EEA State” substitute “an EEA State” in each place it occurs.

**Amendments to the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015**

9.—(1) The Schedule to the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015(1) is amended as follows.

(2) In paragraph 1—

- (a) in sub-paragraph (1)—
  - (i) omit “other than the United Kingdom” in each place it occurs;
  - (ii) at the appropriate place insert—
    - ““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
    - ““residence scheme immigration rules” (“*rheolau mewnfudo’r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;
    - ““Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaid*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
  - (iii) in the definition of “overseas territories”, after “French Southern and Antarctic Territories;” insert “Gibraltar;”;

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(1) S.I. 2015/1484 (W. 163), amended by S.I. 2016/276 (W. 100), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54) and S.I. 2019/1192 (W. 209).

- (iv) for the definition of “right of permanent residence” substitute—

““right of permanent residence” (*“hawl i breswyllo’n barhaol”*) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”;

- (b) in sub-paragraph (3)—

- (i) for “the territory comprising the European Economic Area and Switzerland” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland”;

- (ii) for “the territory comprising the European Economic Area, Switzerland and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories”;

- (iii) for “the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland, Turkey and the overseas territories”;

- (c) in sub-paragraph (4)(b) and (c), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

- (d) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.

- (3) In paragraph 3 (persons who are settled in the United Kingdom)—

- (a) for sub-paragraph (a) substitute—

“(a) on the first day of an academic year of the course either—

- (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence; or

- (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or

Article 16(2) or (3) of the Swiss citizens' rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person's right to reside fallen to be considered immediately before implementation period completion day;"

(b) in sub-paragraph (d), after "the territory comprising" insert "the United Kingdom,".

(4) In paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members), after "the territory comprising" insert "the United Kingdom,".

(5) In paragraph 7 (workers, employed persons, self-employed persons and their family members)—

(a) sub-paragraphs (a), (b) and (c) are renumbered as sub-paragraph (1)(a), (b) and (c);

(b) in sub-paragraph (1)(b) as so renumbered, after "the territory comprising" insert "the United Kingdom,";

(c) after sub-paragraph (1) as so renumbered insert—

"(2) Any description of person who would have fallen within this paragraph immediately before implementation period completion day is to be treated as falling within this paragraph on and after implementation period completion day."

(6) In paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—

(a) in sub-paragraph (1)(b), after "right of residence" insert "before implementation period completion day";

(b) in sub-paragraph (1)(d), after "the territory comprising" insert "the United Kingdom,";

(c) in sub-paragraph (1)(e), after "the territory comprising" insert "the United Kingdom, Gibraltar,";

(d) in sub-paragraph (2)—

(i) in paragraph (a), for "has a right" substitute "had the right";

(ii) in paragraph (b)—

- (aa) for “has a right” substitute “had the right”;
- (bb) for “goes” substitute “has gone”;
- (e) after sub-paragraph (2) insert—

“(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”
- (7) In paragraph 9 (EU nationals)—
  - (a) in sub-paragraph (1)(c), after “territory comprising” insert “the United Kingdom,”;
  - (b) for sub-paragraph (2) substitute—

“(2) Paragraph (c) of sub-paragraph (1) does not apply to a family member of a person who—

    - (a) is—
      - (i) a United Kingdom national who has exercised a right to reside in the territory of a Member State under Article 7(1) of Directive 2004/38; or
      - (ii) an EU national; and
    - (b) has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.”;
  - (c) after sub-paragraph (3) insert—

“(4) Any description of person who would have fallen within this paragraph immediately before implementation period completion day is to be treated as falling within this paragraph on and after implementation period completion day.”
- (8) In paragraph 10 (EU nationals)—
  - (a) in sub-paragraph (1)(a), omit “other than a United Kingdom national”;
  - (b) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom,”;
  - (c) in sub-paragraph (2), omit “other than a United Kingdom national”.
- (9) For paragraph 11 (children of Swiss nationals) substitute—

“**11.**—(1) A person who—

  - (a) is the child of a Swiss national who is entitled to support in the United

Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;

- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have fallen within this paragraph immediately before implementation period completion day is to be treated as falling within this paragraph on and after implementation period completion day.”

(10) In paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom.”.

#### **Amendments to the Education (Student Support) (Wales) Regulations 2017**

**10.** The Education (Student Support) (Wales) Regulations 2017(1) are amended as follows.

#### **Amendment to regulation 2**

**11.** In regulation 2(1) (interpretation), omit the definition of “right of permanent residence”.

#### **Amendments to regulation 15**

**12.** In regulation 15 (events)—

- (a) in paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;

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(1) S.I. 2017/47 (W. 21), amended by S.I. 2018/191 (W. 42), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54), S.I. 2019/1192 (W. 209) and S.I. 2020/142 (W. 25).

(b) for paragraph (e) substitute—

“(e) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

#### **Amendment to regulation 23**

**13.** For regulation 23(12)(d) (general qualifying conditions for grants for living costs) substitute—

“(d) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

#### **Amendments to regulation 30**

**14.** In regulation 30(1) (grants for dependants – interpretation), in sub-paragraph (o)—

(a) in paragraph (ii), for “another Member State” substitute “a Member State”;

(b) for paragraph (iii) substitute—

“(iii) where the legislation of—

(aa) the United Kingdom and one or more Member State;  
or

(bb) more than one Member State,

applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person’s total income in that period is greatest;”.

#### **Amendment to regulation 49**

**15.** For regulation 49(2)(d) (students becoming eligible during the course of an academic year) substitute—

“(d) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

#### **Amendments to regulation 65**

**16.** In regulation 65(4) (students becoming eligible during the course of the academic year)—

(a) in sub-paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;

(b) for sub-paragraph (f) substitute—

“(f) the student becomes a person described in paragraph 3(a) of Schedule 1;”.



### **Amendments to regulation 82**

**17.** In regulation 82(4) (students becoming eligible during the course of the academic year)—

- (a) in sub-paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;
- (b) for sub-paragraph (f) substitute—

“(f) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

### **Amendments to regulation 95**

**18.** In regulation 95(1) (part-time grants for dependants – interpretation), in sub-paragraph (o)—

- (a) in paragraph (ii), for “another Member State” substitute “a Member State”;
- (b) for paragraph (iii) substitute—

“(iii) where the legislation of—

  - (aa) the United Kingdom and one or more Member State;
  - or
  - (bb) more than one Member State,

applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person’s total income in that period is the greatest.”.

### **Amendment to regulation 111**

**19.** For regulation 111(2)(d) (students becoming eligible during the course of an academic year) substitute—

- “(d) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

### **Amendments to Schedule 1**

**20.**—(1) Schedule 1 (eligible students) is amended as follows.

(2) In Part 1 (interpretation), paragraph 1—

- (a) in sub-paragraph (1)—
  - (i) omit “other than the United Kingdom” in each place it occurs;
  - (ii) at the appropriate place insert—

““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the

European Union (Withdrawal Agreement) Act 2020;”;

““residence scheme immigration rules” (*“rheolau mewnfudo’r cynllun preswyllo”*) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;

““right of permanent residence” (*“hawl i breswyllo’n barhaol”*) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”;

““Swiss citizens’ rights agreement” (*“cytundeb ar hawliau dinasyddion Swisaidd”*) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;

- (b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar” in each place it occurs;
- (c) in sub-paragraph (6), after “an area” insert “other than the United Kingdom or Gibraltar”.

(3) In Part 2 (categories)—

- (a) in paragraph 3 (persons who are settled in the United Kingdom)—
  - (i) for sub-paragraph (a) substitute—
    - “(a) either—
      - (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence; or
      - (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before

- implementation period completion day.”;
- (ii) in sub-paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
  - (b) in paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
  - (c) in paragraph 7 (workers, employed persons, self-employed persons and their family members)—
    - (i) sub-paragraphs (a), (b) and (c) are renumbered as sub-paragraph (1)(a), (b) and (c);
    - (ii) in sub-paragraph (1)(b) as so renumbered, after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
    - (iii) after sub-paragraph (1) as so renumbered insert—

“(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
  - (d) in paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
    - (i) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day.”;
    - (ii) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
    - (iii) in sub-paragraph (2)—
      - (aa) for “has a right” substitute “had the right” in each place it occurs;
      - (bb) for “goes” substitute “has gone”;
    - (iv) after sub-paragraph (2) insert—

“(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”;
  - (e) in paragraph 9 (EU nationals)—
    - (i) for sub-paragraph (1)(a) substitute—

“(a) on the first day of the first academic year of the course is—

      - (i) an EU national;

- (ii) a United Kingdom national who has exercised a right of residence; or
- (iii) the family member of a person in sub-paragraph (i) or (ii);”;
- (ii) in sub-paragraphs (1)(c) and (d) and (2), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (iii) in sub-paragraph (4), after “that person” insert “has resided in Gibraltar or”;
- (iv) after sub-paragraph (4) insert—  
“(5) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (f) in paragraph 10 (EU nationals)—
  - (i) in sub-paragraph (1)(a), omit “other than a United Kingdom national”;
  - (ii) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
  - (iii) in sub-paragraph (2), omit “other than a United Kingdom national”;
- (g) for paragraph 11 (children of Swiss nationals) substitute—  
**“11.—(1) A person who—**
  - (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
  - (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
  - (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
  - (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

- (h) in paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”.

#### **Amendments to Schedule 4**

**21.** In Schedule 4 (college fee loans), paragraph 6—

- (a) in sub-paragraph (c), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;

- (b) for sub-paragraph (d) substitute—

“(d) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

#### **Amendments to Schedule 5**

**22.**—(1) Schedule 5 (financial assessment) is amended as follows.

(2) In paragraph 1(1) (definitions), paragraph (n)—

- (a) in sub-paragraph (ii), for “another Member State” substitute “a Member State”;

- (b) for sub-paragraph (iii) substitute—

“(iii) where the legislation of—

(aa) the United Kingdom and one or more Member State;  
or

(bb) more than one Member State,

applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person’s total income in that period is greatest (except as otherwise provided in paragraph 5).”.

(3) In paragraph 2(1)(g) (independent eligible student), before “the European Union” insert “the United Kingdom, Gibraltar and”.

(4) In the following paragraphs, for “another Member State” substitute “a Member State”—

- (a) paragraph 4(1)(b) (calculation of eligible student’s residual income);

- (b) paragraph 5 (calculation of parent’s residual income)—

- (i) sub-paragraph (1)(a);
- (ii) sub-paragraph (6), in each place it occurs;
- (iii) sub-paragraph (7).

#### **Amendments to Schedule 6**

**23.**—(1) Schedule 6 (financial assessment – part-time grants for dependants) is amended as follows.

(2) In paragraph 1(1) (definitions), paragraph (j)—

- (a) in sub-paragraph (ii), for “another Member State” substitute “a Member State”;
- (b) for sub-paragraph (iii) substitute—
  - “(iii) where the legislation of—
    - (aa) the United Kingdom and one or more Member State;  
or
    - (bb) more than one Member State,

applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person’s total income in that period is greatest (except as otherwise provided in paragraph 4).”.

(3) In the following paragraphs, for “another Member State” substitute “a Member State”—

- (a) paragraph 3(1) (calculation of eligible part-time student’s residual income);
- (b) paragraph 4 (calculation of eligible part-time student’s partner’s residual income)—
  - (i) sub-paragraph (1)(a);
  - (ii) sub-paragraph (6), in each place it occurs;
  - (iii) sub-paragraph (7).

#### **Amendments to the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017**

**24.** The Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017(1) are amended as follows.

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(1) S.I. 2017/523 (W. 109), amended by S.I. 2017/712 (W. 169), S.I. 2018/277 (W. 53), S.I. 2018/814 (W. 165), S.I. 2019/895 (W. 161), S.I. 2019/1192 (W. 209) and S.I. 2020/142 (W. 25).

### **Amendment to regulation 2**

25. In regulation 2(1) (interpretation), omit the definition of “right of permanent residence”.

### **Amendments to regulation 8**

26. In regulation 8 (events)—

- (a) in paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;
- (b) for paragraph (e) substitute—
  - “(e) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

### **Amendments to Schedule 1**

27.—(1) Schedule 1 (eligible students) is amended as follows.

(2) In Part 1 (interpretation), paragraph 1—

- (a) in sub-paragraph (1)—
  - (i) omit “other than the United Kingdom” in each place it occurs;
  - (ii) at the appropriate place insert—
    - ““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
    - ““residence scheme immigration rules” (“*rheolau mewnfudo’r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;
    - ““right of permanent residence” (“*hawl i breswyllo’n barhaol*”) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”;
    - ““Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaid*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;

- (b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs;
- (c) in sub-paragraph (6), after “an area” insert “other than the United Kingdom or Gibraltar”.

(3) In Part 2 (categories)—

- (a) in paragraph 3 (persons who are settled in the United Kingdom)—

- (i) for sub-paragraph (a) substitute—

“(a) either—

- (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence; or

- (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before implementation period completion day;”;

- (ii) in sub-paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

- (b) in paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

- (c) in paragraph 7 (workers, employed persons, self-employed persons and their family members)—

- (i) sub-paragraphs (a), (b) and (c) are renumbered as sub-paragraph (1)(a), (b) and (c);

- (ii) in sub-paragraph (1)(b) as so renumbered, after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

- (iii) after sub-paragraph (1) as so renumbered insert—

“(2) Any description of person who would have been eligible under this paragraph



immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

(d) in paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—

(i) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day”;

(ii) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

(iii) in sub-paragraph (2)—

(aa) for “has a right” substitute “had the right” in each place it occurs;

(bb) for “goes” substitute “has gone”;

(iv) after sub-paragraph (2) insert—

“(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”;

(e) in paragraph 9 (EU nationals)—

(i) for sub-paragraph (1)(a) substitute—

“(a) who, on the first day of the first academic year of the course, is—

(i) an EU national;

(ii) a United Kingdom national who has exercised a right of residence; or

(iii) the family member of a person in sub-paragraph (i) or (ii);”;

(ii) in sub-paragraphs (1)(c) and (d) and (2), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

(iii) in sub-paragraph (4), after “that person” insert “has resided in Gibraltar or”;

(iv) after sub-paragraph (4) insert—

“(5) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

(f) in paragraph 10 (EU nationals)—

(i) in sub-paragraph (1)(a), omit “other than a United Kingdom national”;

(ii) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

- (iii) in sub-paragraph (2), omit “other than a United Kingdom national”;
- (g) for paragraph 11 (children of Swiss nationals) substitute—

“11.—(1) A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

- (h) in paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”.

#### **Amendments to the Education (Student Support) (Wales) Regulations 2018**

**28.** The Education (Student Support) (Wales) Regulations 2018(1) are amended as follows.

#### **Amendments to regulation 80**

**29.** In regulation 80(2)(b) (qualifying for a tuition fee loan during the academic year)—

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(1) S.I. 2018/191 (W. 42), amended by S.I. 2018/813 (W. 164), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54) and S.I. 2020/142 (W. 25).

- (a) in paragraph (iii), after “EU national” insert “or of a person who is eligible under paragraph 6(1) of Schedule 2 by virtue of paragraph 6(1A) of that Schedule other than as a family member”;
- (b) for paragraph (iv) substitute—
  - “(iv) the student becomes a person described in paragraph 1(2)(a) of Schedule 2;”.

### **Amendment to regulation 81**

**30.** For regulation 81(3)(b)(iii) (qualifying for grants or maintenance loan during the academic year) substitute—

- “(iii) the student becomes a person described in paragraph 1(2)(a) of Schedule 2;”.

### **Amendments to Schedule 2**

**31.**—(1) Schedule 2 (categories of eligible student) is amended as follows.

(2) In paragraph 1(2) (category 1 – persons settled in the United Kingdom)—

- (a) for paragraph (a) substitute—

“(a) either—

- (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence, or
- (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before implementation period completion day;”;

- (b) in paragraph (d), after “territory comprising” insert “the United Kingdom, Gibraltar.”.

(3) In paragraph 4 (category 4 – workers, employed persons, self-employed persons and their family members)—

- (a) in sub-paragraphs (1)(b) and (2)(b), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (b) after sub-paragraph (2) insert—
  - “(2A) Any description of person who would have been eligible under sub-paragraph (2) immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (c) in sub-paragraphs (3) and (4), omit “other than the United Kingdom” in each place it occurs.

(4) In paragraph 5 (category 5 – persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—

- (a) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day”;
- (b) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (c) in sub-paragraph (3)(c), for “has a right” substitute “had the right”;
- (d) in sub-paragraph (4)—
  - (i) in paragraph (a), for “has a right” substitute “had the right”;
  - (ii) in paragraph (b), for “goes” substitute “has gone”;
- (e) after sub-paragraph (5) insert—
  - “(6) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”

(5) In paragraph 6 (category 6 - EU nationals)—

- (a) for sub-paragraph (1)(a) substitute—
  - “(a) who, on the first day of the first academic year of the course, is—
    - (i) an EU national,
    - (ii) a United Kingdom national who has exercised a right of residence, or
    - (iii) the family member of a person in sub-paragraph (i) or (ii),”;
- (b) in sub-paragraph (1)(c) and (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (c) after sub-paragraph (1) insert—
  - “(1A) Any description of person who would have been eligible under sub-paragraph (1)

immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

- (d) in sub-paragraph (2)(a), omit “other than a United Kingdom national”;
- (e) in sub-paragraph (2)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (f) for sub-paragraph (4) substitute—

“(4) For the purpose of sub-paragraph (1)(a), a United Kingdom national has exercised a right of residence if that person has resided in Gibraltar or has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.”

- (6) For paragraph 7 (category 7 - children of Swiss nationals) substitute—

#### **“Category 7 – Children of Swiss nationals**

7.—(1) A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”

- (7) In paragraph 8(1)(c) (category 8 – children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”

(8) In paragraph 9 (ordinary residence – additional provision)—

- (a) after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs;
- (b) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.

(9) In paragraph 11 (interpretation)—

- (a) at the appropriate place insert—
  - ““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
  - ““residence scheme immigration rules” (“*rheolau mewnfudo’r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;
  - ““Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaidd*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020.”;
- (b) for the definition of “right of permanent residence” substitute—
  - ““right of permanent residence” (“*hawl i breswyllo’n barhaol*”) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”.

### Amendments to Schedule 3

**32.**—(1) Schedule 3 (calculation of income) is amended as follows.

(2) In paragraph 4(1) (independent eligible students), in Case 6, before “the European Union” insert “the United Kingdom, Gibraltar and”.

(3) In paragraph 9 (taxable income)—

- (a) in sub-paragraph (1)(b), for “another member State” substitute “a member State”;
- (b) for sub-paragraph (2) substitute—
  - “(2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of—

(a) the United Kingdom and one or more member State, or

(b) more than one member State,

applies to the person in respect of the year under consideration, the person's total income from all sources is the amount derived from the determination resulting in the greatest amount of total income, including any income which is required to be taken into account under paragraph 18.”

(4) In the following paragraphs, for “another member State” substitute “a member State”—

- (a) paragraph 11 (deductions for the purpose of calculating residual income of an eligible student), Deduction B;
- (b) paragraph 15 (deductions for the purpose of calculating residual income of persons other than eligible student), Deduction A;
- (c) paragraph 18 (treatment of income not treated as income for income tax purposes), in each place it occurs;
- (d) paragraph 19(1) (P's income in currency other than sterling).

#### **Amendments to Schedule 5**

**33.**—(1) Schedule 5 (Oxbridge college fee loans) is amended as follows.

(2) In paragraph 4(2) (students becoming eligible during the course of an academic year)—

- (a) in paragraph (c), after “EU national” insert “or of a person who is eligible under paragraph 6(1) of Schedule 2 by virtue of paragraph 6(1A) of that Schedule other than as a family member”;
- (b) for paragraph (d) substitute—

“(d) the student becomes a person described in paragraph 1(2)(a) of Schedule 2;”.

#### **Amendments to the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018**

**34.** The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018(1) are amended as follows.

#### **Amendment to regulation 2**

**35.** In regulation 2(1) (interpretation), omit the definition of “right of permanent residence”.

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(1) S.I. 2018/656 (W. 124), amended by S.I. 2018/814 (W. 165) S.I. 2019/235 (W. 54) and S.I. 2019/1192 (W. 209).

### Amendments to regulation 8

36. In regulation 8 (events)—

- (a) in paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 10 of Schedule 1 by virtue of paragraph 10(5) of that Schedule other than as a family member”;
- (b) for paragraph (e) substitute—
  - “(e) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

### Amendments to Schedule 1

37.—(1) Schedule 1 (eligible students) is amended as follows.

(2) In Part 1, paragraph 1 (interpretation)—

- (a) in sub-paragraph (1)—
  - (i) omit “other than the United Kingdom” in each place it occurs;
  - (ii) at the appropriate place insert—
    - ““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
    - ““residence scheme immigration rules” (“*rheolau mewnfudo’r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;
    - ““right of permanent residence” (“*hawl i breswyllo’n barhaol*”) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”;
    - ““Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaid*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
- (b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs;



- (c) in sub-paragraph (6), after “an area” insert “other than the United Kingdom or Gibraltar”.

(3) In Part 2 (categories)—

- (a) in paragraph 3 (persons who are settled in the United Kingdom)—

- (i) for sub-paragraph (a) substitute—

“(a) either—

- (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence; or

- (ii) falls with Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before implementation period completion day;”;

- (ii) in sub-paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar;”;

- (b) in paragraph 7(1)(c) (workers, employed persons, self-employed persons and their family members), after “the territory comprising” insert “the United Kingdom, Gibraltar;”;

- (c) in paragraph 8 (workers, employed persons, self-employed persons and their family members)—

- (i) sub-paragraphs (a), (b) and (c) are renumbered as sub-paragraph (1)(a), (b) and (c);

- (ii) in sub-paragraph (1)(b) as so renumbered, after “the territory comprising” insert “the United Kingdom, Gibraltar;”;

- (iii) after sub-paragraph (1) as so renumbered insert—

“(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

- (d) in paragraph 9 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
  - (i) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day”;
  - (ii) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
  - (iii) in sub-paragraph (2)—
    - (aa) for “has a right” substitute “had the right” in each place it occurs;
    - (bb) for “goes” substitute “has gone”;
  - (iv) after sub-paragraph (2) insert—
 

“(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”;
- (e) in paragraph 10 (EU nationals)—
  - (i) for sub-paragraph (1)(a) substitute—
 

“(a) who, on the first day of the first academic year of the course, is—

    - (i) an EU national;
    - (ii) a United Kingdom national who has exercised a right of residence;
    - or
    - (iii) the family member of a person in sub-paragraph (i) or (ii);”;
  - (ii) in sub-paragraphs (1)(c) and (d) and (2), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
  - (iii) in sub-paragraph (4), after “that person” insert “has resided in Gibraltar or”;
  - (iv) after sub-paragraph (4) insert—
 

“(5) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (f) in paragraph 11 (EU nationals)—
  - (i) in sub-paragraph (1)(a), omit “other than a United Kingdom national”;
  - (ii) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
  - (iii) in sub-paragraph (2), omit “other than a United Kingdom national”;
- (g) for paragraph 12 (children of Swiss nationals) substitute—

“12.—(1) A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course;
- (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

- (h) in paragraph 13(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”.

**Amendments to the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019**

38. The Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019(1) are amended as follows.

**Amendments to regulation 16**

39. In regulation 16(1)(b) (students becoming eligible during a course)—

- (a) in paragraph (iii), after “EU national” insert “or of a person who is eligible under paragraph 8(1) of Schedule 2 by virtue of paragraph 8(1A) of that Schedule other than as a family member”;
- (b) for paragraph (iv) substitute—

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(1) S.I. 2019/895 (W. 161), amended by S.I. 2020/142 (W. 25).

“(iv) the student becomes a person described in paragraph 1(2)(a) of Schedule 2;”.

### **Amendments to Schedule 2**

**40.**—(1) Schedule 2 (categories of eligible students) is amended as follows.

(2) In paragraph 1(2) (category 1 – persons settled in the United Kingdom)—

(a) for paragraph (a) substitute—

“(a) either—

(i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence, or

(ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before implementation period completion day;”;

(b) in paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

(3) In paragraph 6 (category 6 – workers, employed persons, self-employed persons and their family members)—

(a) in sub-paragraphs (1)(b) and (2)(b), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

(b) after sub-paragraph (2) insert—

“(2A) Any description of person who would have been eligible under sub-paragraph (2) immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

(c) in sub-paragraphs (3) and (4), omit “other than the United Kingdom” in each place it occurs.

(4) In paragraph 7 (category 7 – persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—

- (a) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day”;
- (b) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (c) in sub-paragraph (3)(c), for “has exercised a right of permanent residence” substitute “had the right of permanent residence”;
- (d) in sub-paragraph (4)—
  - (i) in paragraph (a), for “has a right” substitute “had the right”;
  - (ii) in paragraph (b), for “goes” substitute “has gone”;
- (e) after sub-paragraph (5) insert—

“(6) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”

(5) In paragraph 8 (category 8 – EU nationals)—

- (a) for sub-paragraph (1)(a) substitute—

“(a) who, on the first day of the first academic year of the course is—

  - (i) an EU national,
  - (ii) a United Kingdom national who has exercised a right of residence, or
  - (iii) the family member of a person in sub-paragraph (i) or (ii),”;
- (b) in sub-paragraph (1)(c) and (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (c) after sub-paragraph (1) insert—

“(1A) Any description of person who would have been eligible under sub-paragraph (1) immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (d) in sub-paragraph (2)(a), omit “other than a United Kingdom national”;
- (e) in sub-paragraph (2)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (f) for sub-paragraph (4) substitute—

“(4) For the purposes of sub-paragraph (1)(a), a United Kingdom national has exercised a right

of residence if that person has resided in Gibraltar or has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.”

(6) For paragraph 9 (category 9 – children of Swiss nationals) substitute—

**“Category 9 - Children of Swiss nationals**

**9.**—(1) A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”

(7) In paragraph 10(1)(c) (category 10 – children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

(8) In paragraph 11 (ordinary residence – additional provision)—

- (a) after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs;
- (b) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.

(9) In paragraph 13 (interpretation)—

- (a) at the appropriate place insert—  
““EEA EFTA separation agreement”  
 (“*cytundeb gwahanu EFTA yr AEE*”) has

the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;

““residence scheme immigration rules” (*“rheolau mewnfudo’r cynllun preswyllo”*) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;

““Swiss citizens’ rights agreement” (*“cytundeb ar hawliau dinasyddion Swisaidl”*) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020.”;

- (b) for the definition of “right of permanent residence” substitute—

““right of permanent residence” (*“hawl i breswyllo’n barhaol”*) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”.

### Amendments to Schedule 3

**41.**—(1) Schedule 3 (calculation of income) is amended as follows.

(2) In paragraph 4(1) (independent eligible students), in Case 6, before “the European Union” insert “the United Kingdom, Gibraltar and”.

(3) In paragraph 9 (taxable income)—

- (a) in sub-paragraph (1)(b), for “another member State” substitute “a member State”;

(b) for sub-paragraph (2) substitute—

“(2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of—

- (a) the United Kingdom and one or more member State, or

(b) more than one member State,

applies to the person in respect of the year under consideration, the person’s total income from all sources is the amount derived from the determination resulting in the greatest amount of total income, including any income which is required to be taken into account under paragraph 18.”

(4) In the following paragraphs, for “another member State” substitute “a member State”—

- (a) paragraph 11 (deductions for the purpose of calculating residual income of an eligible student), Deduction B;
- (b) paragraph 15 (deductions for the purpose of calculating residual income of persons other than eligible student), Deduction A;
- (c) paragraph 18 (treatment of income not treated as income for income tax purposes), in each place it occurs;
- (d) paragraph 19(1) (P’s income in currency other than sterling).

*Kirsty Williams*

Minister for Education, one of the Welsh Ministers

17 November 2020



**Explanatory Memorandum to the Education (Student Finance)  
(Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020**

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

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

Kirsty Williams  
Minister for Education  
18 November 2020

## **PART 1**

### **1. Description**

The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (“the Regulations”) revoke and replace the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019.

The 2020 Regulations will make amendments to the following regulations:

- the Education (Fees and Awards) (Wales) Regulations 2007
- the Education (European University Institute) (Wales) Regulations 2014
- the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provisions) (Wales) Regulations 2015
- the Education (Student Support) (Wales) Regulations 2017
- the Education (Postgraduate Masters’ Degrees Loans) (Wales) Regulations 2017
- the Education (Student Support) (Wales) Regulations 2018
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018
- the Education (Student Support) (Postgraduate Masters’ Degrees) (Wales) Regulations 2019.

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

None.

### **3. Legislative background**

The Regulations will be subject to the negative procedure and made using powers under 1 and 2 of the Education (Fees and Awards) Act 1983, sections 22, and 42(6) and 43(1) of the Teaching and Higher Education Act 1998 and sections 5(5)(b) and 55(2) of the Higher Education (Wales) Act 2015

The functions of the Secretary of State in section 1 of the 1983 Act were transferred to the National Assembly for Wales, so far as exercisable in relation to Wales, by National Assembly for Wales (Transfer of Functions) Order 2006 (S.I. 2006/1458) with effect from 8 June 2006. The functions of the Secretary of

State in section 2 of the 1983 Act were transferred to the National Assembly for Wales, so far as exercisable in relation to Wales, by National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The Secretary of State's functions in section 22(2)(2)(a) of the 1998 Act were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8) and are exercisable concurrently with the Secretary of State. The Secretary of State's functions in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. All the above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

#### **4. Purpose and intended effect of the legislation**

The purpose of the 2020 Regulations is to ensure that existing student finance policy is continued for AY 2020/21 and is not adversely affected by IP completion day. The 2020 Regulations will therefore replicate the provisions in the 2019 Regulations. In addition, the 2020 Regulations will ensure EU nationals, and other groups who are settled under the EUSS, or who are to be treated as such under provisions of the Withdrawal Agreement, the EEA separation agreement and the Swiss citizens' rights agreement are able to access the same support and home fee status as they would have been able to before IP completion day.

The 2020 Regulations will also amend the provisions which relate to the eligibility for student support of those settled in the UK but who exercise a right of residence elsewhere in the EU after IP completion day and then return to the UK and start a course before 1 August 2021. Due to UK nationals no longer being able to exercise this right of residence IP completion day, were the regulations not amended, EU nationals would receive a more favourable treatment than UK nationals. An amendment will ensure that they receive equal treatment.

#### **5. Consultation**

Consultation was not undertaken as the purpose of the Regulations is largely to make technical amendments necessary to preserve existing policy.

#### **6. Regulatory Impact Assessment (RIA)**

An RIA has not been conducted. The Regulations make largely technical amendments that are necessary to preserve existing policy.

## **SL(5)678 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) Regulations 2020**

### **Background and Purpose**

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the International Travel Regulations.

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

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations (“exempt countries and territories”) are not required to isolate. Part 2 of these Regulations amends the list of exempt countries and territories.

Regulation 2 amends the International Travel Regulations to remove the entries for Estonia and Latvia.

Regulation 4 amends the International Travel Regulations to add Aruba, the Democratic Republic of Timor-Leste, the Federated States of Micronesia, the Independent State of Samoa, the Kingdom of Bhutan, the Kingdom of Tonga, Mongolia, the Republic of Kiribati, the Republic of Vanuatu and the Solomon Islands to the list of exempt countries and territories.

These Regulations also lift the specific restrictions that were imposed on travellers from Denmark and members of their household. The Regulations also lift the prohibition on the arrival of aircraft and vessels travelling directly from Denmark. Denmark will not however be included on the list of exempt countries. Therefore, travellers from Denmark will still be required to isolate on arrival in Wales.

The Regulations also add sporting events to Schedule 4 to the International Travel Regulations, meaning those involved in such sporting events do not have to isolate when, for example, competing in a sporting event listed in Schedule 4.

These Regulations came into force at 4.00 am on 28 November 2020.

### **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

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

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

In regulation 8(2)(a) of the Welsh text, the amendment should be made in “sub-paragraph (e)”, not “sub-paragraph (c)”.

## Merits Scrutiny

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

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

We note 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 27 November 2020.

In particular, we note the following in the letter:

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

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

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

*“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.”*

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



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

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

## 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**

**2 December 2020**



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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

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**2020 No. 1362 (W. 301)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Coronavirus, International Travel)  
(Wales) (Amendment) (No. 21)  
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 Health Protection (Coronavirus, International Travel) (Wales) (Amendment)



(No. 17) Regulations 2020 (S.I. 2020/1191) (W. 269);

- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 (S.I. 2020/1223) (W. 277);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020 (S.I. 2020/1232) (W. 278);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020 (S.I. 2020/1237) (W. 279);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020 (S.I. 2020/1288) (W. 286);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020 (S.I. 2020/1329) (W. 295).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations.

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

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

Part 2 of these Regulations amends the list of exempt countries and territories. Regulation 2 amends the International Travel Regulations to remove the entries for Estonia and Latvia. Regulation 4 amends the International Travel Regulations to add Aruba, the Democratic Republic of Timor-Leste, the Federated States of Micronesia, the Independent State of Samoa, the Kingdom of Bhutan, the Kingdom of Tonga, Mongolia, the Republic of Kiribati, the Republic of Vanuatu and the Solomon Islands to the list of exempt countries and territories.

Regulations 3 and 5 of these Regulations make transitional provision in connection with these countries’ and territories’ change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the

International Travel Regulations, of the amendments made by regulations 2 and 4 of these Regulations.

Part 3 of these Regulations amends Part 3 and removes Part 3A of the International Travel Regulations and makes a consequential amendment to regulation 14 in Part 4 of those Regulations.

Regulation 6 amends Part 3 of the International Travel Regulations. Firstly, it makes a technical amendment to regulation 9 of the International Travel Regulations to include a reference to paragraph 39 of Schedule 2 to those Regulations. Secondly, it removes regulation 12A of the International Travel Regulations which imposes special rules on any person travelling from Denmark and members of that person's household. Regulation 7 makes saving provision in connection with the removal of regulation 12A of the International Travel Regulations. The saving provision address a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulation 6(3) of these Regulations.

Regulation 8 removes Part 3A of the International Travel Regulations which prohibits the arrival in Wales of aircraft and vessels travelling directly from Denmark. It also makes a consequential amendment to regulation 14 in Part 4 of the International Travel Regulations to remove the offence committed by contravening the requirements of regulation 12B(1) in Part 3A of those Regulations.

Denmark is not included in the list of exempt countries and territories in Schedule 3 to the International Travel Regulations. Therefore, travellers from Denmark will continue to be required to isolate pursuant to those Regulations.

Part 4 of these Regulations – in regulation 9 – amends paragraph 13 of Schedule 2 to the International Travel Regulations to specify that the Welsh Ministers may designate work as “essential government work” for the purposes of the exemption to the requirement to isolate contained in that paragraph.

Part 5 of these Regulations – in regulation 10 – 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.

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.

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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

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**2020 No. 1362 (W. 301)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Coronavirus, International Travel)  
(Wales) (Amendment) (No. 21)  
Regulations 2020**

*Made at 2.14 p.m. on 27 November 2020*

*Laid before Senedd  
Cymru at 5.00 p.m. on 27 November 2020*

*Coming into force at 4.00 a.m. on 28  
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<sup>(1)</sup>, 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. 21) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 28 November 2020.

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

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(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—

“Estonia”

“Latvia”.

#### **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 28 November 2020, and
- (b) was last in a country listed in regulation 2—
  - (i) within the period of 14 days ending with the day of P’s arrival in Wales, and
  - (ii) before 4.00 a.m. on 28 November 2020.

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

#### **Additions to the list of exempt countries and territories**

4. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), at the appropriate place insert—

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(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), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286) and S.I. 2020/1329 (W. 295).

“Aruba”  
“Democratic Republic of Timor-Leste”  
“Federated States of Micronesia”  
“Independent State of Samoa”  
“Kingdom of Bhutan”  
“Kingdom of Tonga”  
“Mongolia”  
“Republic of Kiribati”  
“Republic of Vanuatu”  
“Solomon Islands”.

**Transitional provision in connection with regulation 4**

5.—(1) Paragraph (2) applies where, immediately before 4.00 a.m. on 28 November 2020—

- (a) a person (“P”) was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in a country or territory listed in regulation 4, and
- (b) P’s last day of isolation is 28 November 2020 or a day after that day.

(2) The addition of the countries and territories listed in regulation 4 to Part 1 of Schedule 3 to the International Travel Regulations does not affect the isolation requirement as it applies to P, nor affect how P’s last day of isolation is determined under the International Travel Regulations.

(3) Paragraph (4) applies where a person (“P”)—

- (a) arrives in Wales at or after 4.00 a.m. on 28 November 2020, and
- (b) was in a country or territory listed in regulation 4 within the period of 14 days ending with the day of P’s arrival in Wales.

(4) For the purposes of regulations 7(1) and 8(1) of the International Travel Regulations, the question of whether P has arrived in Wales from, or having been in, a non-exempt country or territory is, in relation to a country or territory listed in regulation 4, to be determined by reference to whether the country or territory was a non-exempt country or territory when P was last there (and not by reference to the country’s or the territory’s status upon P’s arrival in Wales).

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

## PART 3

### Amendments to Part 3 and removal of Part 3A of the International Travel Regulations and consequential amendment

#### **Amendments to Part 3 (requirement to isolate etc.) of the International Travel Regulations**

6.—(1) Part 3 (requirement to isolate etc.) of the International Travel Regulations is amended as follows.

(2) In regulation 9(2)(b), for “38” substitute “39”.

(3) Omit regulation 12A.

#### **Saving provision in connection with regulation 6(3)**

7. Where immediately before 4.00 a.m. on 28 November 2020 regulation 12A of the International Travel Regulations applies to a person, it continues to apply to that person despite its revocation by regulation 6(3).

#### **Removal of Part 3A (travel from Denmark) of the International Travel Regulations and consequential amendment**

8.—(1) Omit Part 3A (travel from Denmark) of the International Travel Regulations.

(2) Regulation 14(1) in Part 4 of the International Travel Regulations is amended as follows—

(a) in sub-paragraph (e), at the end insert “or”;

(b) in sub-paragraph (f), omit “or”;

(c) omit sub-paragraph (g).

## PART 4

### Amendment to Schedule 2 to the International Travel Regulations

#### **Amendment to paragraph 13 of Schedule 2 (exempt persons)**

9. In paragraph 13(2)(c) of Schedule 2 (exempt persons) to the International Travel Regulations, after “by” insert “the Welsh Ministers or”.

## PART 5

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

#### **Additions to the list of specified sporting events**

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

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

“(n) Professional Darts Corporation –  
Ladbrookes Masters.”

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

“(m) Motorsport UK – British Rallycross  
Championship and Support  
Championship.”

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

“(l) World Snooker Tour – German  
Masters;

(m) World Snooker Tour – The Masters;

(n) World Snooker Tour – Players  
Championship;

(o) World Snooker Tour – Welsh Open.”

(5) After paragraph 24 insert—

“**25.** Swimming – British Swimming  
International Meet.”

*Vaughan Gething*

Minister for Health and Social Services, one of the  
Welsh Ministers

At 2.14 p.m. on 27 November 2020



## **Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) 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. 21) Regulations 2020.

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

27 November 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 amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health.

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

### *Coming into force*

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been laid.

### *European Convention on Human Rights*

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.

## **3. Legislative background**

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales. The Regulations are made in reliance on the powers in sections 45B and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel Regulations provides further information on these powers.

## **4. Purpose and intended effect of the legislation**

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which

is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to isolate upon arrival in Wales – most recently on the 21 November 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 Estonia and Latvia 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 Regulations also add Aruba, Bhutan, Mongolia, Timor-Leste and the Pacific islands of Samoa, Kiribati, Micronesia, Tonga, Vanuatu and the Solomon Islands to the list of exempt countries and territories. This is on the basis that the data received from the JBC has indicated that the risk to public health posed by the incidence and spread of coronavirus in those countries and territories has decreased. Travellers from those countries and territories will therefore not be required to isolate on arrival in Wales.

The revised requirements will come into effect for any travellers entering the Common Travel Area from those countries or territories on or after 4.00 am on Saturday 28 November 2020.

The specific restrictions currently imposed on travellers from Denmark and members of their household will be lifted. The prohibition on the arrival of aircraft and vessels travelling directly from Denmark will also be lifted. Denmark will not, however, be included in the list of exempt countries and territories. Therefore, travellers from Denmark will continue to be required to isolate on arrival in Wales.

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.

The Regulations also make two minor amendments relating to the sectoral exemptions in the International Travel Regulations. The first provides that the Welsh Ministers may designate work as “essential government work” for the purposes of the exemption in paragraph 13 to Schedule 2 to the International Travel Regulations. The second is a technical amendment to update one of the paragraph numbers in regulation 9(2)(b) of the International Travel Regulations.

These changes will also come into force at 4.00 am on Saturday 28 November 2020.

None of the amendments to the International Travel Regulations made by the latest amending Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

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

## **5. Consultation**

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

## **6. Regulatory Impact Assessment (RIA)**

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



Ein cyf/Our ref: MA/VG/4099/20

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

27 November 2020

Dear Llywydd,

**The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) 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 and Estonia and Latvia will be removed from the list of exempt countries and territories. Aruba, Bhutan, Mongolia, Timor-Leste and the Pacific islands of Samoa, Kiribati, Micronesia, Tonga, Vanuatu and the Solomon Islands will be added to the list of exempt countries and territories. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from these countries.

The specific restrictions currently imposed on travellers from Denmark and members of their household will be lifted. The prohibition on the arrival of aircraft and vessels travelling directly from Denmark will also be lifted. Denmark will not, however, be included in the list of exempt countries and territories. Therefore, travellers from Denmark will continue to be required to isolate on arrival in Wales.

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.

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)

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

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

The Regulations also make minor amendments relating to the sectoral exemptions within the main Regulations.

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,

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



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**WRITTEN STATEMENT**  
**BY**  
**THE WELSH GOVERNMENT**

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

**DATE**            **26 November 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 Estonia and Latvia will be removed from the list of exempt countries and territories. Travellers from these countries will be required to isolate on arrival in Wales. I have also decided that Aruba, Bhutan, Mongolia, Timor-Leste and the Pacific islands of Samoa, Kiribati, Micronesia, Tonga, Vanuatu and the Solomon Islands will be added to the list of exempt countries and territories. Travellers from these countries and territories will therefore not be required to isolate on arrival in Wales.

The specific restrictions currently imposed on travellers from Denmark and members of their household will be lifted. The prohibition on the arrival of aircraft and vessels travelling directly from Denmark will also be lifted. Denmark will not, however, be included in the list of exempt countries and territories. Therefore, travellers from Denmark will continue to be required to isolate on arrival in Wales.

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.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Saturday 28 November.



## **SL(5)671 – The Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020**

### **Background and Purpose**

These Regulations make technical amendments to subordinate legislation, which apply in relation to Wales in the field of food and feed safety and hygiene, in order to address failures of retained European Union (EU) law to operate effectively/coherently and other deficiencies arising from the withdrawal of the United Kingdom from the EU, to reflect the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.

In particular these Regulations amend the following Welsh instruments:

- The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019;
- The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019;
- The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019;
- The Genetically Modified Food (Wales) Regulations 2004;
- The General Food Regulations 2004;
- The Fishery Products (Official Controls Charges) (Wales) Regulations 2007;
- The Food Irradiation (Wales) Regulations 2009;
- The Meat (Official Controls Charges) (Wales) Regulations 2009;
- The Official Feed and Food Controls (Wales) Regulations 2009;
- The Food Safety (Sampling and Qualifications) (Wales) Regulations 2013;
- The Contaminants in Food (Wales) Regulations 2013;
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013;
- The Honey (Wales) Regulations 2015; and
- The Caseins and Caseinates (Wales) Regulations 2016.



## Procedure

Draft affirmative

## Technical Scrutiny

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

## Merits Scrutiny

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

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

The Committee notes the public, general consultation on these Regulations by the FSA and notes that following EU Exit, that this will continue to be the case with all the future revisions of Food law. Also, the consultation that has taken place with the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Health and Social care on 11 November 2020 (in accordance with paragraph 4 of Schedule 2 to the European Union (Withdrawal) Act 2018 – regarding the need for Part 2 of this instrument to be brought into force before IP completion day).

## 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**

**2 December 2020**



*Draft Regulations laid before Senedd Cymru under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2020 No. (W.)**

**EXITING THE EUROPEAN  
UNION, WALES**

**AGRICULTURE, WALES**

**FOOD, WALES**

**The Food and Feed Hygiene and  
Safety (Miscellaneous Amendments  
and Saving Provision) (Wales) (EU  
Exit) Regulations 2020**

**EXPLANATORY NOTE**

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

These Regulations are made in exercise of the powers conferred by paragraphs 1(1) and 11M(1) of Schedule 2, paragraph 7 of Schedule 4, and paragraph 21(b) of Schedule 7, to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of food and feed safety and hygiene.

Part 2 contains amendments to provisions of Welsh EU Exit subordinate legislation. Amendments include correction of identified errors, and provision required to implement the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement. Part 2 also omits a number of provisions that were included 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 omitted provisions either no longer apply or the

amendments made by those provisions are replaced by other amendments made by these Regulations.

Part 3 contains amendments to subordinate legislation that apply in relation to Wales, in order to address failures of retained EU law to operate effectively and to implement the Protocol on Ireland/Northern Ireland. A number of the amendments consolidate and update (with amendment) provisions included in earlier EU Exit subordinate legislation that are omitted in Part 2 of these Regulations.

Part 4 makes a saving provision.

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.

*Draft Regulations laid before Senedd Cymru under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2020 No. (W. )**

**EXITING THE EUROPEAN  
UNION, WALES**

**AGRICULTURE, WALES**

**FOOD, WALES**

**The Food and Feed Hygiene and  
Safety (Miscellaneous Amendments  
and Saving Provision) (Wales) (EU  
Exit) Regulations 2020**

*Made*

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*Coming into force in accordance with  
regulation 1(2) and (3)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraphs 1(1) and 11M(1) of Schedule 2, paragraph 7 of Schedule 4, and paragraph 21(b) of Schedule 7, to the European Union (Withdrawal) Act 2018<sup>(1)</sup>.

In accordance with paragraph 4(a) of Schedule 2 to that Act, the Secretary of State has been consulted during the preparation of these Regulations.

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(1) 2018 c.16. See section 20(1) of that Act for the definition of “devolved authority”. There are amendments to paragraph 1 of Schedule 2 not relevant to these Regulations. Paragraph 11M of Schedule 2 was inserted by section 22 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 21 of Schedule 7 was amended by paragraph 53 of Schedule 5 to that Act.

In accordance with paragraph 1(8) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru<sup>(1)</sup>.

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(2)</sup> there has been open and transparent public consultation during the preparation of these Regulations.

## PART 1

### Introduction

#### **Title, application and commencement**

**1.**—(1) The title of these Regulations is the Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020 and they apply in relation to Wales.

(2) This Part and Part 2 come into force immediately before implementation period completion day.

(3) Parts 3 and 4 come into force on implementation period completion day.

## PART 2

### Amendments to EU Exit subordinate legislation

#### **The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

**2.**—(1) The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019<sup>(3)</sup> are amended as follows.

(2) Omit regulation 2.

(3) In regulation 3 (amendment to the Materials and Articles in Contact with Food (Wales) Regulations 2012)—

(a) after paragraph (2) insert—

“(2A) In regulation 4(3) omit “Community”.

(2B) In regulation 6(1)—

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(1) The reference in the European Union (Withdrawal) Act 2018 to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(2) OJ No. L 31, 1.2.2002, p. 1.

(3) S.I. 2019/425 (W. 99).

- (a) omit sub-paragraph (a);
  - (b) in sub-paragraph (b), for “16(1)” substitute “16”.
- (b) in paragraph (5), in the new regulation 10A to be inserted—
- (i) in paragraph (1), for “in accordance with Article 16 of Regulation 1935/2004” substitute “complying with paragraph (2)”;
  - (ii) in paragraph (2), for “the United Kingdom” substitute “Great Britain”;
  - (iii) in paragraph (3), for “the United Kingdom” substitute “Great Britain”;
- (c) after paragraph (6) insert—
- “(6A) In regulation 27(1)(a)(i), for “10(4), 10(6)” substitute “10A(1), 10A(3).”
- “(6B) In Schedule 2, in paragraph 1, in the substituted section 10(1A), for “10(4), 10(6)” substitute “10A(1), 10A(3).”
- (4) Omit regulation 4.
- (5) In the Schedule, in the new Schedule 5 (declaration of compliance) to be inserted, in paragraph 1(a), for “the United Kingdom” substitute “Great Britain”.

**The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

3.—(1) The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019<sup>(1)</sup> are amended as follows.

(2) In regulation 4(3) (amendment to the Quick-frozen Foodstuffs (Wales) Regulations 2007), for sub-paragraph (c), substitute—

“(c) in paragraph (4)—

- (i) in the words before sub-paragraph (a), for “any other description listed in Article 8.1(a) of Directive 89/109” substitute “its equivalent in any other language”;
- (ii) in sub-paragraph (b), for “European Union” substitute “United Kingdom”.

(3) Omit regulations 5 and 6.

(4) In regulation 7 (amendment to the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011)—

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(1) S.I. 2019/434 (W. 102), amended prospectively by S.I. 2020/44 (W. 5).

- (a) for paragraph (2) substitute—  
“(2) In regulation 3(1), for “the European Union” substitute “Great Britain””.
- (b) for paragraph (3) substitute—  
“(3) In regulation 8(3)(a)(i), for “the European Union” substitute “Great Britain””.

**The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019**

**4.**—(1) The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019<sup>(1)</sup> are amended as follows.

(2) Omit regulation 2.

(3) Omit regulations 4, 5, 6 and 7.

(4) In regulation 8 (amendment to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015)—

- (a) in paragraph (3), for sub-paragraph (b) substitute—

“(b) for sub-paragraph (d), substitute—

“(d) is a natural mineral water intended for—

- (i) movement into Northern Ireland; or
- (ii) export to a third country.”;

- (b) for paragraph (4)(a)(iii), substitute—

“(iii) for sub-paragraph (d) substitute—

“(d) in the case of water extracted from the ground in a third country—

- (i) the Agency grants recognition in accordance with Part 2 of Schedule 1;
- (ii) it has equivalent recognition in England granted by the Secretary of State in accordance with regulation 4(1)(d)(i) of, and Part 2 of Schedule 3 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007<sup>(2)</sup>;
- (iii) it has equivalent recognition in Scotland

<sup>(1)</sup> S.I. 2019/1046 (W. 185).

<sup>(2)</sup> S.I. 2007/2785, amended by S.I. 2009/1598, 2010/433, 2011/451, 2014/1855, 2018/352, 2019/526 and 2019/1488; amended prospectively by S.I. 2019/150, 2019/775 and 2019/778.



granted by Food Standards Scotland in accordance with regulation 4(1)(d)(i) of, and Part 2 of Schedule 3 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007<sup>(1)</sup>;

(iv) it has equivalent recognition in Northern Ireland granted by the Agency in accordance with regulation 4(2)(d)(i) of, and Part 2 of Schedule 1 to, the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015<sup>(2)</sup>.

- ”””;
- (c) in paragraph 5, in the new regulation 4A to be inserted—
- (i) in paragraph (6), for “exit day” substitute “IP completion day”;
  - (ii) in paragraph (12), for “exit day”, in each place it occurs, substitute “IP completion day”;
- (d) for paragraph (7), substitute—
- “(7) In regulation 27A—
- (a) in paragraph (b)—
    - (i) omit “or from another EEA State”;
    - (ii) for “Articles 1 to 3 of Regulation 115/2010” substitute “the relevant bottled water legislation that applies in that part of the United Kingdom”;
  - (b) in paragraph (c)—
    - (i) for “country other than an EEA State” substitute “third country”;
    - (ii) for the words from “has been authorised” to “Articles 1 to 3”, substitute “complies with Articles 1 and 2””;
- (e) in paragraph (8)(b), after paragraph (i) insert—
- “(ia) after “the Agency”, for the “or” substitute “to be equivalent to the

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(1) S.S.I. 2007/483, amended by S.S.I. 2009/273, 2010/89, 2011/1043, 2014/312, 2015/100, 2015/363 and 2017/287.

(2) S.R. 2015 No. 365, amended by S.R. 2017 No. 201; prospectively amended by S.R. 2019 No.353.

requirements of these Regulations,  
or by the””.

## PART 3

### Amendment of Welsh subordinate legislation

#### **The Genetically Modified Food (Wales) Regulations 2004**

5.—(1) The Genetically Modified Food (Wales) Regulations 2004(1) are amended as follows.

(2) In the Schedule, in Part 2, in the table—

- (a) omit the entry for Article 8.6;
- (b) in the entry for Article 9.3, in the second column, for “Commission”, substitute “Food Safety Authority”.

#### **The General Food Regulations 2004**

6.—(1) The General Food Regulations 2004(2) are amended as follows.

(2) In regulation 4 (requirements under Regulation (EC) No.178/2002: offences), for paragraph (a) substitute—

“(a) Article 12 (food and feed exported from Great Britain) in so far as it relates to food;”.

#### **The Fishery Products (Official Controls Charges) (Wales) Regulations 2007**

7.—(1) The Fishery Products (Official Controls Charges) (Wales) Regulations 2007(3) are amended as follows.

(2) In regulation 2(1), for the definition of “third country” substitute—

““third country” (“*trydedd wlad*”), except in the expression “third country import” means

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- (1) S.I. 2004/3220 (W. 276), amended by S.I. 2018/806; there are other amending instruments but none is relevant to these Regulations. It was amended prospectively by S.I. 2019/425 (W. 99) but that amendment is omitted by regulation 2(2) of these Regulations.
  - (2) S.I. 2004/3279, amended by S.I. 2005/3254 (W. 247) and 2011/1043; there are other amending instruments but none is relevant to these Regulations. It was amended prospectively by S.I. 2019/1046 (W. 185) but that amendment is omitted by regulation 4(2) of these Regulations.
  - (3) S.I. 2007/3462 (W. 307), amended by S.I. 2011/1043, 2018/806 (W. 162) and 2019/1481 (W. 265); there is another amending instrument but it is not relevant to these Regulations. It was amended prospectively by S.I. 2019/1046 (W. 185) but that amendment is omitted by regulation 5(4) of these Regulations.

any country or territory other than the British Islands;”.

(3) For regulation 4 substitute—

**“Sterling equivalents of Euro**

4. Any reference in these Regulations to a specified number of Euros (“EUR”) is to be read as that sum converted into pounds sterling (“GBP”) using the exchange rate of GBP1 = EUR1.1413.”

(4) For the heading to the Schedule, substitute—

**“DEFINITIONS OF  
LEGISLATION”.**

**The Food Irradiation (Wales) Regulations 2009**

8.—(1) The Food Irradiation (Wales) Regulations 2009<sup>(1)</sup> are amended as follows.

(2) In regulation 3(1)—

- (a) in the definition of “import”, for “another Member State or from a country outside the European Union” substitute “outside the United Kingdom”;
- (b) in the definition of “official reference number”, for “the reference number allocated by the Member State in connection with its approval as an irradiation facility (being the number shown for it in the list in Schedule 3)” substitute “the number shown for it in the list in Schedule 3”.

(3) In regulation 5(1)—

- (a) for sub-paragraph (b) substitute—

“(b) it has been irradiated in one of the facilities listed in the Table in Schedule 3 or Schedule 4;”;
- (b) in sub-paragraph (d), for “another” substitute “a”.

(4) For the heading to Schedule 3, substitute—

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(1) S.I. 2009/1795 (W. 162), amended by S.I. 2011/1043 2018/806 (W. 162); there is another amending instrument but it is not relevant to these Regulations.

“ LIST OF FACILITIES IN EU  
MEMBER STATES AND IN THE  
UNITED KINGDOM”.

**The Meat (Official Controls Charges) (Wales)  
Regulations 2009**

9. In the Meat (Official Controls Charges) (Wales) Regulations 2009(1), for the heading to Schedule 1, substitute—

“DEFINITIONS OF  
LEGISLATION”.

**The Official Feed and Food Controls (Wales)  
Regulations 2009**

10.—(1) The Official Feed and Food Controls (Wales) Regulations 2009(2) are amended as follows.

(2) In regulation 2(1)—

(a) after the definition of “relevant feed law”, omit the “and”;

(b) at the appropriate place, insert—

““third country” (“*trydedd wlad*”) means any country or territory other than the British Islands.”

(3) In regulation 4—

(a) in paragraph (1), for “member States” substitute “the Welsh Ministers”;

(b) in paragraph (4), for “EU legislation” substitute “any other applicable legislation”.

(4) In regulation 5(1), for “member States” substitute “the Welsh Ministers”.

(5) Omit regulations 14, 15 and 16.

(6) In regulation 17—

(a) omit paragraph (3);

(b) in paragraph (5), omit sub-paragraphs (a) and (b).

(7) In regulation 19(1)—

(a) in sub-paragraph (a), omit “14, 15 or”;

(b) in sub-paragraph (b)—

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(1) S.I. 2009/1557 (W. 152), amended by S.I. 2011/1043, 2019/1480 (W. 264); there are other amending instruments but none is relevant to these Regulations. It was amended prospectively by S.I. 2019/434 (W. 102) but that amendment is omitted by regulation 3(3) of these Regulations.

(2) S.I. 2009/3376 (W. 298), amended by S.I. 2011/1043, 2019/1482 (W. 266); there are other amending instruments but none is relevant to these Regulations. It was amended prospectively by S.I. 2019/434 (W. 102) and 2019/1046 (W. 185) but those amendments are omitted by, respectively, regulations 3(3) and 5(4) of these Regulations.

- (i) omit “14, 15 or”;
- (ii) for “those regulations” substitute “that regulation”.

(8) In regulation 20(2), for “, regulation 11 or regulation 16” substitute “or regulation 11”.

(9) In regulation 22, omit the definition of “the relevant territories” and the “and” after it.

(10) In regulation 28(1), omit sub-paragraphs (b) and (d).

(11) Omit regulation 35(1).

(12) In regulation 41—

(a) in paragraph 1(b), omit “or paragraph (4) or (5) of regulation 35”;

(b) after paragraph 1(e) insert—

“(f) contravenes or fails to comply with the provisions of any instrument made under Article 53 of Regulation 178/2002.”

(13) In Schedule 6, in the entry relating to Article 5(1)(b) of Regulation 2019/1602, in the second column, for “IMSOC” substitute “appropriate computerised information management system”.

### **The Food Safety (Sampling and Qualifications) (Wales) Regulations 2013**

**11.**—(1) The Food Safety (Sampling and Qualifications) (Wales) Regulations 2013(2) are amended as follows.

(2) In Schedule 2—

(a) in Part 1, in paragraph 6, for “another Member State” substitute “a member State of the European Union”;

(b) in Part 2—

(i) in paragraph 2, for “another Member State” substitute “a member State of the European Union”;

(ii) in paragraph 4, for “another Member State” substitute “a member State of the European Union”.

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(1) See regulation 16 of these Regulations for provision saving declarations made under regulation 35 of the Official Feed and Food Controls (Wales) Regulations 2009 that are in force immediately before implementation period completion day.

(2) S.I. 2013/479 (W. 55), to which there are amendments not relevant to these Regulations.

### **The Contaminants in Food (Wales) Regulations 2013**

**12.**—(1) The Contaminants in Food (Wales) Regulations 2013<sup>(1)</sup> are amended as follows.

(2) In regulation 5—

- (a) in paragraph (1), for “EU provisions” substitute “retained EU law provisions”;
- (b) in paragraph (2), for “EU provisions” substitute “retained EU law provisions”.

(3) In regulation 8(2) (application of various sections of the Food Safety Act 1990), in the text of the modified section 9, for “the EU requirements”, in each place it occurs, substitute “the retained EU law requirements”.

### **The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013**

**13.**—(1) The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013<sup>(2)</sup> are amended as follows.

(2) In regulation 10(b), for “the European Union” substitute “Great Britain”.

(3) In regulation 14(1)(d), for “territory of the EU” substitute “United Kingdom”.

(4) Omit regulation 15.

(5) In Schedule 1—

- (a) in Table 1, in the entry for Article 26.1, in the second column, for “Commission” substitute “Authority”;
- (b) In Table 2—
  - (i) in the entry for Article 21.1 (as read with Article 22), in the second column, for “a language easily understandable to purchasers” substitute “English, or in English and Welsh”;
  - (ii) in the entry for Article 26.2, in the second column, for “Commission” substitute “Authority”.

(6) In Schedule 2, in Table 1—

- (a) in the entry for Article 10, in the second column, for “Union” substitute “domestic”;

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(1) S.I. 2013/2493 (W. 242), amended by S.I. 2018/806 (W. 162).

(2) S.I. 2013/2591 (W. 255), to which there are amendments not relevant to these Regulations. It was amended prospectively by S.I. 2019/425 (W. 99) and 2019/1046 (W. 185) but those amendments are omitted by, respectively, regulations 2(4) and 5(4) of these Regulations.

- (b) in the entry for Article 19.2, in the second column, for “Commission” substitute “Authority”;
- (c) in the entry for Article 19.3, in the second column, for “Commission” substitute “Authority”.

(7) In Schedule 3, in Table 1, in the entry for Article 9.5, in the second column, for “Commission” substitute “Authority”.

(8) In Schedule 4, in Table 1—

- (a) in the entry for Article 4, in the second column, for “Union” substitute “domestic”;
- (b) in the entry for Article 14.1, in the second column, for “Commission” substitute “Authority”;
- (c) in the entry for Article 14.2, in the second column, for “Commission” substitute “Authority”.

#### **The Honey (Wales) Regulations 2015**

**14.**—(1) The Honey (Wales) Regulations 2015<sup>(1)</sup> are amended as follows.

(2) In regulation 17—

- (a) in paragraph (1)—
  - (i) omit “member State or third”;
  - (ii) for the words from “one of the following” to the end, substitute “the indication “blend of honeys from more than one country” or wording in English with equivalent meaning.”;
- (b) in paragraph (6), for the words from “following indications” to the end, substitute “indication “cyfuniad o felau o fwy nag un wlad” or wording in Welsh with equivalent meaning may be included.”

#### **The Caseins and Caseinates (Wales) Regulations 2016**

**15.**—(1) The Caseins and Caseinates (Wales) Regulations 2016<sup>(2)</sup> are amended as follows.

(2) In regulation 6—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (d), for “the European Union, the importer into the European Union market” substitute “the United

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(1) S.I. 2015/1507 (W. 174), to which there are amendments not relevant to these Regulations.

(2) S.I. 2016/1130 (W. 270).

- Kingdom, the importer into the United Kingdom”;
- (ii) in sub-paragraph (e), for “countries outside the European Union” substitute “a third country”;
- (b) after paragraph (8) insert—
- “(9) In this regulation, “third country” means any country other than the British Islands.”

## PART 4

### Saving Provision

#### **Saving of declarations made under regulation 35 of the Official Feed and Food Controls (Wales) Regulations 2009**

**16.** Notwithstanding the revocation of regulation 35 of the Official Feed and Food Controls (Wales) Regulations 2009 (by regulation 10(11) of these Regulations), any declaration made under regulation 35 that is in force immediately before implementation period completion day, takes effect after implementation period completion day as if made by the Welsh Ministers in a statutory instrument under Article 53 of Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law<sup>(1)</sup>.

*Name*

Minister for Mental Health, Wellbeing and Welsh Language, one of the Welsh Ministers

Date

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(1) EUR 178/2002, as prospectively amended by S.I. 2019/641.



## **Explanatory Memorandum to the Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020**

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

### **Minister/Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

**Eluned Morgan**

**Minister for Mental Health, Wellbeing and Welsh Language**

**24 November 2020**

## **PART 1**

### **1. Description**

The Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020 ('the 2020 Regulations') make amendments, which apply in relation to Wales only, to subordinate legislation in the fields of food and feed safety and hygiene, and food compositional standards.

The purpose of the 2020 Regulations is to:

- implement the Protocol on Ireland/Northern Ireland ('NIP') by making necessary amendments to a number of provisions in three EU-Exit statutory instruments ('the 2019 SIs') and other domestic legislation applying in relation to Wales in the fields of food and feed safety and hygiene, and food compositional standards;
- address deficiencies in Welsh domestic legislation arising from EU-Exit also in the fields of food and feed safety and hygiene, and food compositional standards to ensure that the statute book continues to operate effectively at the end of the implementation period ('IP'); and
- ensure that any amendments in the fields of food and feed safety and hygiene, and food compositional standards introduced by EU-Exit SIs made after the 2019 SIs are being accounted for.

The 2020 Regulations amend the following instruments:

- The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, and in particular to regulation 3, which amends:
  - The Materials and Articles in Contact with Food (Wales) Regulations 2012;
- The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, and in particular to regulations 4 and 7, which respectively amend:
  - The Quick-frozen Foodstuffs (Wales) Regulations 2007; and
  - The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011;
- The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019, and in particular to regulation 8, which amends:

- The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015;
- The Genetically Modified Food (Wales) Regulations 2004;
- The General Food Regulations 2004;
- The Fishery Products (Official Controls Charges) (Wales) Regulations 2007;
- The Food Irradiation (Wales) Regulations 2009;
- The Meat (Official Controls Charges) (Wales) Regulations 2009;
- The Official Feed and Food Controls (Wales) Regulations 2009;
- The Food Safety (Sampling and Qualifications) (Wales) Regulations 2013;
- The Contaminants in Food (Wales) Regulations 2013;
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013;
- The Honey (Wales) Regulations 2015; and
- The Caseins and Caseinates (Wales) Regulations 2016.

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

The 2020 Regulations are subject to the affirmative procedure under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal Agreement) Act 2018 ('2018 Act').

## **3. Legislative background**

The 2020 Regulations are being made using the power in Part 1 of Schedule 2 to the 2018 Act 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. The instrument is also made under paragraph 11M(1) of Schedule 2 as well as under paragraph 7 of Schedule 4 and paragraph 21(b) of Schedule 7 to the 2018 Act.

In accordance with the requirements of the 2018 Act, the Minister for Mental Health, Wellbeing and Welsh Language has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

#### **4. Purpose and intended effect of the legislation**

Following the end of the IP, without amendment, certain provisions will be inoperable and as a result existing law will either be unclear or will not function effectively.

The 2020 Regulations, therefore, use powers under the 2018 Act to make technical changes to the below legislation to ensure that it remains coherent and it continues to function correctly after the end of the IP.

#### **What did any relevant EU law do before exit day?**

##### **The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

This instrument makes amendments to subordinate legislation applying in Wales in the fields of genetically modified food and feed, materials and articles in contact with food, and food additives, flavourings, enzymes and extraction solvents. The amendments made by this instrument come into force at the end of the IP.

The 2020 Regulations are particularly concerned with regulation 3 of this instrument, which contains amendments to the Materials and Articles in Contact with Food (Wales) Regulations 2012.

##### **The Materials and Articles in Contact with Food (Wales) Regulations 2012**

This instrument implements the following EU Regulations in relation to Wales:

- Regulation (EU) No 10/2011 providing rules on plastic materials and articles intended to come into contact with food;
- Regulation (EC) No 1935/2004 providing rules on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC;
- Regulation (EC) No 1895/2005 providing rules on restrictions of use of certain epoxy derivatives in materials and articles intended to come into contact with food;

- Regulation (EC) No 2023/2006 establishing good manufacturing practices for materials and articles intended to come into contact with food;
- Regulation (EC) No 450/2009 providing rules on active and intelligent materials and articles intended to come into contact with food;
- Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food.

The EU Regulations, as implemented by the 2012 Regulations, provide for the protection of food from hazards that may arise from materials and articles with which they may come into contact throughout the food chain.

### **The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

This instrument makes amendments to subordinate legislation applying in Wales in the fields of food and feed hygiene and safety to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. The amendments made by this instrument come into force at the end of the IP.

The 2020 Regulations are particularly concerned with regulations 4 and 7 of this instrument, which respectively contain amendments to the Quick-frozen Foodstuffs (Wales) Regulations 2007 and the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011.

### **The Quick-frozen Foodstuffs (Wales) Regulations 2007**

This instrument implements Regulation (EC) No. 37/2005 in relation to Wales.

That EU Regulation, as implemented in Wales by these Regulations, provides rules for monitoring of temperature in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption.

This instrument revokes and re-enacts in relation to Wales the Quick-frozen Foodstuffs Regulations 1990, which extend to the whole of Great Britain.

The Directives implemented by the Quick-frozen Foodstuffs Regulations 1990 that this instrument continues to implement are:

- Directive 89/108/EEC on the approximation of the laws of Member States relating to quick-frozen foodstuffs for human consumption; and

- Directive 92/2/EEC laying down the sampling procedure and the Community method of analysis for the official control of the temperatures of quick-frozen foods intended for human consumption.

### **The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011**

This instrument implements Regulation (EU) No 284/2011 in relation to Wales.

That EU Regulation, as implemented in Wales by these Regulations, provides specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China.

### **The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019**

This instrument makes amendments to subordinate legislation applying in Wales in the fields of food and feed hygiene and safety, food and feed regulated products, and food standards and labelling to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. The amendments made by this instrument come into force at the end of the IP.

The 2020 Regulations are particularly concerned with regulation 8 of this instrument, which contains amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015.

### **The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015**

This instrument transposes the following EU Directives in relation to Wales:

- Directive 98/83/EC on the quality of water intended for human consumption;
- Directive 2003/40/EC establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and the conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters;

- Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters;
- Directive 2013/51/EURATOM laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption.

This instrument also implements the following EU Regulation in relation to Wales:

- Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters.

### **The Genetically Modified Food (Wales) Regulations 2004**

This instrument makes provision for the execution and enforcement of Commission Regulation 1829/2003. This Commission Regulation provides a regulatory framework for the pre-market scientific assessment and authorisation of Genetically Modified Organisms (GMOs) for use in food and feed.

### **The General Food Regulations 2004**

This instrument provides for the enforcement of Regulation (EC) No 178/2002 in relation to Wales. This instrument originally applied in relation to England, Scotland and Wales but has largely been superseded in relation to England.

Regulation (EC) No 178/2002, as implemented in Wales by these Regulations, establishes the responsibility of Food Business Operators (FBOs) to produce food with a high level of protection of human life and health and establishes principles of traceability through the food chain. Together, they provide the high-level principles underpinning the placing of safe food and feed on the market in the EU.

### **The Fishery Products (Official Controls Charges) (Wales) Regulations 2007**

This instrument sets out the charges required to be levied for official controls undertaken on fishery products as specified in Regulation (EU) 2017/625.

Regulation (EU) 2017/625 lays down specific rules 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.

## **The Food Irradiation (Wales) Regulations 2009**

This instrument transposes, in relation to Wales:

- Directive 1999/2/EC, which provides the framework for the manufacture, marketing and importation of foods and food ingredients treated with ionising radiation. The Directive sets out the purpose, conditions and the approved sources for authorising the treatment of food with radiation;
- Directive 1999/3/EC, which establishes a list of foods and food ingredients treated with ionising radiation. The Commission List sets out the list of approved facilities for the treatment of foods and food ingredients with ionising radiation in Member States, and the Commission Decisions provide a similar list of approved facilities in third countries.

## **The Meat (Official Controls Charges) (Wales) Regulations 2009**

This instrument sets out the rules and mechanisms for the collection of certain charges for the delivery of official controls as set out in Regulation (EU) 2017/625 and in any Implementing and Delegated Regulations made under it, as laid out in the Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019.

## **The Official Feed and Food Controls (Wales) Regulations 2009**

This instrument provides for the execution and enforcement, in Wales, of Regulation (EU) 2017/625 and such implementing regulations made under it, as laid out in the Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019, setting out 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;

This instrument sets out the competent authorities for the enforcement of feed and food law, the control mechanisms by which enforcement authorities may monitor the production and supply of food and feed in order to ensure a high level of protection for human life and health, as well as the powers to deal with any non-compliance with the relevant rules.



## **The Food Safety (Sampling and Qualifications) (Wales) Regulations 2013**

This instrument:

- specifies the qualifications necessary to be a public analyst, food analyst or food examiner for the purposes of the Food Safety Act 1990;
- prohibits specified persons from carrying out analyses or examinations;
- specifies the procedures to be followed when a sample has been procured under the Food Safety Act 1990 for analysis or examination;
- excludes from these procedures samples taken under Regulations which have their own procedures; and
- prescribes the form of certificate to be used by analysts and examiners in making their reports.

## **The Contaminants in Food (Wales) Regulations 2013**

This instrument revokes and re-enacts with changes the Contaminants in Food (Wales) Regulations 2010, making provision for:

- the continuing implementation of Regulation (EU) 2015/2284 relating to the fixing of the maximum level of erucic acid in oils and fats intended as such for human consumption; and
- the continuing execution and enforcement of Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs

This instrument also provides for the execution and enforcement of Commission Regulation (EC) No. 124/2009, which concerns maximum permitted levels for certain feed additives that may, in specified circumstances, occur in food.

## **The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013**

This instrument implements the following EU Regulations in relation to Wales:

- Regulation (EC) No. 2065/2003 on smoke flavouring used or intended for use in or on foods;

- Regulation (EC) No. 1332/2008 on food enzymes;
- Regulation (EC) No. 1333/2008 on food additives;
- Commission Regulation EU No. 231/2012 laying down specifications for food additives approved under 1333/2008;
- Regulation (EC) No. 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods flavourings.

This instrument also transposes Directive 2009/32/EC on extraction solvents used in the production of foodstuffs and food ingredients.

### **The Honey (Wales) Regulations 2015**

This instrument transposes Council Directive 2001/110/EC relating to honey. The Directive lays down compositional requirements and reserved names by which honey can be called.

### **Caseins and Caseinates (Wales) Regulations 2016**

This instrument transposes Directive (EU) 2015/2203 relating to caseins and caseinates intended for human consumption in relation to Wales.

Directive (EU) 2015/2203 on caseins and caseinates intended for human consumption lays down specifications for use of reserved descriptions, manufacturing specifications and labelling of casein products so as to ensure their free movement within the European Union. It also aligns composition requirements with the international standard set by the Codex Alimentarius for the sake of consistency and to avoid trade distortions.

### **Why is it being changed?**

Corrections are necessary to the text of the legislation to ensure that a range of provisions in Welsh domestic legislation reflect the application of the NIP. In addition to this, there is a need to account for any legislative developments made since the introduction of the 2019 SIs as well as to ensure that amendments to retained direct EU law introduced by other EU-Exit SIs have been reflected in the associated amendments made to the domestic legislation.

The 2020 Regulations provide the necessary amendments to Welsh domestic legislation by amending a number of provisions in three Wales specific EU-Exit instruments and in other domestic legislation that apply in relation to Wales, to

ensure that these fully implement the NIP in the fields of food and feed safety and hygiene, and compositional standards. It also includes updated technical amendments to Welsh instruments to account for deficiencies arising from the withdrawal of the UK from the EU and accounts for any recent changes to other retained EU law made after the implementation of the three EU-Exit SIs listed in the Description section at page 2 of this Explanatory Memorandum.

The proposed amendments in the 2020 Regulations are technical in nature and cover a range of issues such as:

- Updating references to retained EU law;
- Amending the definitions of third country;
- replacing references to 'EU' with 'UK' or 'GB' as appropriate to reflect the application of the NIP post IP; and
- removing or replacing references to EU-specific terminology.

These amendments are necessary to ensure that Wales' obligations under the NIP are met as well as to ensure the accuracy and efficiency of the statute book in Wales after the end of the IP.

Where appropriate, existing EU-Exit changes are omitted and the provisions remade (with relevant updates, amendments and consolidation) within this instrument to ensure that EU-Exit amendments are as clear and accessible as possible.

### **What will it now do?**

The 2020 Regulations will ensure the proper application of the NIP in relation to, and will address technical deficiencies in, the Welsh legislation affected by this instrument and arising from EU-Exit at the end of the IP. The 2020 Regulations will also ensure that any amendments to relevant retained EU law in the fields of food and feed safety and hygiene, and food compositional standards, including those introduced by other EU-Exit SIs made after the 2019 SIs, are reflected in the current drafting.

The amendments ensure that the legislation is operable at the end of the IP and provides a smooth transition for businesses.

## 5. Consultation

### Duty to consult with the Secretary of State

In accordance with paragraph 4 of Schedule 2 to the 2018 Act there has been consultation with the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Health and Social Care on 11 November 2020 regarding the need for Part 2 of this instrument to be brought into force before IP completion day.

### General consultation

Article 9 of Regulation (EC) No. 178/2002 provides that there must be open and transparent public consultation during the preparation, evaluation and revision of food law, except in urgent circumstances. Following EU Exit, this will continue to be the case with all future revisions of food law.

The FSA undertook a UK-wide consultation between the 20 August 2020 and 16 September 2020 in relation to “Amendments to Retained EU Law for Food and Feed Safety and Hygiene for the end of the Transition Period”, specifically in relation to changes needed in relation to the Withdrawal agreement and NIP. The consultation received 7 responses from interested parties. A significant proportion (71%) supported the proposed approach being outlined within the consultation. The remaining replies (29%) had mixed comments, however, no concerns were raised in relation to the proposed fixes.

A copy of the consultation is available here:

<https://www.food.gov.uk/news-alerts/consultations/amendments-to-retained-eu-law-for-food-and-feed-safety-and-hygiene-for-the-end-of-the-transition-period>.

The FSA in Wales also undertook consultation between 7 January 2019 and 4 February 2019 in relation to “The proposed approach to amendments to Welsh domestic legislation for food and feed safety and hygiene, food compositional standards, labelling”.

This consultation concerned the technical amendments detailed by the three Wales specific EU-Exit SIs the 2020 Regulations are amending.

The purpose of this FSA consultation was to provide stakeholders with the opportunity to comment on the FSA’s proposals to make technical fixes to the relevant domestic legislation, and on the FSA’s options for the more

substantive corrections that were required in relation to food compositional standards and labelling.

A copy of the consultation is available here:

<https://www.food.gov.uk/news-alerts/consultations/the-proposed-approach-to-amendments-to-welsh-domestic-legislation-for-food-and-feed-safety-and-hygiene-food-compositional>.

## **6. Regulatory Impact Assessment (RIA)**

No impact assessment has been produced in relation to these Regulations as no impact on the private, voluntary or public sectors is foreseen.

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

# 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 of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

| Statement       | Where the requirement sits                                       | To whom it applies   | What it requires  |
|-----------------|--|--|---|
| Sifting         | Paragraphs 3(7) and 4(3), Schedule 7<br><br>Standing Order 27.1A | The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI<br><br>Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement                   | A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee) |
| Appropriateness | Sub-paragraph (2) of paragraph 28, Schedule 7                    | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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                    | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have   | A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.   |

|                   |  |  |  |
|-------------------|--|--|--|
|                   |  | committed to make the same statement when exercising powers in Schedule 2  |  |
| Equalities        | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | <p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p> |
| Explanations      | Sub-paragraph (6) of paragraph 28, Schedule 7          | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement to 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 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.  |
| Sub-delegation    | Paragraph 30, Schedule 7                               | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.                      | A statement to explain why it is appropriate to create such a sub-delegated power.   |

|         |  |  |  |
|---------|--|--|--|
|         |  | Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority |  |
| Urgency | Sub-paragraph (2) and (8) of paragraph 7, Schedule 7 | Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7  | A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion. |



## Part 2

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

#### 1. Sifting statement(s)

Not applicable/required.

#### 2. Appropriateness statement

The Minister for Mental Health, Wellbeing and Welsh Language, Eluned Morgan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate.”

This is the case because the Instrument predominantly corrects technical deficiencies arising from EU-Exit and ensures the proper application of the NIP.

#### 3. Good reasons

The Minister for Mental Health, Wellbeing and Welsh Language, Eluned Morgan, 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.”

These are that failure to make this legislation would result in Welsh legislation relating to feed and food safety and hygiene failing to operate effectively after IP completion day.

#### 4. Equalities

The Minister for Mental Health, Wellbeing and Welsh Language, Eluned Morgan, has made the following statement

“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.”

The Minister for Mental Health, Wellbeing and Welsh Language, Eluned Morgan, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the [draft] instrument, I, Eluned Morgan 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.”.

## **5. Explanations**

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

## **6. Criminal offences**

Not applicable/required.

## **7. Legislative sub-delegation**

Not applicable/required.

## **8. Urgency**

Not applicable/required.

## SL(5)675 – The Senedd Cymru (Representation of the People) (Amendment) Order 2020

### Background and Purpose

The National Assembly for Wales (Representation of the People) Order 2007 (“the 2007 Order”) sets out detailed rules for the conduct of elections to Senedd Cymru.

This Order amends the 2007 Order to reflect policy and legislative changes which have taken place since the 2016 Senedd general election in preparation for the 2021 Senedd general election.

In particular, this Order:

- implements changes arising as a result of the name change, extension of the franchise and disqualification criteria introduced by the Senedd and Elections (Wales) Act 2020,
- gives candidates the option of not publishing their home address at Senedd elections, and
- makes changes to the manner in which payment is made to returning officers for services rendered.

### Procedure

Draft Affirmative.

### Technical Scrutiny

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

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

The definition inserted by article 3(3) refers to “*the Senedd Cymru*” [*emphasis added*]. It appears that the inclusion of the definite article is erroneous, as the Government of Wales Act 2006 refers to “Senedd Cymru” throughout, without “the” preceding it.

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

Articles 43(b) and 44(2)(a)(ii) refer to section 16 of the Government of Wales Act 2006. In both instances, the heading to section 16 is described as “(disqualification from being Senedd member)” but the heading actually reads “(disqualification from being a Member of



the Senedd)". The same error is also made in the first paragraph on page 3 of the Explanatory Note.

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

Article 53(9) modifies article 23(8) of the 2007 Order by substituting "Assembly" in each place it occurs with "Welsh Ministers". However, the first occurrence of "Assembly" in paragraph (8) relates to Assembly elections.

The effect of the provision as drafted is that part of the wording of paragraph (8) reads "*a returning officer's charges at an Welsh Ministers election [sic]*".

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

In the Welsh language version of the Order, article 3 has been numbered incorrectly, and is therefore inconsistent with the numbering in article 3 of the English language version.

## **Merits Scrutiny**

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

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

Schedule 10 (appendix of forms) to the 2007 Order contains both English and Welsh language forms. We ask why the English language version of this Order amends only the English language forms, and the Welsh language version amends only the Welsh language forms, as the forms in both languages are contained in a single instrument. It could appear to the reader that the forms are only amended in one language, depending on which version they read.

The Committee notes that although article 4 of this Order does state that the amendments are made to both the Welsh and English language text of the forms, articles 39, 47 and 57 do not contain similar statements to that effect.

### **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**

The Committee notes that no Regulatory Impact Assessment has been carried out. In particular, we note the following paragraph in the Explanatory Memorandum:

*"These amendments are mainly based on policies which have already been subject to substantive consultation and debate. Where policies were considered in the Regulatory Impact Assessments for the Senedd and Elections (Wales) Act 2020 and the Local Government and Elections (Wales) Bill, in the absence of any additional or alternative evidence, we did not consider it to be necessary to carry out those assessments again."*



The Committee welcomes the inclusion in the Explanatory Memorandum of links to the Regulatory Impact Assessments mentioned above, as this provides a helpful aid to the reader.

## **Implications arising from exiting the European Union**

None.

## **Welsh Government response**

A Welsh Government response is required in relation to the technical reporting points and the first merits reporting point.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**2 December 2020**



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

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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

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**2020 No. (W. )**

**CONSTITUTIONAL LAW**

**REPRESENTATION OF THE  
PEOPLE, WALES**

**The Senedd Cymru (Representation  
of the People) (Amendment) Order  
2020**

**EXPLANATORY NOTE**

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

This Order amends the National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236) (“the 2007 Order”).

The 2007 Order and subsequent amendment Orders were made by the Secretary of State, but the enabling powers were transferred to the Welsh Ministers by the Wales Act 2017. Consequently, this is the first Order made by the Welsh Ministers in relation to the conduct of Senedd Cymru elections.

The title of this Order contains the term Senedd Cymru due to the change made to the name of the National Assembly for Wales by Part 2 of the Senedd and Elections (Wales) Act 2020 (“the 2020 Act”).

Part 2 of this Order also makes provision in relation to the 2007 Order to reflect the changes made by Part 2 of the 2020 Act. For example, articles 4 to 35 substitute references within these forms to the National Assembly of Wales with references to the new name in consequence of Part 2 of the 2020 Act.

Part 3 of this Order makes various provision to give effect to and in consequence of Part 3 (elections) of the 2020 Act. Part 3 of that Act makes provision to lower the voting age for and extend the franchise to qualifying foreign citizens at Senedd Cymru elections.

Article 36 amends article 14 of the 2007 Order to ensure that offences committed under the Order in relation to providing false information are applicable only to those who have attained voting age.

Articles 37 and 38 make various amendments to Schedule 1 (absent voting) and Schedule 5 (Senedd Cymru election rules) to the 2007 Order, respectively. These amendments all reflect the fact that Part 3 of the 2020 Act provides that at elections for membership of the Senedd at which the poll is held on or after 5 April 2021, a person who has attained the age of 16 and would otherwise be entitled to, may vote at that election and make provision in consequence of this.

In particular article 37(2) amends paragraph 1(9) of Schedule 1 and inserts a new paragraph (e). When making an application for absent voting at Senedd Cymru elections, a person is required to provide their address to which they are, or will be registered. Paragraph 1(9) of Schedule 1 enables service voters, patients in mental hospitals who are not detained offenders, persons remanded in custody and homeless persons to provide certain addresses for the purpose of an application. The 2020 Act makes provision for persons who are, or have been, looked after children to make a declaration of local connection to (i) an address in Wales at which the person has previously been resident; or (ii) the address of a council of a county or county borough in Wales in which that person has previously been resident. New paragraph 1(9)(e) allows an applicant to use any such address for the purpose of applying to be an absent voter.

Article 37(7) inserts paragraph 14A in Schedule 1 which ensures that information contained within an absent voter record or list which relates to a person under the age of 16 is not disclosed unless it is necessary for the purpose of, or in connection with, an election at which that young person will be entitled to vote.

Article 38 lowers the age of those who are entitled to accompany voters to the polling station by virtue of rule 41(1)(b) of Schedule 5 to 16. Paragraph (b) lowers the age of those who the Presiding Officer may limit admission to a polling station to 16. Paragraph (c) amends rule 48(3)(b) of Schedule 5 to similarly lower the age of those who are entitled to accompany a person who is a voter with disabilities to 16.

Part 4 of this Order amends the 2007 Order in consequence of Part 4 (disqualification) of the 2020 Act.

Article 43 amends article 34 (false statements in nomination papers etc.) of the 2007 Order so as to provide that a statement as to a candidate's qualification for a Senedd Cymru election includes a statement that the candidate is not disqualified under section 16(A1)

of the 2006 Act (disqualification from being a Senedd member).

Article 44 makes amendments to various provisions within Schedule 5 to the 2007 Order (Senedd Cymru election rules). The purpose of these amendments is to give effect to the change made in Part 4 of the 2020 Act which introduces a distinction between disqualification from membership of the Senedd and disqualification from candidacy for and membership of the Senedd.

Article 44(5) omits rule 19 of Schedule 5 given that disqualification under the Representation of the People Act 1981 is no longer applicable to Senedd Cymru elections as a result of Part 4 of the 2020 Act.

Part 5 of this Order makes provision for candidates at Senedd Cymru elections to request that their home address not be made public. This provision also applies to those who act as their own agents. Where such persons request that their home address not be made public, their home address will not appear on a statement of persons nominated and the ballot paper. However they are nevertheless required to provide, where they are residents in the United Kingdom, the constituency in which they live, or, where they reside outside the United Kingdom, the name of the country in which they live.

Articles 47 to 52 introduce the Schedule to this Order which contains a home address form in which candidates can request that their home address not be made public and make consequential amendments to other prescribed forms in Schedule 10 to the 2007 Order.

Article 53 amends article 23 of the 2007 Order. The amendments made to article 23 will mean that constituency and regional returning officers will recover charges in respect of services rendered in connection with a Senedd Cymru election on behalf of electoral administrators (returning officers, deputy returning officers and officers of a council) and distribute such charges as necessary.

Part 7 of this Order makes provision enabling the Electoral Commission to prepare a code of practice in relation to election expenses for candidates at Senedd Cymru elections. Article 54 revokes article 63(8) of the 2007 Order. This is replaced by the new provision in article 55 to be included within Schedule 7 (election expenses) to the 2007 Order.

In accordance with this, the Welsh Ministers may approve a draft Code prepared by the Commission with or without modifications. They must then lay the Code, in draft form, before Senedd Cymru. Within 40 days, the Senedd may make a resolution not to approve the draft Code. In that event, the Welsh Ministers must take no further steps in relation to it. But if no resolution is



made, the Welsh Ministers must issue the Code in the form of the draft laid and the Commission must publish it.

Part 8 of this Order provides for constituency and regional candidates to use the suffix “Cymru” and prefix “Welsh” in the nomination of candidate form and ballot paper where the registered party name does not include “Cymru” or “Welsh”.

Part 9 of this Order makes a number of other amendments to the 2007 Order. Articles 64 and 65 revoke out of date references to the Government of Wales Act 1998 (“the 1998 Act”). These references were transitional in nature and are now unnecessary.

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

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

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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

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**2020 No. (W. )**

**CONSTITUTIONAL LAW**

**REPRESENTATION OF THE  
PEOPLE, WALES**

The Senedd Cymru (Representation  
of the People) (Amendment) Order  
2020

*Made*

\*\*\*

*Coming into force*

*17 December 2020*

The Welsh Ministers make this Order in exercise of the powers conferred on them by sections 13(1), 13(2) and 157(2)(c) of the Government of Wales Act 2006(1) as extended by section 26(3) of the Welsh Language Act 1993(2).

In accordance with section 7(1) and (2)(f) of the Political Parties, Elections and Referendums Act 2000(3), the Welsh Ministers have consulted with the Electoral Commission prior to it being made.

In accordance with section 13(7) of the Government of Wales Act 2006, a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru.

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- (1) 2006 c. 32. Section 13 was substituted by section 5(1) of the Wales Act 2017 (c. 4) and subsequently amended by the Senedd and Elections (Wales) Act 2020 (anaw 1).  
(2) 1993 c. 38.  
(3) 2000 c. 41; subsection (2)(f) was substituted by S.I. 2007/1388 and subsequently amended by the Wales Act 2017 (c. 4).

## PART 1

### General

#### **Title, commencement, interpretation and application**

**1.**—(1) The title of this Order is the Senedd Cymru (Representation of the People) (Amendment) Order 2020.

(2) This Order comes into force on 17 December 2020 but articles 3 to 65 only have effect for the purpose of a Senedd Cymru election at which the poll is held on or after 5 April 2021.

(3) In this Order, “the 2007 Order” means the National Assembly for Wales (Representation of the People) Order 2007<sup>(1)</sup>.

#### **Amendment of the 2007 Order**

**2.** The 2007 Order is amended in accordance with articles 3 to 65.

## PART 2

### Renaming of the National Assembly for Wales

#### **Change of the name of the National Assembly for Wales**

**3.**—(1) Article 2(1) (interpretation) is amended as follows.

(2) Omit the definition of “the Assembly”.

(3) In the appropriate place, insert—

““Senedd Cymru” means the Senedd Cymru constituted by the 2006 Act;”.

**4.** Schedule 10 (appendix of forms) is amended as follows, and such amendments are made to both the Welsh and English language text of the forms.

**5.** In form CA (form of proxy paper)—

(a) for “the National Assembly for Wales” substitute “Senedd Cymru”;

(b) for “Assembly election(s)” substitute “Senedd Cymru election(s)”;

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<sup>(1)</sup> S.I. 2007/236. This Order has been amended by S.I. 2009/1182; S.I. 2010/1142 (W. 101); S.I. 2010/2931; S.I. 2011/1441; S.I. 2011/2085; S.I. 2012/1479; S.I. 2013/388; S.I. 2013/591; S.I. 2015/664; S.I. 2016/272; S.I. 2016/292; section 3 of the Wales Act 2014 (c. 29) and section 27 of the Senedd and Elections (Wales) Act 2020 (anaw 1).

- (c) for “any Assembly election”, in each place it occurs substitute “any Senedd Cymru election”;
- (d) for “an Assembly election”, in each place it occurs substitute “a Senedd Cymru election”;
- (e) for “Assembly elections”, in each place it occurs substitute “Senedd Cymru elections”;
- (f) for the words from “at an Assembly general election” to “Assembly electoral region” substitute—
  - “at a Senedd Cymru general election in the same Senedd Cymru constituency or constituencies in the same Senedd Cymru electoral region”.

**6.** In form CB (form of certificate of employment), for “the National Assembly for Wales” substitute “Senedd Cymru”.

**7.** In forms CC1, CC2 and CC3 (form of postal voting statement)—

- (a) for “the National Assembly for Wales”, in each place it occurs substitute “Senedd Cymru”;
- (b) for “National Assembly constituency members” substitute “Senedd Cymru constituency members”;
- (c) for “National Assembly regional members” substitute “Senedd Cymru regional members”.

**8.** In form CD (statement as to postal ballot papers)—

- (a) for “Election to the National Assembly for Wales” substitute “Election to Senedd Cymru”;
- (b) for “Assembly Constituency” substitute “Senedd Cymru Constituency”.

**9.** In form CE (form of nomination paper: constituency election), for “the National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”.

**10.** In form CF (form of certificate referred to in rule 5(1)), for “Assembly Constituency” substitute “Senedd Cymru Constituency”.

**11.** In form CG (form of certificate referred to in rule 5(3)), for “Assembly Constituency” substitute “Senedd Cymru Constituency”.

**12.** In form CH (form of individual nomination paper: regional election), for “the National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”.

**13.** In form CI (form of party nomination paper: regional election), for “the National Assembly for

Wales” in the heading to the form substitute “Senedd Cymru”.

**14.** In form CK (constituency ballot paper)—

- (a) for “National Assembly for Wales” substitute “Senedd Cymru”;
- (b) for “Assembly Member” substitute “Member of the Senedd”.

**15.** In form CK1 (directions as to printing the ballot paper: constituency election)—

- (a) for “National Assembly for Wales election” substitute “Senedd Cymru election”;
- (b) for “Assembly member” substitute “Member of the Senedd”.

**16.** In form CL (regional ballot paper)—

- (a) for “National Assembly for Wales election” substitute “Senedd Cymru election”;
- (b) for “Assembly Member” substitute “Member of the Senedd”;
- (c) for “Assembly constituency” substitute “Senedd Cymru constituency”.

**17.** In form CL1 (directions as to printing the ballot paper: regional election)—

- (a) for “National Assembly for Wales election” substitute “Senedd Cymru election”;
- (b) for “Assembly member” substitute “Member of the Senedd”;
- (c) for “Assembly constituency” substitute “Senedd Cymru constituency”.

**18.** In form CM (form of corresponding number list), for “The National Assembly for Wales” substitute “Senedd Cymru”.

**19.** In form CM1 (form of corresponding number list for combined polls), for “the National Assembly of Wales” substitute “Senedd Cymru”.

**20.** In form CN1 (elector’s form of poll card), for “the National Assembly for Wales” substitute “Senedd Cymru”.

**21.** In form CN2 (proxy’s form of poll card), for “the National Assembly for Wales” substitute “Senedd Cymru”.

**22.** In form CN3 (postal voter’s form of poll card), for “the National Assembly for Wales” substitute “Senedd Cymru”.

**23.** In form CN4 (postal proxy’s form of poll card), for “the National Assembly for Wales” substitute “Senedd Cymru”.

**24.** In form CO (form of corresponding number list for use by presiding officers in polling stations), for “The National Assembly for Wales” substitute “Senedd Cymru”.

**25.** In form CO1 (combined form of corresponding number list for use by presiding officers in polling stations), for “the National Assembly of Wales” substitute “Senedd Cymru”.

**26.** In form CQ (form of declaration to be made by the companion of a voter with disabilities), for “the National Assembly for Wales” substitute “Senedd Cymru”.

**27.** In form CQ1 (form of declaration to be made by the companion of a voter with disabilities), for “the National Assembly for Wales”, in each place it occurs substitute “Senedd Cymru”.

**28.** In form CR (form of certificate declaring candidate to be returned at a constituency election)—

- (a) for “The National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”;
- (b) for “an Assembly constituency” substitute “a Senedd Cymru constituency”;
- (c) for “the National Assembly for Wales” substitute “Senedd Cymru”.

**29.** In form CS (form of certificate declaring candidates to be returned at a regional election)—

- (a) for “The National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”;
- (b) for “an Assembly electoral region” substitute “a Senedd Cymru electoral region”;
- (c) for “the National Assembly for Wales” substitute “Senedd Cymru”.

**30.** In form CT (form of certificate: electoral region; seat to remain vacant until next Assembly general election)—

- (a) for “The National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”;
- (b) for “an Assembly electoral region” substitute “a Senedd Cymru electoral region”;
- (c) for “Assembly general election” substitute “Senedd Cymru general election”;
- (d) for “the National Assembly for Wales” substitute “Senedd Cymru”.

**31.** In form CU (form of return: expenses incurred in support of a candidate)—

- (a) for “The National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”;
- (b) for “Assembly constituency” substitute “Senedd Cymru constituency”;
- (c) for “Assembly electoral region” substitute “Senedd Cymru electoral region”.

**32.** In form CV (form of declaration: expenses incurred in support of a candidate)—

- (a) for “The National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”;
- (b) for “Assembly constituency” substitute “Senedd Cymru constituency”;
- (c) for “Assembly electoral region” substitute “Senedd Cymru electoral region”.

**33.** In form CW (return of candidate’s election expenses)—

- (a) for “the National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”;
- (b) for “Assembly electoral region” substitute “Senedd Cymru electoral region”.

**34.** In form CX (form of declaration by constituency or individual candidate as to election expenses)—

- (a) for “The National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”;
- (b) for “Assembly constituency” substitute “Senedd Cymru constituency”;
- (c) for “Assembly electoral region” substitute “Senedd Cymru electoral region”.

**35.** In form CY (form of declaration by party list candidates as to election expenses)—

- (a) for “the National Assembly for Wales” in the heading to the form substitute “Senedd Cymru”;
- (b) for “Assembly electoral region” substitute “Senedd Cymru electoral region”.

## PART 3

### Extension of the right to vote

#### **Amendment of article 14 (offences)**

**36.** In paragraph 1 of article 14, after “A person who” insert “has attained voting age and”.

### **Amendment of Schedule 1 (absent voting at Senedd Cymru elections)**

**37.**—(1) Schedule 1 (absent voting at Senedd Cymru(1) elections) is amended as follows.

(2) In paragraph 1(9)—

- (a) at the end of paragraph (c), omit “and”;
- (b) at the end of paragraph (d), omit “.” and insert “; and”;
- (c) after paragraph (d) insert—

“(e) in the case of a person who is, or has been, a child looked after by a local authority, the address at which they are resident or the address shown on the declaration of local connection in accordance with section 7B(3)(d) of the 1983 Act.”

(3) In paragraph 5(2)(a)(i), for “18” substitute “16”.

(4) In paragraph 5(4)(a), for “18” substitute “16”.

(5) In paragraph 6A(4)(b)(i), for “18” substitute “16”.

(6) In paragraph 6A(6)(b)(ii), for “18” substitute “16”.

(7) After paragraph 14 (conditions on the use, supply and inspection of absent voter records or lists) insert—

#### **“Protection of information about persons aged under 16**

**14A.**—(1) A young person’s information (other than any information by which the person’s date of birth may be ascertained) may be disclosed in a version or copy of an absent voters record or list supplied in accordance with the relevant provisions of this Order in relation to Senedd Cymru elections, but only so far as it is necessary to do so for the purposes of or in connection with an election at which the young person will be entitled to vote.

(2) Save for paragraph 14A(1), a registration officer must not publish, supply or otherwise disclose a young person’s information, except in accordance with section 25, or regulations made under section 26 of the Senedd and Elections (Wales) Act 2020.

(3) In this paragraph—

- (i) “young person’s information” is to be construed in accordance with section 24(2) of the Senedd and Elections (Wales) Act 2020, and

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(1) References in the 2007 Order to the National Assembly for Wales now have effect as references to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).



- (ii) “absent voters record or list” is to be construed in accordance with section 24(2) of the Senedd and Elections (Wales) Act 2020 and also includes the records kept under articles 8(9) and 12(13) of this Order.”

**Amendment of Schedule 5 (Senedd Cymru election rules)**

**38.** In Schedule 5 (Senedd Cymru election rules)—

- (a) in rule 41(1)(b), for “18” substitute “16”;
- (b) in rule 41(2), for “18” substitute “16”;
- (c) in rule 48(3)(b), for “18” substitute “16”.

**Amendment of Schedule 10 (appendix of forms)**

**39.** Schedule 10 (appendix of forms) is amended as follows.

**40.** In form CA (form of proxy paper)—

- (a) for “18” substitute “16”;
- (b) after “Republic of Ireland,” insert “a qualifying foreign citizen”.

**41.** In form CQ (form of declaration to be made by the companion of a voter with disabilities), for “18” substitute “16”.

**42.** In form CQ1 (form of declaration to be made by the companion of a voter with disabilities), for “18” substitute “16”.

## PART 4

### Disqualification

**Amendment of article 34 (false statements in nomination papers etc)**

**43.** In article 34(5)—

- (a) omit sub-paragraphs (a), (b) and (c);
- (b) after “a statement that” insert “to the best of their knowledge and belief they are not disqualified from being elected under section 16(A1) of the 2006 Act (disqualification from being Senedd member).”

**Amendment of Schedule 5 (Senedd Cymru election rules)**

**44.—**(1) Schedule 5 (Senedd Cymru election rules) is amended as follows.

(2) In rule 9—

- (a) in paragraph (4)(c)—
  - (i) omit paragraph (i) and (ii);
  - (ii) after “shall state” insert “to the best of their knowledge and belief they are not disqualified from being elected under section 16(A1) of the 2006 Act (disqualification from being Senedd member)”;
- (b) omit paragraph (7).

(3) In rule 13—

- (a) in paragraph (2)—
  - (i) in sub-paragraph (c), for “by the Representation of the People Act 1981” substitute “under section 16(A1) of the 2006 Act from being a Member of the Senedd and from being a candidate to be a Member of the Senedd”;
  - (ii) in sub-paragraph (d), for “section 5(6) of the 1998 Act” substitute “section 7(6) of the 2006 Act”;
  - (iii) in sub-paragraph (e), for “section 4(7) of the 1998 Act” substitute “section 7(1) of the 2006 Act”;
- (b) omit paragraph (8).

(4) In rule 14(4)(b), for “by the Representation of the People Act 1981” substitute “under section 16(A1) of the 2006 Act from being a Member of the Senedd and from being a candidate to be a Member of the Senedd”.

(5) Omit rule 19.

## PART 5

### Withholding of candidate’s home address

#### **Amendment of article 37 (appointment of election agent)**

**45.**—(1) Article 37 (appointment of election agent) is amended as follows.

(2) In paragraph (9), after “agent” insert “who is not also a candidate”.

(3) After paragraph (9) insert—

“(10) Upon the name and address of an election agent who is also a candidate being declared to the returning officer—

- (a) the appropriate returning officer must give public notice of that name, and save where the agent has requested on a home address form not to make their home address public, the address. If the address is not to be made public, the

- constituency or country will be released, as required by Schedule 5 to this Order;
- (b) in the case of the regional election, the regional returning officer must give notice to the constituency returning officer for each Senedd Cymru constituency in the Senedd Cymru electoral region of the name, and save where the agent has requested on a home address form not to make their home address public, the address. If the address is not to be made public, the constituency or country will be released, as required by Schedule 5 to this Order.
- ”

**Amendment of Schedule 5 (Senedd Cymru election rules)**

**46.**—(1) Schedule 5 (Senedd Cymru election rules) is amended as follows.

(2) In rule 4 (nomination of candidates at a constituency election)—

(a) in paragraph (2)—

(i) in sub-paragraph (a), after “names;” insert “and”;

(ii) omit sub-paragraph (b);

(b) after paragraph (4) insert—

“(4A) The constituency nomination paper must be accompanied by a form (in this Schedule referred to as the “home address form”) which states the candidate’s—

(a) full names; and

(b) home address in full.

(4B) The home address form as set out in form CZ in Schedule 10—

(a) may contain a statement made and signed by the candidate that the candidate requires their home address not to be made public; and

(b) if it does so, must—

(i) state the constituency within which that address is situated; or

(ii) where the candidate’s home address is outside the United Kingdom, state the country in which it is situated.

(4C) Where a home address form has been completed and returned with the constituency nomination paper and the candidate has requested that their home address not be made public, the information as provided in paragraph

(4B)(b) only will appear on the statement of persons nominated and the ballot paper.”;

(c) after paragraph (6) insert—

“(7)(a) During ordinary office hours on any day, after the latest time for delivery of constituency nomination papers and before the date of the poll, the following persons may inspect the home address form of a candidate (“candidate A”)—

- (i) a person standing nominated as a candidate (“candidate B”) in the same constituency as candidate A;
  - (ii) the election agent or subscriber of candidate B; or
  - (iii) where candidate B is acting as their own election agent, any person nominated by candidate B;
- (b) where a person has been nominated by more than one constituency nomination paper, the reference to the subscriber in sub-paragraph (a)(ii) is a reference to—
- (i) the subscriber on the nomination paper that the candidate may select; or
  - (ii) in the absence of such a selection, the nomination paper which was first delivered in accordance with rule 4(1);
- (c) nothing in this rule permits any person to take a copy of, or extracts from, any home address form;
- (d) the returning officer must not permit a home address form to be inspected otherwise than in accordance with this rule, or for some other purpose authorised by law.

(8)(a) The returning officer must destroy each candidate’s home address form—

- (i) on the next day following the 35th day after the officer has returned the name of the Member elected; or
  - (ii) if an election petition questioning the election or return is presented before that day, as soon as is practicable following the conclusion of proceedings on the petition or on appeal from such proceedings;
- (b) for the purposes of sub-paragraph (a), any day falling within rule 2 must be disregarded.”

(3) Rule 6 (nomination of individual candidates at a regional election) is amended as follows.

(a) in paragraph (2)—

(i) in sub-paragraph (a), after “names;” insert “and”;

(ii) omit sub-paragraph (b);

(b) after paragraph (4) insert—

“(4A) The individual nomination paper must be accompanied by a form (in this Schedule referred to as the “home address form”) which states the candidate’s—

(a) full names; and

(b) home address in full.

(4B) The home address form as set out in form CZ in Schedule 10—

(a) may contain a statement made and signed by the candidate that the candidate requires their home address not to be made public; and

(b) if it does so, must—

(i) state the constituency within which that address is situated; or

(ii) where the candidate’s home address is outside the United Kingdom, state the country in which it is situated.

(4C) Where a home address form has been completed and returned with the regional nomination paper and the candidate has requested that their home address not be made public, the information as provided in paragraph (4B)(b) only will appear on the statement of persons nominated and the ballot paper.”;

(c) after paragraph (5) insert—

“(6)(a) During ordinary office hours on any day, after the latest time for delivery of regional nomination papers and before the date of the poll, the following persons may inspect the home address form of a candidate (“candidate A”)—

(i) a person standing nominated as a candidate (“candidate B”) in the same region as candidate A;

(ii) the election agent or subscriber of candidate B; or

(iii) where candidate B is acting as their own election agent, any person nominated by candidate B;

(b) where a person has been nominated by more than one regional nomination paper, the reference to the subscriber in sub-paragraph (a)(ii) is a reference to—

- (i) the subscriber on the nomination paper that the candidate may select; or
  - (ii) in the absence of such a selection, to the nomination paper which was first delivered in accordance with rule 4(1);
- (c) nothing in this rule permits any person to take a copy of, or extracts from, any home address form;
- (d) the returning officer must not permit a home address form to be inspected otherwise than in accordance with this rule, or for some other purpose authorised by law.
- (7)(a) The returning officer must destroy each candidate's home address form—
- (i) on the next day following the 35th day after the officer has returned the name of the member elected; or
  - (ii) if an election petition questioning the election or return is presented before that day, as soon as is practicable following the conclusion of proceedings on the petition or on appeal from such proceedings;
- (b) for the purposes of sub-paragraph (a), any day falling within rule 2 must be disregarded.”

(4) Rule 7 (nomination of parties and party list candidates at a regional election) is amended as follows.

- (a) In paragraph (4)—
- (i) in sub-paragraph (a), omit “and”;
  - (ii) omit sub-paragraph (b).
- (b) After paragraph (6) insert—
- “(6A) The party nomination paper must be accompanied by a form (in this Schedule referred to as the “home address form”), in respect of each party list candidate, which states the candidate's—
- (a) full names; and
  - (b) home address in full.
- (6B) The home address form as set out in form CZ in Schedule 10—
- (a) may contain a statement made and signed by the candidate that the candidate requires their home address not to be made public; and
  - (b) if it does so, must—

- (i) state the constituency within which that address is situated; or
- (ii) where the candidate's home address is outside the United Kingdom, state the country in which it is situated.

(6C) Where a home address form has been completed and returned with the party nomination paper and the candidate has requested that their home address not be made public, the information as provided in paragraph (6B)(b) only will appear on the statement of persons nominated and the ballot paper.”

(c) After paragraph (7) insert—

“(7)(a) During ordinary office hours on any day, after the latest time for delivery of a party nomination paper and before the date of the poll, the following persons may inspect the home address form of a candidate (“candidate A”)—

- (i) a person standing nominated as a candidate (“candidate B”) in the same region as candidate A;
- (ii) the election agent or subscriber of candidate B; or
- (iii) where candidate B is acting as their own election agent, any person nominated by candidate B;

(b) where a person has been nominated by more than one party nomination paper, the reference to the subscriber in subparagraph (a)(ii) is a reference to—

- (i) the subscriber on the nomination paper that the candidate may select; or
- (ii) in the absence of such a selection, the nomination paper which was first delivered in accordance with rule 4(1);

(c) nothing in this rule permits any person to take a copy of, or extracts from, any home address form;

(d) the returning officer must not permit a home address form to be inspected otherwise than in accordance with this rule, or for some other purpose authorised by law.

(8)(a) The returning officer must destroy each candidate's home address form—

- (i) on the next day following the 35th day after the officer has returned the name of the member elected; or

(ii) if an election petition questioning the election or return is presented before that day, as soon as is practicable following the conclusion of proceedings on the petition or on appeal from such proceedings;

(b) for the purposes of sub-paragraph (a), any day falling within rule 2 must be disregarded.”

(5) In paragraph (2) of rule 16 (constituency election; publication of statement of persons nominated), after “addresses” insert “, or such relevant information as provided in the home address form”.

(6) In paragraph (3)(a) of rule 17 (regional election: publication of statement of parties and other persons nominated), after “addresses” insert “, or such relevant information as provided in the home address form”.

(7) In paragraph (3)(a) of rule 24 (the ballot paper at a constituency election), after “nominated” insert “(but must not contain a candidate’s home address where a candidate has completed a home address form and requested that their address not be made public)”.

(8) In paragraph (3)(a) of rule 25 (the ballot paper at a regional election), after “nominated” insert “(but must not contain a candidate’s home address where a candidate has completed a home address form and requested that their address not be made public)”.

#### **Amendment of Schedule 10 (appendix of forms)**

**47.** Schedule 10 (appendix of forms) is amended as follows.

**48.** Form CE (form of nomination paper: constituency election) is amended as follows.

(a) Omit the 6<sup>th</sup> column of the table entitled “Home address in full (please also include telephone number)”;

(b) insert “Subscriber” before “Signed”, “Name” and “Address” in the signatory clause of the form.

**49.** Form CH (form of individual nomination paper: regional election) is amended as follows.

(a) Omit the 6<sup>th</sup> column of the table entitled “Home address in full (please also include telephone number)”;

(b) insert “Subscriber” before “Signed”, “Name” and “Address” in the signatory clause of the form.

**50.** Form CI (form of party nomination paper: regional election) is amended as follows.



- (a) Omit the 5th column of the table entitled “Home address in full (please also include telephone number)”;
- (b) insert “Subscriber” before “Signed”, “Name” and “Address” in the signatory clause of the form.

**51.** In form CK (constituency ballot paper), after “Schedule 5” insert “and rule 24(3)(a) (the ballot paper at a constituency election) provides that the candidate’s home address be omitted from the Ballot paper where the candidate has completed a home address form requesting that their home address not be disclosed”.

**52.** After form CY insert the form in the Schedule to this Order.

## PART 6

### Returning officers’ charges

#### **Returning officers’ charges**

**53.—**(1) Article 23 (payments by and to returning officer) is amended as follows.

(2) For paragraph (1) substitute—

“(1) A constituency or a regional returning officer is entitled to recover their charges in respect of expenses incurred for, or in connection with, a Senedd Cymru election where such expenses were necessarily incurred, for the efficient and effective conduct of the election.”

(3) After paragraph (1), insert—

“(1A) Subject to article 23A, a constituency or a regional returning officer is entitled to recover on behalf of electoral administrators charges in respect of services rendered for, or in connection with, a Senedd Cymru election where such charges were necessarily incurred for the efficient and effective conduct of the election.

(1B) In the case of a constituency returning officer, paragraphs (1) and (1A) apply to services rendered or expenses incurred for, or in connection with, a constituency or a regional election.

(1C) For the purpose of paragraph (1A), the “electoral administrators” include—

- (a) a constituency or regional returning officer appointed under article 18;
- (b) a deputy constituency or regional returning officer appointed under article 28(2);

- (c) officers of councils responsible for the carrying out of functions related to a Senedd Cymru election under article 19.

(1D) The total charges a constituency or a regional returning officer shall be entitled to recover under paragraphs (1) and (1A) must not exceed the amount (“the overall maximum recoverable amount”) specified in, or determined in accordance with, an order made by the Welsh Ministers for the purposes of this paragraph.”

(4) In paragraph (2) for “(1)”, substitute “(1D)”.

(5) In paragraph (3)—

- (a) in the first place it appears, for “Assembly” substitute “Welsh Ministers”,
- (b) for “the Assembly is” substitute “the Welsh Ministers are”.

(6) In paragraph (5) for “(1)”, substitute “(1D)”.

(7) In paragraph (6)—

- (a) for “(1)”, substitute “(1D)”,
- (b) for “Assembly thinks fit”, substitute “Welsh Ministers think fit”.

(8) In paragraph (7)—

- (a) in the first place it appears, for “Assembly” substitute “Welsh Ministers”,
- (b) for “Assembly may if it thinks fit”, substitute “Welsh Ministers may if they think fit”.

(9) In paragraph (8), in each place it occurs, for “Assembly” substitute “Welsh Ministers”.

(10) In paragraph (9) for “Assembly” substitute “Welsh Ministers”.

(11) In paragraph (10), in each place it occurs, for “Assembly” substitute “Welsh Ministers”.

(12) In paragraph (11)—

- (a) omit “the Assembly or”.
- (b) omit “in the financial year beginning on 1st April 2007 and in subsequent years”.

## PART 7

### Electoral Commission

#### **Guidance by the Electoral Commission**

**54.** Omit article 63(8).

#### **Amendment of Schedule 7 (election expenses)**

**55.** In Schedule 7 (election expenses), after paragraph 13 insert—

## “PART 3 Supplemental

### Guidance by the Commission

**14.**—(1) The Commission may prepare, and from time to time revise, a code of practice for Senedd Cymru elections giving—

- (a) guidance as to the matters which do, or do not, fall within Part 1 or Part 2 of this Schedule;
- (b) guidance supplementing the definition in article 63(3) as to the cases or circumstances in which expenses are, or are not, to be regarded as incurred for the purposes of a candidate’s election.

(2) Once the Commission have prepared a draft code under this paragraph, they must submit it to the Welsh Ministers for approval.

(3) The Welsh Ministers may approve a draft code with or without modifications.

(4) Once the Welsh Ministers have approved a draft code they must lay a copy of the draft, in the form in which they have approved it, before Senedd Cymru.

(5) If the draft incorporates modifications, the Welsh Ministers must at the same time lay before Senedd Cymru a statement of their reasons for making them.

(6) If, within the 40-day period, Senedd Cymru resolves not to approve the draft, the Welsh Ministers must take no further steps in relation to it.

(7) If no such resolution is made within the 40-day period—

- (a) the Welsh Ministers must issue the code in the form of the draft laid before Senedd Cymru,
- (b) the code comes into force on the date appointed by the Welsh Ministers by order, and
- (c) the Commission must arrange for the Code to be published in such manner as the Commission thinks appropriate.

(8) Sub-paragraph (6) does not prevent a new draft code from being laid before Senedd Cymru.

(9) In this paragraph, “the 40-day period”, in relation to a draft code, means the period of 40 days beginning with the day on which the draft is laid before Senedd Cymru, no account being taken of any period during which Senedd Cymru

is dissolved or is in recess for more than four days.

(10) In this paragraph, references to a draft code include a revised draft code.”

## PART 8

### Registered party names

#### **Registered party name to include “Welsh” or “Cymru” in respect of both regional and constituency nomination papers and ballot paper.**

**56.**—(1) Schedule 5 (Senedd Cymru election rules) is amended as follows.

(2) In rule 4 (nomination of candidates at a constituency election), after paragraph (4)(b) insert—

“(c) where the description provided is that of a registered party’s name and the name does not include “Welsh” or “Cymru”, then the registered party’s name may be supplemented with “Welsh” or “Cymru” as set out in rule 5(2A).”

(3) In rule 5 (constituency nomination paper: name or description of registered political party), after paragraph (2) insert—

“(2A) The name of the registered party contained in the constituency nomination paper may (disregarding for this purpose, the word “the” where it is the first word of the registered name)—

- (a) be preceded by the word “Welsh” if the English language name is given;
- (b) be followed by the word “Cymru” if the Welsh language name is given; or
- (c) where a bilingual party name is used, be preceded by the word “Welsh” in the English language text or followed by the word “Cymru” in the Welsh language text;
- (d) where the party name is neither Welsh or English, the name can be preceded by the word “Welsh” or followed by the word “Cymru”,

where the word “Welsh” or “Cymru” is not used in the name of the party registered under section 28 of the Political Parties, Elections and Referendums Act 2000, and where the name of any registered party has been preceded by the word “Welsh” or followed by the word “Cymru”, then these Rules shall apply as if the name of the registered party included that word.”

(4) In rule 7 (nomination of parties and party list candidates at regional election), after paragraph (2)(b) insert —

“(c) where the registered party name is provided and the name does not include “Welsh” or “Cymru”, then the registered party’s name may be supplemented with “Welsh” or “Cymru” as set out in rule 8(1A).”

(5) In rule 8 (party nomination paper: name or description of registered political party), after paragraph (8)(1) insert—

“(1A) The name of the registered party contained in the party nomination paper may (disregarding for this purpose, the word “the” where it is the first word of the registered name)—

- (a) be preceded by the word “Welsh” if the English language name is given;
- (b) be followed by the word “Cymru” if the Welsh language name is given; or
- (c) where a bilingual party name is used, be preceded by the word “Welsh” in the English language text or followed by the word “Cymru” in the Welsh language text;
- (d) where the party name is neither Welsh or English, the name can be preceded by the word “Welsh” or followed by the word “Cymru”,

where the word “Welsh” or “Cymru” is not used in the name of the party registered under section 28 of the Political Parties, Elections and Referendums Act 2000, and where the name of any registered party has been preceded by the word “Welsh” or followed by the word “Cymru”, then these Rules shall apply as if the name of the registered party included that word.”

(6) In rule 24 (the ballot paper at a constituency election), after paragraph (3)(a) insert—

“(3aa) where the candidate has elected to use the word “Welsh” or “Cymru” in the registered party name as set out in rule 5(2A), then the same must be displayed on the ballot paper.”

(7) In rule 25 (the ballot paper at a regional election), after paragraph (3)(b) insert—

“(3ba) where the candidate has elected to use the word “Welsh” or “Cymru” in the registered party name as set out in rule 8(1A), then the same must be displayed on the ballot paper.”

### **Amendment of Schedule 10 (appendix of forms)**

**57.** Schedule 10 (appendix of forms) is amended as follows.

**58.** Form CF (form of certificate referred to in rule 5(1)) is amended as follows.

- (a) In the first footnote after “2000.” insert “Where the registered party name is given and the name does not include “Welsh” or “Cymru”, then the registered party’s name may be supplemented with “Welsh” or “Cymru””.

**59.** Form CI (form of party nomination paper; regional election referred to in rule 7(1)) is amended as follows.

- (a) In the last footnote after “paper.” insert “Where the registered party name is given and the name does not include “Welsh” or “Cymru”, then the registered party’s name may be supplemented with “Welsh” or “Cymru””.

**60.** Form CJ (form of certificate referred to in rule 8(1)) is amended as follows.

- (a) In the first footnote after “Act.” insert “Where the registered party name is given and the name does not include “Welsh” or “Cymru”, then the registered party’s name may be supplemented with “Welsh” or “Cymru””.

## **PART 9**

### **Other amendments**

#### **Amendment of article 2(1) (interpretation)**

**61.**—(1) Article 2(1) (interpretation) is amended as follows.

(2) Omit the term “the 2007 Assembly general election” and its definition.

(3) For the definition of “Presiding Officer of the Assembly” substitute—

““Presiding Officer of Senedd Cymru” is to be construed in accordance with section 25 of the 2006 Act;”.

#### **Amendment of article 137 (interpretation of Part 4)**

**62.** In article 137 (interpretation of Part 4), omit paragraph (2).

#### **Amendment of article 149 (saving and transitional provision as to incapacities in respect of Senedd Cymru elections)**

**63.** Omit article 149.

## **Amendment of Schedule 5 (Senedd Cymru election rules)**

**64.**—(1) Schedule 5 (Senedd Cymru election rules) is amended as follows.

(2) In rule 14 (decisions as to validity of nomination papers)—

- (a) in paragraph (4)(c), for “section 5(5) of the 1998 Act” substitute “section 7(5) of the 2006 Act”;
- (b) omit paragraph (11).

(3) In rule 23 (poll to be taken by ballot)—

- (a) in paragraph (1), for “section 4(4) of the 1998 Act” substitute “section 6(4) of the 2006 Act”;
- (b) in paragraph (2), for “sections 4(5) and (6) and 5 to 7 of the 1998 Act” substitute “sections 6(5) and 7 to 9 of the 2006 Act”;
- (c) omit paragraph (3).

(4) In rule 62 (declaration of result at a constituency election), omit paragraph (5).

(5) In rule 65 (return or forfeiture of deposit)—

- (a) in paragraph (8)—
  - (i) in sub-paragraph (i), for “section 4(7) or section 8(7) of the 1998 Act” substitute “sections 7(1) and 10(9) of the 2006 Act”;
  - (ii) in sub-paragraph (ii), for “section 5(5) or, as the case may be section 5(6) of the 1998 Act” substitute “section 7(5) or, as the case may be section 7(6) of the 2006 Act”;
- (b) omit paragraph (9).

(6) In rule 78 (vacancies: return of electoral region members)—

- (a) in paragraph (11), omit “, in respect of a vacancy occurring before the 2007 Assembly general election, section 9(7)(b) of the 1998 Act and in respect of vacancies occurring after that election,”;
- (b) omit paragraph (12).

(7) In paragraph (7) of rule 79 (return of Senedd members and record of returns etc)—

- (a) in sub-paragraph (a), for the words from “, section 8(6) of the 1998 Act” until the end substitute “section 10(7) of the 2006 Act; and”;
- (b) in sub-paragraph (b), for the words from “, section 9(7)(a) of the 1998 Act” until the end substitute “section 11(7)(a) of the 2006 Act.”

### **Amendment of Schedule 9 (modification of Election Petition Rules 1960)**

**65.**—(1) Schedule 9 (modification of Election Petition Rules 1960) is amended as follows.

(2) In paragraph 3 (rule 2(3) of the 1960 Rules (prescribed officer)), omit “under Part 1 of the Government of Wales Act 1998 or, as the case may be,”.

(3) In paragraph 4 (rule 4(1) of the 1960 Rules (form of petition)), for sub-paragraph (2)(b) substitute—

“(b) “the Clerk of the Crown” shall be construed as a reference to the Clerk; and”.

(4) In paragraph 8—

(a) in sub-paragraph (a)—

(i) omit paragraph (i);

(ii) in paragraph (ii), for “any subsequent” substitute “an”;

(iii) omit paragraph (iii);

(iv) in paragraph (iv), for “any subsequent Assembly” substitute “a Senedd Cymru”;

(b) in sub-paragraph (b), for the words from “[*or, in the case of a return under section 9 of the Government of Wales Act 1998*]” to “[*section 11 of the Government of Wales Act 2006*]” substitute “[*or, in the case of a return under section 11 of the Government of Wales Act 2006, claims to have had a right to be returned under section 11 of the Government of Wales Act 2006*]”;

(c) in sub-paragraph (c)—

(i) omit “\* section 9(6) of the Government of Wales Act 1998”;

(ii) omit “(\**delete as appropriate*)”;

(d) in sub-paragraph (e)(ii)—

(i) omit “\* section 9 of the Government of Wales Act 1998”;

(ii) omit “(\**delete as appropriate*)”.

*Name*

First Minister, one of the Welsh Ministers

Date



# SCHEDULE

Article 52

## Inserted form

|  |  |  |                   |  |  |
|--|--|--|-------------------|--|--|
| FORM CZ – Rule 4 (4B) and 6 (4B) of Schedule 5 |  |  |                   |  |  |
| Senedd Cymru Elections                         |  |  | Home address form |  |  |

|                   |  |                  |  |
|-------------------|--|------------------|--|
| Constituency name |  | Date of election |  |
|-------------------|--|------------------|--|

- You must complete Part 1
- Only complete Part 2 if you do not wish your home address to be made public.

| Part 1: To be completed by all candidates |  |
|---|--|
| Full name of candidate                    |  |
| Home address (in full)                    |  |
| Postcode                                  |  |
| End of Part 1.                            |  |

If you are only completing Part 1 please now deliver this form with the nomination paper to the Returning Officer with the relevant nomination paper.

| Part 2: To be completed only if you do not wish your home address to be made public  |   |
|--|---|
| If you request that your home address is not made public then your address will not appear on the statement of persons nominated or the ballot paper   |   |
| If you choose not to make your home address public, the constituency in which your home address is located (or country, if outside the UK) will appear on the statement of persons nominated and the ballot papers |   |
| Statement: I require my home address not to be made public.  |   |
| The constituency which my home address is located in:  | (insert name of parliamentary constituency) |
| Or   |   |
| My home address is outside the UK. My home address is located in:  | (insert name of country)                    |
| Signature of candidate completing Part 2.  |   |
| Candidate's signature:   |   |
| Date:  |   |

Deliver to the Returning Officer with the relevant nomination paper.

**Explanatory Memorandum to the Senedd Cymru (Representation of the People) (Amendment) Order 2020**

This Explanatory Memorandum has been prepared by the Office of the First Minister and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

**Minister/Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Senedd Cymru (Representation of the People) (Amendment) Order 2020

Mark Drakeford MS  
First Minister of Wales  
24 November 2020

## **PART 1**

### **Description**

1. Ahead of each Senedd election the National Assembly for Wales (Representation of the People) Order 2007,<sup>1</sup> which sets out the manner in which the election and election campaign is conducted and includes provision for legal challenge, is reviewed and amended to take account of any policy or legislative changes since the last election.
2. The draft Senedd Cymru (Representation of the People) (Amendment) Order 2020 outlines amendments to the 2007 Order in readiness for the 2021 Senedd general election.

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

3. The National Assembly for Wales (Representation of the People) Order 2007 has previously been amended by the National Assembly for Wales (Representation of the People) (Amendment) Order 2010, the National Assembly for Wales (Representation of the People) (Fresh Signatures for Absent Voters) Order 2013 and most recently twice in 2016 by the National Assembly for Wales (Representation of the People) (Amendment) Order 2016 and the National Assembly for Wales (Representation of the People) (Amendment) (No 2) Order 2016. As such this will be the fifth set of amendments to the 2007 Order.
4. The Welsh Government is committed to making the law in Wales accessible, transparent and easy to navigate. We recognise that electoral law is in need of updating and consolidation. The 2007 Order is also not currently bilingual (although some of the forms in the Schedules to it are). We plan to review the 2007 Order further after the elections with a view to consolidating it in time for the 2026 elections.

### **Legislative background**

5. The proposed amendments to the 2007 Order will be made under section 13 of the Government of Wales Act 2006 (GoWA 2006).<sup>2</sup>
6. Previous Orders and amendments have been made by the Secretary of State for Wales. Following the enactment of the Wales Act 2017 the power to make provision for the conduct of Senedd elections has largely transferred to the Welsh Ministers.

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<sup>1</sup> The National Assembly for Wales (Representation of the People) Order 2007  
<http://www.legislation.gov.uk/uksi/2007/236/contents/made>

<sup>2</sup> Section 13 of the Government of Wales Act 2006  
<https://www.legislation.gov.uk/ukpga/2006/32/section/13/2018-04-01>

7. The Conduct Order was originally made under section 11 of the Government of Wales Act 1998 (the predecessor to section 13 of GoWA 2006) but as a result of paragraph 8 to Schedule 11 to GoWA 2006 is treated as if having been made under section 13 of that Act.

### *Section 13*

8. Section 13 now currently provides that “*the Welsh Ministers may by order make provision that would be within the legislative competence of the Senedd, if included in an Act of the Senedd, as to:*
  - (a) *the conduct of elections of Members of the Senedd,*
  - (b) *the questioning of an election of Members of the Senedd and the consequences of irregularities, and*
  - (c) *the return of a Member of the Senedd otherwise than at an election.*
9. The Senedd Cymru (Representation of the People) (Amendment) Order 2020 will be made under the draft affirmative procedure.

### **Purpose and intended effect of the legislation**

10. The National Assembly for Wales (Representation of the People) Order 2007 sets out the detailed rules for the conduct of elections to Senedd Cymru. It sets out the way in which the election and the election campaign are conducted, and includes provisions for legal challenge to an election. It also includes provisions concerning the collection and retention of personal identifiers for postal and proxy voters and requirements in connection with the application for and dealing with absent votes.
11. The 2007 Order is reviewed and has generally been amended before each Senedd general election. Amendments to the Order are typically made to reflect any relevant policy or legislative changes which have taken place since the previous election. They also make any relevant technical and/or minor updates such as amendments to certain limits to candidates' expenditure.
12. Many of the amendments to the 2007 Order outlined in the Senedd Cymru (Representation of the People) (Amendment) Order 2020 are technical in nature and are required to reflect policy decisions and legislative changes which have already been subject to substantive consideration. In particular most arise as a result of changes to the franchise and disqualification arrangements made by the Senedd and Elections (Wales) Act 2020,<sup>3</sup> specifically the extension to voters aged 16 and 17 and to qualifying foreign citizens, and some consequential amendments arising from the disqualification and naming provisions.

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<sup>3</sup> Senedd and Elections (Wales) Act 2020 <http://www.legislation.gov.uk/anaw/2020/1/contents/enacted>

13. Other amendments are more significant and reflect changes made elsewhere in the United Kingdom to allow candidates the option of not publishing their home address at an election, along with the issue of payment to returning officers fees for services rendered, as well as other general updates reflecting changes since the last amending Order was made.
14. The purpose and intended effect of the Senedd Cymru (Representation of the People) (Amendment) Order 2020 is, therefore, to amend the National Assembly for Wales (Representation of the People) Order 2007 to reflect the relevant policy or legislative changes which have taken place since the 2016 Senedd general election in preparation for the 2021 Senedd general election.

## **Consultation**

15. On 15 June 2020, the Welsh Government issued a 12 week consultation on the draft Senedd Cymru (Representation of the People) (Amendment) Order 2020. The consultation sought views on whether there were any additional aspects of the 2007 Order which required updating or amending as well as comments on the proposed amendments themselves. The purpose of the consultation was to ensure the relevant issues had been identified and the resulting amendments were clear and workable.
16. View of stakeholders were sought on the provisions in the draft Order relating to the following matters:
  - Senedd change of name (to reflect Part 2 of the Senedd and Elections (Wales) Act 2020)
  - Extension of Senedd franchise to 16 and 17 year olds and associated provisions (to reflect Part 3 of the Senedd and Elections (Wales) Act 2020)
  - Extension of Senedd franchise to qualifying foreign citizens (to reflect Part 3 of the Senedd and Elections (Wales) Act 2020).
  - Disqualification (to reflect Part 4 of the Senedd and Elections (Wales) Act 2020)
  - Publication of Candidates' addresses
  - Payments by and to Returning Officers
  - Provision for codes made by the Welsh Ministers to apply to Senedd elections, rather than UK codes made by the Secretary of State

The legislative changes relating to the Senedd change of name, franchise and disqualification arrangements took effect in the Senedd and Elections (Wales) Act 2020. The Senedd Cymru (Representation of the People) (Amendment) Order 2020 is embedding these required amendments as a result of the 2020 Act into the National Assembly for Wales (Representation of the People) Order 2007. The consultation sought views on the need to change the provisions in the 2007 Order, as brought about by the 2020 Act. The consultation did not include consulting on the merits of policies which had already been subject to consultation and debate.

17. The consultation document also highlighted issues that were being considered:
- Provision to ensure that the rules in the Order for absent voters' records and the rules for the protection of information about 14 and 15 year old attainers in the Senedd and Elections (Wales) Act 2020 operate effectively together.
  - Provision for political parties to use the term "Welsh" or "Cymru" on registration and ballot papers to ensure that the distinction can be made between devolved branches of UK-wide political parties and avoid confusion for voters.
18. The consultation document also set out proposals to lay a separate combined Order for the Local Government and Senedd elections in respect of exempting disability and translation expenses to ensure that there is a consistent approach across devolved Welsh elections. The Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020 was duly laid on 19 October 2020.
19. The consultation closed on 8 September 2020. As well as being publicly available on the Welsh Government website, a targeted number of stakeholders with a direct interest in the proposals were contacted directly via email on the day the consultation was published to raise awareness of the consultation and allow for the maximum amount of time to respond.
20. The Electoral Commission have been consulted throughout the process of producing the draft 2020 Order. This is in line with Section 7 of the Political Parties, Elections and Referendums Act 2000 which requires consultation with the Electoral Commission before an Order under section 13 of the Government of Wales Act 2006 can be made.
21. The Information Commissioner's Office was also consulted in line with Article 36 (4) of the General Data Protection Regulation which imposes a requirement to consult with the Information Commissioner's Office (ICO) when developing policy proposals relating to the processing of personal data.
22. A total of 14 substantive responses were received to the consultation.
23. The following changes were made to the Order post consultation:
- Presentation of Political Parties on Nomination and Ballot Papers*
24. Provision has been added for political parties to use the term "Welsh" or "Cymru" on nomination and ballot papers to ensure that the distinction can be made between devolved branches of UK-wide political parties and avoid confusion for voters. The option is discretionary and it is up to the candidate whether the prefix / suffix is adopted. Where the party name is neither

Welsh or English, the name can be preceded by “Welsh” or followed by “Cymru”

#### *Payments to Returning Officers*

25. Provision has been made to remove the personal fees previously paid to Returning Officers for services rendered and instead allow an amount to be paid via Returning Officers for services rendered for electoral administration by electoral administration teams.
26. The payment is intended to recognise the independent status of all electoral administrators and the additional burden placed on teams during the Senedd elections and preceding months and responsibilities undertaken by them which exceed their contracted principal council functions.
27. The payment will be paid directly to the Returning Officer to be distributed amongst the electoral administrators at their discretion, having regard to guidance which will be provided by the Welsh Ministers.

#### *Data Protection*

28. Provision has been added to require Electoral Registration Officers to include, when considering absent voters records, provisions in section 24 of the Senedd and Elections (Wales) Act 2020 and articles 8(9) and 12(13) in the National Assembly for Wales (Representation of the People) Order 2007.
29. An analysis of the consultation responses is available as part of the Welsh Government’s response to the consultation, published on the Welsh Government website:

<https://gov.wales/sites/default/files/consultations/2020-11/draft-senedd-cymru-representation-of-the-people-responses.pdf>

#### **6. Regulatory Impact Assessment (RIA)**

30. The draft Senedd Cymru (Representation of the People) (Amendment) Order 2020 makes amendments to the National Assembly for Wales (Representation of the People) Order 2007.
31. These amendments are mainly based on policies which have already been subject to substantive consultation and debate. Where policies were considered in the Regulatory Impact Assessments for the Senedd and Elections (Wales) Act 2020 and the Local Government and Elections (Wales) Bill, in the absence of any additional or alternative evidence, we did not consider it to be necessary to carry out those assessments again.
32. The Explanatory Memorandum including the Regulatory Impact Assessment for the Senedd and Elections (Wales) Act 2020 can be found at the following link:

<https://senedd.wales/laid%20documents/pri-ld12142-em-r/pri-ld12142-em-r-e.pdf>

33. The Explanatory Memorandum including the Regulatory Impact Assessment for the Local Government and Elections (Wales) Bill can be found at the following link:

<https://senedd.wales/laid%20documents/pri-ld12877-em/pri-ld12877-em-e.pdf>

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

35. The amendment relating to the payments to Returning Officers and Data Protection are policies which were considered in the Regulatory Impact Assessments for the Local Government and Elections (Wales) Bill and the Senedd and Elections (Wales) Act 2020 respectively.

36. The amendment relating to the presentation of political parties on nomination and ballot papers falls within the exemption contained within the Code where routine technical amendments or factual amendments are required to update regulations.



# Agenda Item 5.1

## **SL(5)665 – The Town and Country Planning (General Permitted Development) (Amendment) (No.3) (Wales) Order 2020**

### **Background and Purpose**

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 (“the GPDO”).

Article 3 of, and Schedule 2 to, the GPDO confer permitted development rights in respect of certain development. Where these rights are conferred, an application for planning permission is not required.

Article 3 of this Order amends Schedule 2 to the GPDO by inserting a new Part 6A (community growing spaces) to permit the erection, extension, alteration or replacement of storage sheds and greenhouses on community growing spaces of at least 62 square metres. These are subject to limitations which are also set out in the new Part 6A.

Article 4 of this Order implements Article 57(1) of Directive (EU) 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code (recast) (OJ No L 321, 17.12.2018, p. 36) by amending article 4 of, and Part 24 (electronic communications code operators) of Schedule 2 to, the GPDO.

Article 4 of this Order also makes other further changes to Part 24 of Schedule 2, including (amongst other things) increasing the number of antenna systems which may be installed on certain buildings from three to four, and increasing the number of electronic communications code operators who may operate antennas systems on certain buildings and structures from three to four.

Article 5 of this Order amends paragraph H.4 of Part 1 of Schedule 2 to the GPDO, and paragraphs A.3(b) and B5 of Part 25 of Schedule 2 to the GDPO.

### **Procedure**

Negative.

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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



## Implications arising from exiting the European Union

This Order contains provisions which implement EU legislation. The Order 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**

**December 2020**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

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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

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**2020 No. 1318 (W. 290)**

**TOWN AND COUNTRY  
PLANNING, WALES**

**The Town and Country Planning  
(General Permitted Development)  
(Amendment) (No. 3) (Wales)  
Order 2020**

**EXPLANATORY NOTE**

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

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 (“the GPDO”).

Article 3 of, and Schedule 2 to, the GPDO confer permitted development rights in respect of certain development. Where such rights are conferred, an application for planning permission is not required.

Article 3 of this Order amends Schedule 2 to the GPDO by inserting a new Part 6A (community growing spaces) to permit the erection, extension, alteration or replacement of storage sheds and greenhouses on community growing spaces of at least 62 square metres. The permitted development is subject to limitations which are also set out in the new Part 6A.

Article 4(1), (2), (3), (5)(b) to (f), (7) and (8) of this Order implement Article 57(1) of Directive (EU) 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code (recast) (OJ No L 321, 17.12.2018, p. 36) by amending article 4 of, and Part 24 (electronic communications code operators) of Schedule 2 to, the GPDO.

The amendments to Part 24 of Schedule 2 to the GPDO—

- (a) reduce the limitations on development consisting of the installation, alteration or replacement of all small cell systems, and

- (b) remove limitations on development consisting of the installation, alteration or replacement of Regulation 2020/1070 small cell systems outside protected land or World Heritage Sites.

The main changes are to—

- (a) omit the definitions of “small antenna” and “small cell antenna” (article 4(7)(a)),
- (b) insert a new definition of “small cell system” in place of the previous definition of “small cell antenna”(article 4(7)(b)),
- (c) insert a definition of “Regulation 2020/1070 small cell system” which is a small cell system to which Commission Implementing Regulation (EU) 2020/1070 (OJ No L 234, 21.7.2020, p. 11) applies and which meets the conditions and requirements set out in that Regulation (article 4(7)(b)),
- (d) provide that references to Commission Implementing Regulation (EU) 2020/1070 are ambulatory (article 4(8)),
- (e) extend permitted development rights in relation to development consisting of the installation, alteration or replacement of a small cell system or a Regulation 2020/1070 small cell system (article 4(5)(d) to (f)), and
- (f) exclude small cell systems and Regulation 2020/1070 small cell systems from the calculation of the number of antenna systems which may be installed on certain buildings and structures and the number of electronic communications code operators who may operate antenna systems on such buildings and structures (article 4(5)(b) and (c)).

This Order also amends article 4 of the GPDO so that a local planning authority or the Welsh Ministers may not issue a direction restricting the scope of permitted development rights so far as the development consists of the installation, alteration or replacement of a Regulation 2020/1070 small cell system (article 4(1), (2) and (3)).

Article 4(5)(a), (b) and (c) and (6) of this Order, makes the following further changes to Part 24 of Schedule 2—

- (a) minor drafting changes (article 4(5)(a)),
- (b) increases the number of antenna systems which may be installed on certain buildings and structures from three to four (article 4(5)(b) and (c)),
- (c) increases the number of electronic communications code operators who may operate antennas systems on certain buildings

and structures from three to four (article 4(5)(b) and (c)), and

- (d) to remove a reference to a EU Council Recommendation and change a reference to small cell antenna (article 4(6)).

Article 5 of this Order amends paragraph H.4 of Part 1 of Schedule 2 to the GPDO and paragraphs A.3(b) and B.5 of Part 25 of Schedule 2 to the GPDO to—

- (a) substitute “small cell systems” for “small antenna”, and
- (b) exclude Regulation 2020/1070 small cell systems permitted by the new paragraph A.1(q) of Part 24 of Schedule 2 to the GPDO from the calculation of the number of antenna permitted by paragraph H.1(a) of Part 1 to Schedule 2 to the GPDO and by paragraphs A.1(d) and B.1(d) of Part 25 of that Schedule.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff, CF10 3NQ.

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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

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**2020 No. 1318 (W. 290)**

**TOWN AND COUNTRY  
PLANNING, WALES**

**The Town and Country Planning  
(General Permitted Development)  
(Amendment) (No. 3) (Wales)  
Order 2020**

*Made* 19 November 2020

*Laid before Senedd Cymru* 20 November 2020

*Coming into force* 21 December 2020

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 59, 60(1) and (3), 61(1) and 333(4B) and (7) of the Town and Country Planning Act 1990(1) and now vested in them(2) and, in relation to article 4(8), by paragraph

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(1) 1990 c. 8. Section 59(4) was inserted by section 55 of, and paragraph 5 of Schedule 7 to, the Planning (Wales) Act 2015 (anaw 4) (“the 2015 Act”). Section 333(4B) was substituted by section 55, of and paragraph 6(3) of Schedule 7 to, the 2015 Act. There are other amendments which are not relevant to this instrument.

(2) The functions of the Secretary of State under sections 59, 60(1), 61(1) and (3) and 333(7) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672): *see* the entry in Schedule 1 for the Town and Country Planning Act 1990 as substituted by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). By virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32) the functions of the National Assembly for Wales were transferred to the Welsh Ministers.

1A of Schedule 2 to the European Communities Act 1972(1).

This Order make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for the references in this Order to Commission Implementing Regulation (EU) 2020/1070(2) on specifying the characteristics of small-area wireless access points pursuant to Article 57 paragraph 2 of EU Directive 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code(3), to be construed as references to that instrument as amended from time to time.

### **Title, commencement and application**

1.—(1) The title of this Order is the Town and Country Planning (General Permitted Development) (Amendment) (No. 3) (Wales) Order 2020 and it comes into force on 21 December 2020.

(2) This Order applies in relation to Wales.

### **Amendment of the Town and Country Planning (General Permitted Development) Order 1995**

2. The Town and Country Planning (General Permitted Development) Order 1995(4) is amended as set out in articles 3 to 5.

### **Community growing spaces**

3. After Part 6 of Schedule 2 (agricultural buildings and operations) insert—

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(1) 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). Paragraph 1A of Schedule 2 to the 1972 Act was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and amended by section 3(3) of, and Part 1 of the Schedule, to the European Union (Amendment) Act 2008 (c. 7) and S.I. 2007/1388.

(2) OJ No L 234, 21.7.2020, p. 11.

(3) OJ No L 321, 17.12.2018, p. 36.

(4) S.I. 1995/418. Article 4 was amended by S.I. 1996/528, S.I. 2006/124 (W. 17), S.I. 2006/1386 (W. 136) and S.I. 2013/1776 (W. 177). Part 24 was substituted by S.I. 2019/330 (W. 80). There are other amending instruments but none are relevant.

## **“PART 6A**

### **Community Growing Spaces**

#### **Class A**

##### **A. Permitted development**

**Development consisting of the erection, extension, alteration or replacement of storage sheds and greenhouses on community growing spaces.**

##### **A.1 Development not permitted**

Development is not permitted by Class A if—

- (a) the development would be carried out on a community growing space of less than 62 square metres in area;
- (b) on a community growing space of less than 125 square metres in area, it would result in the presence of more than either—
  - (i) one storage shed; or
  - (ii) one greenhouse;
- (c) on a community growing space of 125 square metres or more in area, it would result in the presence of more than one storage shed and one greenhouse;
- (d) the ground area of the storage shed or greenhouse would exceed 6 square metres when measured externally;
- (e) any part of the storage shed or greenhouse would exceed 2.2 metres in height;
- (f) the development would be on article 1(5) land;
- (g) the development would be on land within a World Heritage Site;
- (h) the development would be within the curtilage of a listed building; or
- (i) the development would be within—
  - (i) 8 metres of a non-tidal main river (or within 8 metres of any flood defence structure or culvert on that river); or
  - (ii) within 16 metres of a tidal main river (or within 16 metres of any flood defence structure or culvert on that river).

##### **A.2 Interpretation of Class A**

For the purposes of Class A—



“community growing space” means—

- (a) an allotment including an allotment garden within the meaning of the Allotments Act 1922<sup>(1)</sup>; or
- (b) any other land used or intended for use—
  - (i) by one or more communities,
  - (ii) wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers, and
  - (iii) otherwise than with a view to making a profit;

“culvert” means a covered channel or pipe which prevents the obstruction of a main river or drainage path by an artificial construction;

“flood defence structure” means any permanent works constructed, operated or maintained by the Natural Resources Body for Wales, for the purposes of managing flood risk;

“greenhouse” means a structure such as a glasshouse or polytunnel in which vegetables, fruit, herbs or flowers are cultivated under cover in an enclosed space, but does not include a structure in which livestock are kept;

“main river” has the meaning given in section 113(1) of the Water Resources Act 1991<sup>(2)</sup>;

“non-tidal main river” means any part of a main river that is not a tidal main river;

“normal tidal limit” means the normal tidal limit as marked on the Ordnance Maps (1:25,000 scale);

“tidal main river” means that part of a main river downstream of the normal tidal limit.”

#### **Development by electronic communications code operators**

4.—(1) In article 4(3)—

- (a) after sub-paragraph (aa) insert—

“(aaa) development permitted by Part 24 which consists of the installation, alteration or replacement of a Regulation

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(1) 1922 c. 51.

(2) 1991 c. 57. The definition of “main river” in section 113(1) was amended by section 59(1) and (3) of the Water Act 2014 (c. 21). There are other amendments to section 113(1) but none are relevant to this Order.

2020/1070 small cell system;”;

(b) in sub-paragraph (c), after “provides” insert “but this is subject to paragraph (3A)”.

(2) After article 4(3) insert—

“(3A) A direction under paragraph (1) or (2) may not affect the carrying out of development consisting of the installation, alteration or replacement of a Regulation 2020/1070 small cell system.”

(3) In article 4(6), at the appropriate place insert—

““Regulation 2020/1070 small cell system” has the same meaning as in Part 24 of Schedule 2;”.

(4) Part 24 of Schedule 2 is amended as set out in paragraphs (5) to (8).

(5) In paragraph A.1—

(a) in sub-paragraph (h), for “paragraphs” substitute “sub-paragraphs” and for “paragraph” substitute “sub-paragraph”;

(b) in sub-paragraph (j)—

(i) in paragraph (i), for “small cell antennas” substitute “Regulation 2020/1070 small cell systems or small cell systems”;

(ii) for paragraph (iii) substitute—

“(iii) in the case of antennas other than dish antennas, Regulation 2020/1070 small cell systems or small cell systems, the development would result in the presence on the building or structure of—

(aa) more than four antenna systems; or

(bb) any antenna system operated by more than four electronic communications code operators; or”;

(c) for sub-paragraph (k)(ii) substitute—

“(ii) in the case of antennas other than dish antennas, Regulation 2020/1070 small cell systems or small cell systems, the development would result in the presence on the building or structure of—

(aa) more than five antenna systems; or

- (bb) any antenna system operated by more than four electronic communications code operators; or”;
- (d) for sub-paragraph (l) substitute—
  - “(l) in the case of development on any protected land it would consist of—
    - (i) the installation or alteration of an antenna other than a Regulation 2020/1070 small cell system or a small cell system, or of any apparatus which includes or is intended for the support of such an antenna; or
    - (ii) the replacement of an antenna or such apparatus by an antenna other than a Regulation 2020/1070 small cell system or a small cell system, or apparatus which differs from that which is being replaced,  
unless the development is carried out in an emergency or is development described in the introductory words to sub-paragraph (m) and which is allowed by the paragraphs which follow those introductory words;”;
- (e) in sub-paragraph (m)(ii), after “dish antennas” insert “Regulation 2020/1070 small cell systems or small cell systems;”;
- (f) for sub-paragraphs (q) to (t) substitute—
  - “(q) in the case of the installation, alteration or replacement on a dwellinghouse or within the curtilage of a dwellinghouse of any electronic communications apparatus, that apparatus—
    - (i) is not a Regulation 2020/1070 small cell system or a small cell system;
    - (ii) being a Regulation 2020/1070 small cell system or a small cell system, is or would be on any protected land or within a World Heritage Site, unless the development is carried out in an emergency or is development which is allowed by sub-paragraph (r);
    - (iii) being a small cell system, would result in the presence on that dwellinghouse or within the curtilage of that dwellinghouse of more than two small cell systems; or

- (iv) being a small cell system, is to be located on a roof or on a chimney so that the highest part of the antenna would exceed in height the highest part of that roof or chimney respectively;
- (r) in the case of the installation, alteration or replacement on protected land or within a World Heritage Site of a Regulation 2020/1070 small cell system or a small cell system on a dwellinghouse or within the curtilage of a dwellinghouse, the antenna—
  - (i) is to be located—
    - (aa) on a chimney;
    - (bb) on a building which exceeds 15 metres in height;
    - (cc) on a wall or roof slope which fronts a highway; or
    - (dd) on a roof, other than a roof slope which fronts a highway, so that the highest part of the antenna would exceed in height the highest part of that roof;
  - (ii) is or would be on protected land (other than a conservation area<sup>(1)</sup>) and would result in the presence on that dwellinghouse or within the curtilage of that dwellinghouse of more than either—
    - (aa) two Regulation 2020/1070 small cell systems;
    - (bb) two small cell systems; or
    - (cc) one Regulation 2020/1070 small cell system and one small cell system; or
  - (iii) is or would be in a conservation area or within a World Heritage site and would result in the presence on that dwellinghouse or within the curtilage of that dwellinghouse of more than one Regulation 2020/1070 small cell system or one small cell system;
- (s) in the case of the installation, alteration or replacement of a Regulation 2020/1070 small cell system or a small cell system on a building or other

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(1) See section 336(1) of the Town and Country Planning Act 1990 for the definition of “conservation area”.

structure, which is not a dwellinghouse or within the curtilage of a dwellinghouse, in a conservation area or World Heritage Site—

- (i) unless the development is carried out in an emergency;
- (ii) the installation of a Regulation 2020/1070 small cell system or a small cell system would result in the presence on the building or other structure of more than either—
  - (aa) two Regulation 2020/1070 small cell systems;
  - (bb) two small cell systems; or
  - (cc) one Regulation 2020/1070 small cell system and one small cell system; or
- (iii) the replacement or alteration of a Regulation 2020/1070 small cell system or a small cell system would result in the presence on the building or other structure of more than either—
  - (aa) two Regulation 2020/1070 small cell systems;
  - (bb) two small cell systems;
  - (cc) one Regulation 2020/1070 small cell system and one small cell system; or
  - (dd) if greater, the number of Regulation 2020 small cell systems or small cell systems on the building or other structure before alteration or replacement of the antenna.”

(6) In paragraph A.3(4)(c)—

- (a) for “small cell antennas” substitute “Regulation 2020/1070 small cell systems or small cell systems”, and
- (b) omit the words from “as expressed in” to the end.

(7) In paragraph A.4(1)—

- (a) omit the definitions of “small antenna” and “small cell antenna”;
- (b) at the appropriate place insert—

““Commission Regulation 2020/1070” means Commission Implementing Regulation (EU) 2020/1070 on specifying the characteristics of small-area wireless

access points pursuant to Article 57 paragraph 2 of the Directive;”;

““the Directive” means Directive (EU) 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code (recast);”;

““Regulation 2020/1070 small cell system” means a small cell system—

(a) to which Commission Regulation 2020/1070 applies;

(b) which complies with the requirements of the European Standard laid down at point B of the Annex to Commission Regulation 2020/1070; and

(c) meets the conditions set out in Point A of the Annex to Commission Regulation 2020/1070;”;

““small cell system” means an antenna which may be referred to as a femtocell, picocell, metrocell or microcell antenna, together with any ancillary apparatus, which—

(a) operates on a point to multi point or area basis in connection with an electronic communications service;

(b) does not, in any two dimensional measurement, have a surface area exceeding 5000 square centimetres; and

(c) does not have a volume exceeding 50,000 cubic centimetres;

but does not include a Regulation 2020/1070 small cell system and any calculation for the purposes of paragraph (b) or (c) includes any power supply unit or casing, but excludes any mounting, fixing, bracket or other support structure;”.

(8) After paragraph A.4(2) insert—

“(3) Any reference in this Order to Commission Regulation 2020/1070 is a reference to that Regulation as amended from time to time.”

**Amendments to Part 1 (development within the curtilage of a dwellinghouse) and Part 25 (other telecommunications development) of Schedule 2**

5.—(1) In Part 1 of Schedule 2, in paragraph H.4 —

(a) for “small antenna” substitute “small cell system”;

(b) at the end insert “, but excludes Regulation 2020/1070 small cell systems to the extent

that they are permitted by paragraph A.1(q) of Part 24”.

(2) In Part 25 of Schedule 2—

(a) in paragraph A.3(b)—

(i) for “small antenna” substitute “small cell system”;

(ii) at the end insert “, but excludes Regulation 2010/1070 small cell systems to the extent that they are permitted by paragraph A.1(q) of Part 24”;

(b) in paragraph B.5—

(i) for “small antenna” substitute “small cell system”;

(ii) at the end insert “, but excludes Regulation 2010/1070 small cell systems to the extent that they are permitted by paragraph A.1(q) of Part 24”.

*Julie James*

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

19 November 2020

## **Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (Wales) Order 2020**

This Explanatory Memorandum has been prepared by the Planning Directorate 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 Town and Country Planning (General Permitted Development) (Amendment) (No.3) (Wales) Order 2020. I am satisfied that the benefits justify the likely costs.

Julie James MS  
Minister for Housing and Local Government

20 November 2020



## **PART 1**

### **1. Description**

- 1.1 The Town and Country Planning (General Permitted Development) Order 1995 (the “GPDO”), as amended, allows some minor development to be undertaken, within certain parameters, without the need to submit a planning application. This is known as “permitted development”.
- 1.2 The Town and Country Planning (General Permitted Development) (Amendment) (No. 3) (Wales) Order 2020 (“the Amendment Order”) amends Schedule 2 to the GPDO by inserting a new Part 6A (community growing spaces) to permit the erection, extension, replacement or alteration of storage sheds and greenhouses on community growing spaces of at least 62 square metres. The permitted development is subject to limitations which are also set out in the new Part 6A.
- 1.3 The Amendment Order also amends article 4 of, and Part 24 (development by electronic communications code operators) of Schedule 2 to, the GPDO to implement Article 57(1) of EU Directive 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code (recast) as they relate to the planning system by:
  - 1.3.1 reducing the limitations on development consisting of the installation, alteration or replacement of all small cell systems;
  - 1.3.2 removing the limitations on development consisting of the installation, alteration or replacement of Regulation 2020/1070 small cell systems outside protected land or World Heritage Sites. Regulation 2020/1070 small cell systems are small cell systems to which Commission Implementing Regulation (EU) 2020/1070 applies and which meet the conditions and requirements set out in that Regulation;
  - 1.3.3 making changes to article 4 of the GPDO so that a local planning authority or the Welsh Ministers cannot issue a direction restricting the scope of permitted development rights so far as the development consists of the installation, alteration or replacement of a Regulation 2020/1070 small cell system.
- 1.4 The Amendment Order makes other amendments to Part 24 of Schedule 2 to the GPDO including:
  - 1.4.1 increasing the number of antenna systems which can be installed on certain buildings and structures from three to four;
  - 1.4.2 increasing the number of electronic communications code operators who can operate antennas systems on certain buildings and structures from three to four;
  - 1.4.3 excluding small cell systems and Regulation 2020/1070 small cell systems from the calculation of the number of antenna systems which can be installed and number of electronic communications

code operates who can operate, on certain building and instructions;

1.4.4 making minor drafting changes.

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

2.1 None.

## **3. Legislative background**

3.1 The powers to make the Amendment Order are in sections 59, 60, 61 and 333 of the Town and Country Planning Act 1990. These sections give the Secretary of State power to grant (or to enable local planning authorities to grant) planning permission for categories of development specified in a development order. The GPDO is made under these powers.

3.2 The functions of the Secretary of State were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006. These powers are therefore now exercisable by the Welsh Ministers.

3.3 Section 333(5B) of the Town and Country Planning Act 1990 provides that the procedure for a statutory instrument which contains a development order is the negative resolution procedure.

3.4 Article 4(7) of the Amendment Order is made in exercise of powers in paragraph 1A of Schedule 2 to the European Communities Act 1972 ("the 1972 Act"). Paragraph 1A of Schedule 2 to the 1972 Act provides where subordinate legislation makes provision for a purpose mentioned in section 2(2) of the 1972 Act, the legislation contains a reference to a EU instrument, and it appears to the person making the legislation that it is necessary or expedient for the reference to be construed as a reference to that instrument as amended from time to time, the subordinate legislation may make express provision to that effect.

3.5 The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 ("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 which was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 ("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).

- 3.6 The Amendment Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act i.e. implementing an EU Obligation.

#### **4. Purpose and intended effect of the legislation**

##### Community Growing Spaces

- 4.1 Structures such as sheds and greenhouses are commonly located on allotments and other community growing spaces. Sheds are necessary for the storage of tools used in association with the working of the land and to provide shelter from the elements, whilst greenhouses play a significant role in ensuring the optimum conditions necessary for productive growth.
- 4.2 There are currently no permitted development rights for development on land used for community growing. Development therefore requires planning permission. Such applications when submitted to local planning authorities are often minor in scale and non-controversial.
- 4.3 The Wellbeing of Future Generations (Wales) Act 2015 sets out a clear obligation for public bodies to enable positive change that leads to a more resilient, secure and healthy Wales. The fresh, often organic fruit and vegetables grown on community growing sites make a contribution towards providing a more sustainable and secure food supply which in turn will work towards creating a healthier, happier and more sustainable Wales.
- 4.4 The purpose of the provisions in this Amendment Order is to grant permitted development rights for the erection, extension, replacement or alteration of storage sheds and greenhouses on community growing spaces, to support existing, and encourage new, community growing in Wales.
- 4.5 Providing community growers with freedom to undertake development without the need for planning permission will encourage greater use of the land, contributing towards the production of sustainable food and other produce.
- 4.6 These rights will be subject to certain limitations, such as maximum size and siting, designed to minimise amenity impacts on the wider environment, to protect watercourse/flood defences and to enable control over development in protected areas.

##### Development by electronic communications code operators

- 4.7 The delivery of a fast reliable mobile telecommunications network to all parts of Wales is essential to achieve Wales's digital connectivity goals, including areas not currently served by the market. In October 2017 the Welsh Government also published the Mobile Action Plan for Wales. The Plan identified a number of actions required to achieve national objectives

for digital connectivity, including the review of permitted development rights, and revision of telecoms policy in Planning Policy Wales.

- 4.8 The Planning System has an important role to play in supporting and enhancing digital connectivity, through national and local policy and through permitted development rights.
- 4.9 Permitted development rights for electronic communications code operators in Wales are set out in Part 24 of Schedule 2 to the GDPO. The Welsh Government's review of permitted development rights provided an opportunity to consider if the current provisions were fit for purpose and able to deliver the objectives set out in national strategy.
- 4.10 The Amendment Order amends Part 24 of the GDPO to omit the definition of "small antenna" and "small cell antenna" and for a new definition of "small cell system" is inserted. The definition of "small cell system" is based on the old definition of "small cell antenna" with amendment to include ancillary apparatus to clarify the extent of the permitted development rights. The definition of "small cell system" includes what were previously defined as "small antenna". It is considered that these two definitions are no longer needed and could lead to confusion.
- 4.11 In relation to these changes, the Amendment Order gives permitted development rights for small cell systems. This is subject to limitations and conditions which have been applied to help protect buildings and areas of natural and historic value. In particular, the numbers of systems are limited in conservation areas, World Heritage Sites and on dwellings to ensure that a building does not become visually cluttered with such equipment to its detriment. Where development is on Protected Land (which include land within a national park, an area of outstanding natural beauty and a conservation area or land within an SSSI) a Prior Approval process in place so that a local planning authority can still determine if the siting and design of the installation is appropriate.
- 4.12 In addition to the above changes, the Amendment Order also increases the number of antenna systems (other than "dish antennas", "Regulation 2020/1070 small cell systems" or "small cell systems") which can be installed on certain buildings and structures from three to four. It also increases the number of electronic communications code operators who can operate antennas systems (other than "dish antennas", "Regulation 2020/1070 small cell systems" or "small cell systems") on certain buildings and structures from three to four.
- 4.13 The purpose of these provisions is to increase the flexibility of the permitted development rights regime for electronic communication code operators to enable the further roll-out of mobile coverage across Wales. The changes in paragraph 4.11 also implement paragraph 1 of article 57(1) of EU Directive 2018/1972 as they reduce the limitations on permitted development rights in relation to the installation, alteration or

replacement of small cell systems. It is considered that the definition of a small cell system covers the definition of a Small Area Wireless Access Point (SAWAP) for the purposes of implementing the EU Directive.

- 4.14 The changes made by the Amendment Order also implement paragraph 2 of Article 57(1) of EU Directive 2018/1972 by giving increased permitted development rights to development consisting of the installation, alteration or replacement of Regulation 2020/1070 small cell systems except for certain development on Protected Land or within a World Heritage Site. Article 4 of the GDPO is also being amended so that Article 4 Directions cannot be made by planning authorities seeking to amend these permitted development provisions to require planning permission for these types of small cell systems. It is considered that removing permitted development rights for Regulation 2020/1070 small cell systems would be inconsistent with paragraph (2) of Article 57(1) of the EU Directive.

## **5. Consultation**

### Community Growing Spaces

- 5.1 The permitted development rights for allotment holders' consultation document was published on 22 November 2019 and was open for responses until 28 February 2020. It sought views on proposals to amend the GDPO by introducing new permitted development rights for the erection of structures on allotments.
- 5.2 In total, 63 responses were received to the consultation. The respondents represented a number of different interest groups, just under half of which were individual members of the public.
- 5.3 There was broad agreement from stakeholders to all of the proposals in the consultation. The provisions set out in the Amendment Order take forward these proposals, as amended to account for feedback received through the consultation. This includes introducing the ability for smaller plots to undertake development in the form of either a shed or a glasshouse and ensuring the permitted development rights apply to modern forms of community growing sites and not be restricted to traditional, regulated allotments. Clarity is also provided in respect of the planning status of polytunnels, which should be considered a greenhouse for the purpose of permitted development rights introduced by this Amendment Order.
- 5.4 A summary of the consultation responses is available on the Welsh Government website - <https://gov.wales/permitted-development-rights-allotment-holders>.

### Development by electronic communications code operators

- 5.5 A consultation ran from 31 May 2018 to 28 September 2018 on a wide ranging set of proposals regarding the consolidation and amendment of

the Town and Country Planning (Use Classes) Order 1987 and the GPDO. A total of 148 responses were received. We consulted on changes to Part 24, Development by Electronic Communications Code Operators (Wales) Provisions relating to mast heights and widths were enacted through the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019 which came in to force 1 April 2019.

- 5.6 In the same consultation we asked for views on the extent of permitted development rights on the deployment of 'small antenna' and 'small cell system'; Upon further consideration it has not been thought necessary to keep the two separate definitions as they were largely repetitive. It was considered the term 'small cell system' was a more accurate, encompassing term. Notwithstanding this, the equipment covered by this definition, and hence the policy intent, has not changed.
- 5.7 In the context of EU Directive 2018/1972 which states that the deployment of SAWAPs should not be unduly restricted, we consider it was pertinent to implement our proposals for small cell systems. It is considered that small cell systems and SAWAPs have the same characteristics for the purposes of implementation of the EU Directive. In the consultation there was broad agreement for our proposals to relax the limitations on small cell systems with provisions in place to protect the most sensitive sites and buildings of historical and natural value.
- 5.8 Not all of the 2018 consultation proposals have been taken forward in their entirety. Responses identified Conservation Areas as a particular additional area in need of special consideration within the subset of 'protected areas due' to the potential impact high numbers of small cell systems on a building could have to the sensitive character of these areas.
- 5.9 Cadw also indicated in their response that World Heritage Sites had not been addressed in our consultation proposals and should be considered for protection alongside Conservation Areas. Given the importance of World Heritage Site status nationally and globally it is considered this should be recognised so that buildings or structures within such sites are afforded the same protection as Conservation Areas.
- 5.10 A summary of the consultation responses to the relevant consultation questions concerning small cell systems is available on the Welsh Government website - <https://gov.wales/subordinate-legislation-consolidation-and-review>.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **The Town and Country Planning (General Permitted Development) (Amendment) (No. 3) (Wales) Order 2020**

#### **1. Permitted Development Rights for community growing spaces**

##### **Options**

##### 1.1 The following options are considered:

Option 1: Do nothing – Planning permission will continue to be required for all development on allotments and other community growing spaces.

Option 2: Make the legislation – Grant permitted development rights for the erection, extension, alteration or replacement of storage sheds and greenhouses on community growing spaces.

##### 1.2 Option 2 is the favoured option as it will provide greater freedoms to community growers and remove small, uncontroversial planning applications from the system, releasing local planning authority resources.

##### **Cost and Benefits Analysis**

##### 1.3 The sectors most likely to be affected by the proposals include:

- Community growers – Those who use, or would potentially use, community growing spaces, such as allotments, and would benefit from new permitted development rights.
- Local Planning Authorities (LPA) – Wales has 25 Local Planning Authorities who determine applications for planning permission. 22 of these are the unitary authorities, with the national park authorities, who provide their own town planning function, accounting for the remaining 3.
- The general public – Those who may have an interest in the development of land within their area.

##### 1.4 The following cost and benefit analysis has been undertaken for each of the above sectors:

##### **Cost Analysis for Option 1: Do nothing**

##### Community growers

##### 1.5 This is the baseline option and as such there are no additional costs associated with this option. Planning permission would still be required for the erection of sheds and greenhouses on community growing spaces.

- 1.6 The planning fee for a planning application is currently £85.00. There will be associated costs for the preparation of the necessary supporting information, such as plans. A benchmarking study undertaken in England<sup>1</sup> estimated the total cost of submitting a householder development, which is of comparable scale, varied from £150 to £2,900. Given the scale of development proposed, it is likely that the costs associated for community growers would be at the lower end of this range. A number of variables can have an impact on these costs, including the use of an agent and the savings incurred by submitting applications via Planning Applications Wales (this limits printing costs). The Welsh Government believe the costs identified in this study are representative of a) the costs likely to be incurred in Wales and b) the costs likely to be incurred by community growers for an application for this scale of development.
- 1.7 The need for planning permission, and the costs involved, may dissuade people from taking on allotments and other community growing spaces, particularly if their intend use of the land requires a storage shed and/or a greenhouse.

#### Local Planning Authorities

- 1.8 LPAs will continue to validate, process and determine applications for planning permission. Each application will need to be publicised and a site visit undertaken. The application will be determined in accordance with the relevant LPA scheme of delegation which may entail the application being determined by the planning committee. The planning fee paid is intended to offset the LPAs costs.

#### General public

- 1.9 No direct or indirect costs.

### **Benefit Analysis for Option 1 – Do nothing**

#### Community Growers

- 1.10 There are no direct or indirect benefits for community growers. The existing requirement for planning permission for the erection of sheds and greenhouses will remain.

#### Local Planning Authorities

- 1.11 LPAs retain the planning application fees associated with any applications made.

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<sup>1</sup> Benchmarking the costs to applicants of submitting a planning application.  
<https://webarchive.nationalarchives.gov.uk/20090903233426/http://www.communities.gov.uk/documents/planningandbuilding/pdf/benchmarkingcostsapplication.pdf>



## General public

- 1.12 Those with an interest in the proposed development will continue to be able to participate in the planning application process by making representations to the LPA through the statutory publicity period. Comments raised during this process will be taken into account by the LPA as part of the decision-making process.

## **Option 2 - Make the legislation**

### **Description**

- 1.13 Option 2 would result in legislation being made that introduces permitted development rights on land used for community growing for the erection, extension, alteration and replacement of structures, specifically sheds and greenhouses, subject to limitations.

### **Cost Analysis for Option 2: Make the legislation**

#### Community growers

- 1.14 The proposals are de-regulatory and as such are expected to result in cost-savings. The fees associated with the submission of a planning application, set out in paragraph 1.6, would in effect be saved through planning permission being granted automatically by the GPDO.

#### Local Planning Authorities

- 1.15 There will be reduction in planning application fee income, however, this is offset by the LPA not incurring the costs involved in processing those applications. In many circumstances, the application fee does not cover the cost of determining a planning application.
- 1.16 Furthermore, whilst performance data gathered from local planning authorities as part of the Development management quarterly survey does not differentiate applications made on allotments (or other community growing spaces), anecdotal evidence suggests that the number of applications submitted are low. The loss of planning fee income is not therefore considered to have a notable impact upon overall LPA fee income.

#### General public

- 1.17 No direct or indirect costs.

## **Benefit Analysis for Option 2**

### Community growers

- 1.18 Those wishing to erect a structure on their growing space will make savings on planning application fees (currently £85.00) and associated administration costs incurred for the preparation and submission of a planning application, as outlined in paragraph 1.6.

### Local Authorities

- 1.19 The reduced number of minor, non-controversial planning applications needing to be determined will allow LPAs to reallocate valuable staff resources to other planning applications which may have more complex and significant impacts.

### General public

- 1.20 No direct or indirect benefits.

## **2. Development by electronic communications code operators**

- 2.1 The following options are considered:

**Option 1: Do nothing** – Legislation remains the same and the existing permitted development rights apply.

**Option 2: - Make the legislation** – Gives permitted development rights for small cell systems (subject to limitations) and removes permitted development rights restrictions and limitations on Regulation 2070/1070 small cell systems outside protected land or World Heritage Sites. Removes the ability for planning authorities and the Welsh Ministers to make changes to permitted development rights through Article 4 directions.

## **Cost and Benefits Analysis**

- 2.2 The sectors most likely to be affected by the proposals include:
- Mobile infrastructure operators wishing to install new or enlarged mobile telecommunication equipment.
  - LPAs who determine applications for planning permission.
  - The general public who will potentially benefit from increased mobile coverage but may also be impacted by less restrictive / unrestricted small cell system development in their communities.
- 2.3 The following cost and benefit analysis has been undertaken for each of the above sectors:

## **Cost Analysis for Option 1: Do nothing**

### Business

- 2.4 The requirement for planning permission for small cell system will continue, resulting in an ongoing cost to the mobile industry to roll out their networks. This includes the planning application fee and associated costs for the preparation of the necessary supporting information, such as plans.
- 2.5 The requirement for planning permission may also deter some operators from installing small cell systems, to the detriment of communities in the vicinity who will not benefit from greater mobile coverage.

### Local Planning Authorities

- 2.6 LPAs will continue to validate, process and determine applications for planning permission for small cell systems and telecommunications equipment generally. Each application will need to be publicised and a site visit undertaken. The application will be determined in accordance with the relevant LPA scheme of delegation which may entail the application being determined by the planning committee. The planning fee paid is intended to offset the LPAs costs.

### General Public

- 2.7 There are no direct costs to the public.

## **Benefit Analysis for Option 1 – Do nothing**

### Businesses

- 2.8 There are no indirect or direct benefits for businesses; this will maintain the existing situation.

### Local Planning Authorities

- 2.9 LPAs retain the associated planning application fee for small cell systems which require planning permission and have more control over the development.

### General Public

- 2.10 There will be a greater involvement of the public through the ability to comment directly on the principle of planning permission for those small cell systems which currently need planning applications.

## **Cost Analysis for Option 2: Make the legislation**

### Businesses

- 2.11 There are no additional direct or indirect costs to businesses. The proposed legislation is de-regulatory and expected to result in cost-savings to businesses.

### Local Planning Authorities

- 2.12 There will be reduction in planning application fee income, however, this is offset by the LPA not incurring the costs involved in dealing with those applications. In many circumstances, the application fee does not cover the cost of determining a planning application.

### General Public

- 2.13 There are no additional direct or indirect costs to the general public. There will be less scope to challenge in principle new or enlarged equipment, however the ability to make comments on siting and design issues will remain through the prior approval process in protected areas.

## **Benefit Analysis for Option 2**

### Business

- 2.14 Mobile operating companies will not need to apply for planning permission for a larger range of small cell systems in different situations. Narrowing discussions in protected areas around siting and design mean that the principle of the development will not need to be discussed. Increased mobile coverage will also enable businesses to more readily access communication networks.
- 2.15 Moving from full planning permission to permitted development rights could reduce the time taken to go through the necessary planning processes as deemed consent is given after 8 weeks. This reduces uncertainty in the industry.

### Local Planning Authorities

- 2.16 The reduced number of planning applications needing to be determined will allow LPAs to reallocate valuable staff resources to other planning applications which may have more complex and significant impacts. LPAs may experience a rise in the number of environmental complaints due to impact on amenity.

## General Public

- 2.17 The general public will benefit from a potential increase in mobile coverage and the wider economic and social benefits arising from greater connectivity.

### **3. Summary and Preferred Option**

#### Community growing spaces

- 3.1 Option 2 is the favoured option as it will remove, minor non-controversial applications from the planning system whilst likely encouraging the use and expansion community growing spaces, and the subsequent production of sustainable produce.

#### Development by electronic communications code operators

- 3.2 Option 2 is the favoured option as it will result in a more enabling regime for the installation of telecommunication infrastructure.

### **4. Competition Assessment**

- 4.1 A competition filter test has been applied to the proposed amendments. The proposals are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

### **5. Post implementation review**

- 5.1 Regular meetings take place between the Welsh Government and LPAs. This enables discussion regarding any issues or concerns with the arrangements introduced by the new secondary legislation.
- 5.2 The Welsh Government also welcomes any feedback from the public and other stakeholders which is taken into account when formulating future policy development.

## **SL(5)666 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020**

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) to add Bonaire, Sint Eustatius and Saba; Israel; the City of Jerusalem; Namibia; the Northern Mariana Islands; Rwanda; Sri Lanka; Uruguay and the US Virgin Islands to the list of exempt countries and territories in the International Travel Regulations and to make transitional provisions. Travellers from these countries, territories and parts of countries will not be required to isolate on arrival in Wales.

These Regulations also:

- amend regulation 4 of the International Travel Regulations (requirement to provide passenger information) so that passenger information must be provided on or before arrival in Wales;
- amend Schedule 2 (exempt persons) to the International Travel Regulations, including:
  - the exemption for representatives at international or UK conferences, so as to clarify that the reference to conferences is to those conferences held in the UK;
  - the exemption for Crown servants and government contractors;
  - to add a new exemption for subsea telecommunication workers; and
- make miscellaneous amendments to the International Travel Regulations, including a correction to the Welsh language text of those Regulations to remedy a technical point raised by the Committee in its report on the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020.

These Regulations came into force at 4.00 am on 21 November 2020.

### **Procedure**

Negative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul these 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

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

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

Schedule 2 (exempt persons) to the International Travel Regulations exempts certain categories of worker from having to provide passenger information and from having to isolate.

Regulation 6(5) of these Regulations inserts a new category of exempt persons as paragraph 39 of Schedule 2 to the International Travel Regulations, namely:

*“A person —*

*(a) who is engaged in the installation, maintenance or repair of subsea fibre optic telecommunications infrastructure,*

*(b) whose role directly supports the installation, maintenance or repair of subsea fibre optic telecommunications infrastructure,*

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

The Explanatory Memorandum to these Regulations states that this amendment is *“made to the sectoral exemptions ... adding a new exemption for subsea telecommunication workers”*.

Regulation 9(2)(b) of the International Travel Regulations provides that regulations 7 and 8 of the International Travel Regulations, which contain the requirements to self-isolate, do not apply to a person described in paragraphs 2 to 38 of Schedule 2. To give effect to newly inserted paragraph 39, it appears necessary to amend regulation 9(2) of the International Travel Regulations to include reference to paragraph 39.

A Welsh Government response is requested.

## Merits Scrutiny

The following 6 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the Government’s explanation contained in the Explanatory Memorandum that:

*“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 Bonaire,*



*Sint Eustatius and Saba; Israel; the City of Jerusalem; Namibia; the Northern Mariana Islands; Rwanda; Sri Lanka; Uruguay and the US Virgin Islands has decreased."*

Further, in the Explanatory Memorandum to these Regulations, 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 of public policy likely to be of interest to the Senedd.**

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

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

In a letter to the Llywydd from Rebecca Evans MS, Minister for Finance and Trefnydd dated 20 November 2020, it is also explained that:

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative resolution instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 20 November 2020.

In particular, we note the following in the letter:

*"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."*

### **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.**

When considering the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 and the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020, the Committee





reported on the absence of an equality impact assessment for those Regulations and the International Travel Regulations.

We note that the Welsh Government responded to the reports in relation to the No. 18 and No. 19 Regulations on 24 November 2020. In particular, we note the following:

*“Regulations have been made to respond to a public health emergency, so it has not been possible to produce and publish an Equality Impact Assessment alongside them. An Integrated Impact Assessment of international travel isolation requirements will be published in due course.”*

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

Regulation 6(2) of these Regulations substitutes paragraph 13 of Schedule 2 to the International Travel Regulations, which exempts certain categories of worker from having to isolate when returning to Wales.

Prior to amendment by these Regulations, the International Travel Regulations defined “essential government work” as “work that has been designated as such by the Welsh Ministers or the relevant Department or employer”. These Regulations amend that definition so that there is no reference to the Welsh Ministers, and therefore designations are made only by “the relevant Department”. The Explanatory Memorandum does not explain why the power to designate essential government work is no longer required by the Welsh Ministers.

A Welsh Government response is requested.

#### **6. Standing Order 21.3(v) – that it imperfectly achieves its policy objectives.**

The Explanatory Memorandum states that:

*“The following additional amendments are being made to the sectoral exemptions from the requirements to provide passenger information and to self-isolate: ... amending the exemption for Crown servants and government contractors so it is broader in scope and covers their dependents”*

It is not clear how these Regulations provide either for the exemption to be broader in scope, and how they cover the dependents of Crown servants and government contractors.

A Welsh Government response is requested.

### **Implications arising from exiting the European Union**

None.

### **Welsh Government response**

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



## Committee Consideration

The Committee considered the instrument at its meeting on 30 November 2020 and reports to the Senedd in line with the reporting points above.



**Government Response: *The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020***

**Technical Scrutiny point 1:**

The Welsh Government accepts the technical scrutiny point raised and confirms that regulation 9(2)(b) has been amended by the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) Regulations 2020, laid on 27 November 2020, to include paragraph 39 of Schedule 2.

**Merit Scrutiny point 5:**

The Welsh Government confirms that paragraph 13 of Schedule 2 to the International Travel Regulations has been amended by the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) Regulations 2020, laid on 27 November 2020, to specify that the Welsh Ministers may also designate work as “essential government work” for the purposes of the exemption to the requirement to isolate contained in that paragraph.

**Merit Scrutiny point 6:**

Paragraph 13 of Schedule 2 to the International Travel Regulations, which was substituted by regulation 6(2) of these Regulation, broadens the exemption to apply not only to Crown servants and government contractors, but to “any person” certified as meeting the descriptions in sub-paragraphs (a) to (c).

Sub-paragraphs (a) and (b) now refer to “essential state business”, thereby encompassing a wider range of work whereas the previous provision was limited to those “undertaking bilateral or multilateral discussions”.

The wording of paragraph 13(1)(c) is drafted more widely to also include others, whose return to the UK is necessary to facilitate the functioning of the various official postings. This may include dependants.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**        **The Seeds (Amendment etc.) (EU Exit) Regulations 2020**

**DATE**        **20 November 2020**

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

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

**The Seeds (Amendment etc.) (EU Exit) Regulations 2020**

The 2020 Regulations amend the following legislation:

- The Seeds (National Lists of Varieties) (Fees) Regulations 1994;
- The Seeds (National Lists of Varieties) Regulations 2001; and
- The Marketing of Seeds and Plant Propagating Material (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 purpose of the amendments**

The 2020 Regulations ensure the UK has a functioning statute book at the end of the Implementation Period. It exercises the power in Section 8C(1) of the European Union (Withdrawal) Act 2018 to implement the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement. It amends the Seeds (National Lists of Varieties) Regulations 2001 so they apply to Great Britain only and create a Great Britain variety list. It amends the Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019 to align its operability amendments with the Protocol and makes consequential amendments to the Seeds (National Lists of Varieties) (Fees) Regulations 1994.

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/uksi/2020/1294/made>

### **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

### 206 - The Seeds (Amendment etc.) (EU Exit) Regulations 2020

*Laid in the UK Parliament: 17 November 2020*

#### Sifting

|  |               |
|--|---------------|
| Subject to sifting in UK Parliament?   | Yes           |
| Procedure:   | Made negative |
| Date of consideration by the House of Commons European Statutory Instruments Committee | N/A           |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee   | N/A           |
| Date sifting period ends in UK Parliament  | N/A           |
| SICM under SO 30A (because amends primary legislation)                                 | Not required  |

#### Scrutiny procedure

|  |               |
|--|---------------|
| Outcome of sifting   | N/A           |
| Procedure  | Made negative |
| Date of consideration by the Joint Committee on Statutory Instruments                | Not known     |
| Date of consideration by the House of Commons Statutory Instruments Committee        | Not known     |
| Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee | Not known     |

#### Background

These Regulations are proposed to be made by the UK Government pursuant to Section 8C(1) of the European Union (Withdrawal) Act 2018.

#### Summary

The purpose of these Regulations is to ensure that the UK has a functioning statute book at the end of the Implementation period. It uses the power under Section 8C of the European Union (Withdrawal) Act 2018 to implement the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement. It amends the Seeds (National Lists of Varieties) Regulations 2001 so that they apply to Great Britain only and creates a Great Britain variety list. It also amends the Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019 to align its operability amendments with the Protocol and makes consequential amendments to the Seeds (National Lists of Varieties) (Fees) Regulations 1994.

**Statement by Welsh Government**

Legal Advisers agree with the statement laid by the Welsh Government dated 20 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.

Ein cyf/Our ref qA1411587

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

27 November 2020

Dear Mick,

I am writing to you concerning the Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020. This Order was to be made following the affirmative procedure and was approved in plenary on Tuesday 17 November 2020.

The Order was not made as anticipated on the 18 November ahead of the scheduled coming into force date of 19 November. Instead the Order was made at 15:19 on the 19<sup>th</sup>, meaning the Order has a minimal retrospective effect given that it came into force at the beginning of 19 November.

The purpose of the order is to exclude translation and disability costs from the statutory ceilings for election spending to ensure a more level playing field for all election candidates. This will level the playing field for candidates with disabilities and enable them to stand for election.

Given that polls previously postponed due to coronavirus are rescheduled to take place from 1 February it was important that the Order was made, even with a minimal retrospective effect, to ensure that candidates understand what expenses will count towards their expenses limits. Making the Order now, as approved by the Senedd, means that Guidance from the Electoral Commission can be issued in a timely manner; preparing and laying a new Order for consideration by Plenary would have delayed such guidance being issued until late December, which could result in candidates with disabilities choosing not to

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[Correspondence.Julie.James@gov.Wales](mailto:Correspondence.Julie.James@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.



stand if they were unable to determine what expenses may be incurred.

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

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

**Agenda Item 8.2**



Llywodraeth Cymru  
Welsh Government

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

1 December 2020

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement that on Thursday 03 December, the next Joint Ministerial Committee (EU Negotiations) will again take place virtually. The meeting will discuss the UK-EU Future Relationship, the Withdrawal Agreement Joint Committee and Specialised Committees. There will also be an update on transition matters including UK Readiness, the Northern Ireland Protocol and the legislative timetable. There will also be discussions on the Common Frameworks programme and on the UK Internal Market Bill. We will also reflect on the work of the joint Review of intergovernmental relations to date.

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'JM', written in a cursive style.

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

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

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



Llywodraeth Cymru  
Welsh Government

Mick Antoniw MS  
Chair  
Legislation Justice and Constitution Committee

[seneddLJC@senedd.wales](mailto:seneddLJC@senedd.wales)

3 December 2020

Dear Chair

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

I am grateful to the committee for noting the oversight in my letter to the Llywydd of 17 September informing her the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 would be coming into force on the same day as they were laid before the Senedd and would therefore be in force for some hours prior to being laid.

You are right to point out that the urgency was because these regulations were revoking and replacing the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020 and it was imperative that any doubt about the powers available to local authorities to respond to the coronavirus pandemic was resolved as a matter of urgency. That was indeed the reason why the regulations came into force before they were laid.

I am copying this response to the Llywydd and I hope she also accepts my apologies for the oversight in my letter of 17 September. Please accept my apologies for the delay in my response to your letter about this issue.

I am grateful for the scrutiny and oversight your committee provides in relation to the significant amount of legislation, which has been made in the course of responding to the coronavirus pandemic.

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.

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## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

### (MEMORANDUM NO.2)

#### Medicines and Medical Devices Bill

1. This legislative consent memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Medicines and Medical Devices Bill was introduced into the UK Parliament's House of Commons on 13 February 2020 and consideration in the House of Lords commenced on 24 June 2020. House of Lords Committee stages in the House of Lords completed on 19 November 2020. The Bill can be found at:

<https://services.parliament.uk/Bills/2019-21/medicinesandmedicaldevices.html>

#### Policy Objectives

3. The purpose of the Medicines and Medical Devices Bill is to replace section 2(2) provision of the European Communities Act 1972, which will be repealed on the United Kingdom's exit from the European Union and creates powers to enable the continuation of the main arrangements for regulating human medicines, human clinical trials, medical devices and veterinary medicines post Brexit.

#### Summary of the Bill

4. The Bill is sponsored by the Department of Health and Social Care.
5. The Bill makes provision for:
  - Introducing targeted delegated powers in the fields of human medicines, veterinary medicines and medical devices, in anticipation of the UK's withdrawal from the European Union;
  - A delegated power to establish one or more information systems in relation to medical devices;
  - Consolidating the enforcement provisions for medical devices and introduces sanctions; and
  - An information gateway to enable the sharing of information held by the Secretary of State about medical devices such as to warn the public about safety concerns.

#### Update since the Publication of the First Legislative Consent Memorandum

6. We laid a Legislative Consent Memorandum on 8 July 2020 based on the Bill as introduced into the House of Lords on 24 June 2020.

7. The Memorandum confirmed we are supportive of the Bill's purpose but has a number of concerns about aspects of the former clause 16 (now clause 18) relating to the introduction of a medical device information system. The concerns included the absence of a specific requirement to consult the devolved administrations (DAs) on the medical device information system (MDIS), the need for four nation oversight of the system, the costs to the Welsh Government and NHS in Wales of participating in the initial stages of the MDIS and ownership of the data and access to the raw non-Welsh data for comparative analyses.
8. As the Bill is enabling legislation, the details of how it will be implemented will be determined by UK regulations. Officials of the DAs have developed a series of principles to which the regulations should conform for discussion with the Department of Health and Social Care (DHSC) and NHS Digital.

### **Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required**

9. House of Lord Committee stage concluded on 19 November. During Lords Committee stage there were no changes to the human or veterinary medicines sections of the Bill which impact on the Senedd's powers.
10. However, a UK Government amendment to the medical device provisions tabled by Lord Bethell on 17 November was agreed in relation to the DAs which is within the Senedd's competence. This amendment is to clause 41 (now clause 43) which replaces the former general power to consult with a statutory requirement that the DAs are consulted before any regulations under clause 16 (now clause 18) are made irrespective of whether the proposed regulations are seen as relating primarily to supporting specific device safety matters or supporting the wider healthcare system.

### **Welsh Government position on the Bill as amended**

11. We support the House of Lords' amendment to clause 41 (now clause 43) which ensures that the DAs, including the Welsh Government, will have an opportunity to engage in the discussions on the design and operation of the MDIS and to highlight any specific arrangements they would like to see reflected in the regulations.
12. The emerging proposals on the design of the MDIS envisage a partnership arrangement between the NHS, patients, regulators, device manufacturers, clinicians, DAs and Department of Health and Social Care (DHSC) and the form and nature of the system is likely to be unclear until early drafts of the regulations are available. The DAs have been given assurances by the UK government of places on the working groups that will design and implement the MDIS, including on the project's steering group and there are also proposals for a four nation working group to look at the MDIS regulations.
13. Discussions continue with UK Government on some areas of the Bill and further assurances and we will set out more detail on our position as the situation develops and further information becomes available.

## **Follow up from recent Senedd Committee reports on the Legislative Consent Memorandum on the Bill**

14. Following scrutiny of the Legislative Consent Memorandum laid on 8 July 2020, by the Health, Social Care and Sport and the Legislation, Justice and Constitution Committees neither committee made a recommendation on whether legislative consent should be given to clause 16 (now 18) but requested further information before reaching a view on whether or not consent should be given.
15. Since the Senedd Committees' reports on 22 October, it should be noted as set out in paragraph 10 above, that following discussions on the DAs principles an amendment has been made to clause 41 (now clause 43) of the Bill, strengthening the requirement to consult with the other UK Ministers. Furthermore, there have been NHS and government official discussions on the informatics and technical issues for the MDIS. Discussions with DHSC's bill team officials on further ministerial assurances are ongoing and are yet to be concluded.

### **Financial implications**

16. As the Bill contains enabling provisions there are no direct financial implications for Wales as a result of taking these provisions in this Bill.

### **Conclusion**

17. The supplementary legislative consent memorandum outlines the relevant changes made to the Bill at Lords stage requiring Senedd consent. The Welsh Government is supportive of the policy behind the Bill, but has concerns about aspects of clause 16 (now clause 18). Much of the concern relates to the absence of firm information on the form and nature of the proposed information system and how it will operate. This reflects the absence of draft regulations and firm views on its form and operations. UK Ministers have emphasised that the DAs views on the regulations will be carefully considered when shaping the new arrangements and the DAs, including Welsh Government and the NHS in Wales, have been offered places on the working groups.
18. The benefits of a UK wide MDIS are recognised and set out in the first Legislative Consent Memorandum on the Bill The [Cumberlege Report](#) also recently emphasised the importance of introducing such a system

**Vaughan Gething MS**

**Minister for Health and Social Services**

**2 December 2020**

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

### UNITED KINGDOM INTERNAL MARKET BILL

1. This legislative consent memorandum is laid under Standing Order 29.2. Standing Order 29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The United Kingdom Internal Market Bill (“the Bill”) was introduced in the House of Commons on 9 September 2020. The Bill has now completed its Report stage in the House of Lords and is expected to receive its Third Reading on 2 December. The Bill can be found at:  
<https://services.parliament.uk/Bills/2019-21/unitedkingdominternalmarket.html>

### Policy Objective(s)

3. The UK Government’s stated policy objectives are:
  - a) to continue to secure economic opportunities across the United Kingdom;
  - b) to continue to increase competitiveness and enable citizens across the UK to be in an environment that is the best place in the world to do business; and
  - c) to continue to provide for the general welfare, prosperity, and economic security of all UK citizens.

### Summary of the Bill

4. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy.
5. The key provisions of the Bill as originally introduced in the House of Commons cover:
  - a) The principles of mutual recognition and non-discrimination of goods and services, forming the Market Access Commitment, which would apply across the UK;



- b) Modifications to the market access commitment principles, designed to give effect to providing unfettered access of qualifying goods from Northern Ireland to Great Britain;
- c) The recognition of professional qualifications across the UK;
- d) The Competition and Markets Authority (CMA) which would be provided with new functions, including monitoring the health of the internal market and advising and reporting on proposals and regulations and their potential or actual impact on the UK Internal Market;
- e) Measures which take steps to “clarify specific elements of the Northern Ireland Protocol in domestic law, concerning tariffs, export procedures and state aid, to remove any ambiguity”;
- f) Provisions to “ensure a uniform approach across the UK” to the application of EU State aid law under Article 10 of the Northern Ireland Protocol;
- g) The power to enable UK Government Minister to provide financial assistance to persons in any part of the UK to promote economic development, infrastructure, culture and sport, as well as educational and training activities;
- h) Specific amendment of the Government of Wales Act 2006, Scotland Act 1998, and the Northern Ireland Act 1998 to include the regulation of subsidies as a reserved matter.

### **Update on the position since the publication of the first Legislative Consent Memorandum**

- 6. The Welsh Government laid a Legislative Consent Memorandum on 25 September 2020, based on the Bill as introduced into Parliament on 9 September 2020.
- 7. This Supplementary Legislative Consent Memorandum (Memorandum No. 2) updates the Senedd on the amendments made to the Bill up to the House of Lords Report Stage. These amendments cover both government and non-government amendments.
- 8. Our view on the unnecessary and damaging nature of this Bill has not changed.

## **Amendments to note since the publication of the first Legislative Consent Memorandum, for which consent is required**

9. Consent is required for the Bill as a whole due to Clause 48 of the Bill, which seeks to amend paragraph 5 of Schedule 7B to the Government of Wales Act 2006 so that the entire Bill is specified as a protected enactment. Each provision will therefore modify the legislative competence of the Senedd by adding to the category of legislation that it cannot amend and therefore engage standing order 29.1(ii).
10. In addition, a number of clauses in the Bill also engage standing order 29.1(i) on the basis that they make provision in relation to Wales for any purpose within the legislative competence of the Senedd, by (among other things) making provision in relation to the regulation of goods, services or professions that fall within the legislative competence of the Senedd. Further information about those clauses and the accompanying analysis can be found in the first Memorandum. These clauses were therefore also considered to require consent by virtue of standing order 29.1(i)
11. A number of amendments have been made to the Bill during both the House of Lords Committee and Report stage. These amendments are described at Annex A. Clause numbers relate to the latest version of the Bill. It is not yet known which, if any, of these amendments will remain in the Bill.
12. This Supplementary Legislative Consent Memorandum sets out our position on these amendments.
13. Where amendments have been made to clauses which were in the Bill on Introduction and were identified in the first Legislative Consent Memorandum as engaging standing order 29.1(i), there is no change to our position that these clauses require the consent of the Senedd by virtue of standing order 29.1(i).
14. In the case of amendments which insert new clauses, our position as to the engagement of standing order 29.1(i) is set out at Annex A.

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

15. The Bill has been significantly amended by the House of Lords at both Committee and Report stage.
16. We are encouraged by the direction the Bill has taken during its passage through the House of Lords, and we welcome the engagement and interest in the Bill demonstrated by the Lords. A number of the Lords' amendments replicate the Welsh Government's model amendments (published 15 October) and we very much welcome their inclusion in the Bill.

17. However, we expect the Bill to continue to change and evolve past Third Reading.

### **Financial implications**

18. It is unclear on the face of the Bill whether there will be direct financial implications for the Welsh Government or the Senedd arising from the powers under the Bill.

19. As it stands, the original Part 6 of the Bill on Financial Assistance Powers has been removed.

### **Conclusion**

20. As set out above, the Senedd's consent is required for the United Kingdom Internal Market Bill. We remain committed to the Union and we have been clear that we are not opposed to the view that there is an internal market in the United Kingdom that needs to be protected. We have also been clear that we are not opposed to a UK-wide subsidy regime.

21. While we welcome the changes made to the Bill as it stands, we expect further changes and amendments to be made after the Bill's Third Reading.

22. A key concern for the Welsh Government is that the entirety of the Bill has been designated a protected enactment. No amendment was tabled in respect of the Bill's status and this provision therefore still stands. This, as well as the amendments already made, would need to be addressed before the Welsh Government could consider recommending consent.

23. Given the number of amendments made to the Bill and defeats suffered by the UK Government, it is clear that the Bill as originally introduced to the House of Commons was deeply flawed. A wise government would listen to the many widespread criticisms the Bill has received.

24. We will continue to monitor the Bill's developments and update the Senedd as appropriate.

**Jeremy Miles MS**  
**Counsel General and Minister for European Transition**  
**3 December 2020**

## ANNEX A

### Amendments to the UK Internal Market Bill

*(Note – unless otherwise stated, references to clause numbers are to those in the Bill as amended on Report)*

#### **Part 1 – UK Market Access: Goods**

1. Clause 2 (new clause) (common frameworks process) (HL Report) (Non-Gov):

This new clause provides that the United Kingdom market access principles shall not apply to any statutory provision or requirement that gives effect to a decision to diverge from harmonised rules that has been agreed through the common frameworks process. It also provides that no regulations may be made by a Minister of the Crown with regard to a matter that is under consideration under the common frameworks process while that process in relation to that matter is still in progress.

2. This new clause engages matters within the legislative competence of the Senedd and therefore requires the consent of the Senedd under standing order 29.1(i).

#### Clause 3 (the mutual recognition principle for goods)

3. Technical amendments to Clause 3(1)(b) and 3(2) (HC Committee) (Gov)

#### Clause 4 (relevant requirements for the purposes of section 3)

4. Technical amendments to Clause 4(1) and (2) (HL Committee) (Gov)
5. Removal of sub-clauses (3) and (5) as introduced (HC Report) (Gov)
6. Insertion of new sub-clauses (4) to (6) (HC report) (Gov):

The amendment makes clear that manner of sale requirements are outside the scope of the mutual recognition principle. The definition of “manner of sale requirement” is intended to clarify that manner of sale requirements include pricing requirements, for example Minimum Unit Alcohol Pricing or plastic bag charges, which are therefore not in scope of the mutual recognition principle. The only exception will be where a requirement appears to be designed artificially to present something that would otherwise be a relevant requirement in the form of a manner of sale requirement.

7. Removal of Clause 4(8) to (10) (HL Report) (Non-Gov):

This amendment would remove the power to amend Clause 4(3)

Clause 5 (exclusion of certain requirements existing before commencement)

8. Technical amendments to Clause 5(1) and (5) (HL Committee) (Gov)

Clause 7 (relevant requirements for the purposes of the non-discrimination principle)

9. Amendments to Clause 7(3)(a) related to new clause 4(4) to (6) (HC Report) (Gov)

10. Removal of Clause 7(5) to (7) (HL Report) (Non-Gov):

This amendment would remove the power to amend clause 7(3)

Clause 8 (the non-discrimination principle: direct discrimination)

11. Technical amendments to Clause 8(4) (HC Report) (Gov)

Clause 9 (the non-discrimination principle: indirect discrimination)

12. Removal of Clause 9(7) and (8) (HL Report) (Non-Gov):

This amendment would remove the power to amend Clause 9(6)

13. Amendment inserting new subsection after Clause 9(8). (HL Report) (Gov)

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending the “legitimate aims” in Clause 9 (which can mean that provision does not count as indirectly discriminatory against goods).

14. Amendment inserting new subsections after clause 9(8) (HL Report) (Non-Gov):

“(8) Before making regulations under subsection (subsection removed) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.

(9) But the Secretary of State may make regulations under subsection (subsection removed) without the consent required by subsection (8) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(10) If the Secretary of State makes regulations without the consent required by subsection (8), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations.”

Clause 11 (exclusions from market access principles: public interest derogations)

15. Removal of original Clause 10 (further exclusions from market access principles) and replacement with new Clause (now clause 11) (exclusions from market access principles: public interest derogations) (HL Report) (Non- Gov)

“(1) The United Kingdom market access principles do not apply to, and sections 3(3) and 6(3) do not affect the operation of, any requirements which—

(a) pursue a legitimate aim,  
(b) are a proportionate means of achieving that aim, and (c) are not a disguised restriction on trade.

(2) A requirement is considered to pursue a legitimate aim if it makes a contribution to the achievement of—

(a) environmental standards and protection,  
(b) animal welfare,  
(c) consumer standards, including digital and artificial intelligence privacy rights, (d) employment rights and protections,  
(e) health and life of humans, animals or plants,  
(f) cultural expression,  
(g) regional socio-cultural characteristics, or  
(h) equality entitlements, rights and protections.

(3) A requirement is considered disproportionate if the legitimate aim being pursued in the destination part of the United Kingdom is already achieved to the same or higher extent by requirements in the originating part of the United Kingdom.”

16. This new clause engages matters within the legislative competence of the Senedd and therefore requires the consent of the Senedd under standing order 29.1(i).

17. Removal of Clause 10(2) and (3) (as introduced) (HL Report) (Non – Gov):

This amendment would remove the power to amend Schedule 1

18. Amendment inserting new subsection after Clause 10(3) (as introduced) (HL Report) (Gov):

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending Schedule 1 (which contains exceptions from the rules about market access for goods).

19. Amendment inserting new subsections after Clause 10(3) (as introduced) (HL Report) (Non – gov):

“(3A) Before making regulations under subsection (2) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.

(3B) But the Secretary of State may make regulations under subsection (2) without the consent required by subsection (3A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.<sup>1</sup>

(3C) If the Secretary of State makes regulations without the consent required by subsection (3A), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations.”

Schedule 1 (exclusions from market access principles) (introduced by original clause 10 – now removed)

20. Amendment to paragraph 1(1) (HC Committee) (Gov):

This amendment means that measures aimed at preventing the spread of pests or diseases are capable of being excluded from the non-discrimination principle for goods (as well as the mutual recognition principle for goods).

21. Insertion of new paragraph 1(7) (HC Committee) (Gov):

This amendment means that, in assessing whether a measure aimed at preventing the spread of pests or diseases can reasonably be justified as necessary, account will be taken of whether similar threats are addressed with similar severity

22. Insertion of new paragraphs 9 and 10 (HC Committee) (Gov):

This amendment excludes certain measures in relation to fertilisers and pesticides from the operation of the mutual recognition principle for goods.

Clause 12 (modifications in connection with the Northern Ireland protocol)

23. Insertion of new clause 12(6) and (7) (HC Report) (Gov):

This amendment modifies the exclusion in paragraph 1 of Schedule 1 so that it applies to threats posed by pests or diseases that are or may be transmitted in qualifying Northern Ireland goods (without necessarily being established in Northern Ireland).

24. Amendment of Clause 12(8) (HL Report) (Non – Gov):

This amendment is consequential on the removal of original Part 5 (Northern Ireland Protocol) at Committee Stage.

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<sup>1</sup> Amendments referred to at paragraphs 17, 18 and 19 related to Clause 10 of the Bill. They have been included here for the sake of completeness, but note that they were removed as per paragraphs 15 and 16 above.

### Clause 13 (Guidance relating to part 1)

25. New clause inserted (HC Committee) (Gov)

26. Amendment to Clause 13, inserting new subsections after subsection (4) (HL Report) (Non-gov):

This amendment ensures that the Secretary of State must consult with the devolved administrations before revising or withdrawing guidance under Clause 13.

27. After clause 13, the insertion of a new Clause 14 (duty to review the use of Part 1 amendment powers) (HL Report) (Gov):

This new Clause would require the Secretary of State to carry out a review of, and to lay a report to Parliament about, the use made of the amendment powers in Part 1. The review cannot start within three years of Royal Assent, and the steps required would need to be completed within five years.

28. As it is considered that the amendment powers in Part 1 engage matters within the legislative competence of the Senedd, this new clause also engages matters within the legislative competence of the Senedd and therefore requires the consent of the Senedd under standing order 29.1(i).

### Clause 17 (interpretation of other expressions used in Part 1)

29. Amendment to clause 17(2) (HC Committee) (Gov):

The amendment clarifies that “goods” for the purposes of Part 1 includes their packaging and any label attached to them.

30. Amendment to clause 17(3) and insertion of new clause 17(4) to (7) (HC Committee) (Gov):

These amendments clarify the rule for determining whether goods have been produced in a part of the United Kingdom for the purposes of Part 1.

31. Insertion of new Clause 17(11) (linked to removal of clause 3(5)) (HC Report) (Gov)

32. Insertion of new Clause 17(13) (definition of “contravening”) (HC Report) (Gov)

### ***Part 2 – UK Market Access: Services***

33. Insertion of new clause 21 (Common frameworks process) (HL Report) (Non – Gov):



“(1) The mutual recognition of authorisation requirements shall not apply to any regulatory requirement that gives effect to a decision to diverge from harmonised requirements that has been agreed through the common frameworks process.

(2) No regulations may be made by a Minister of the Crown with regard to a matter that is under consideration under the common frameworks process while that process in relation to that matter is still in progress.”

34. This new clause engages matters within the legislative competence of the Senedd and therefore requires the consent of the Senedd under standing order 29.1(i).

#### Clause 18 (Services: overview)

35. Technical amendment to clause 18(2) (HC Committee) (Gov)

36. Technical amendments to clause 18(5) (HC Committee) (Gov)

37. Insertion of new clause 18(6) and (7) (HC Committee) (Gov):

This amendment brings a requirement into the scope of Part 2 if a corresponding requirement in another part of the UK was substantively changed after the section comes into force.

38. Insertion of new Clause 18 (8) (HC Report) (Gov):

This amendment ensures changes to the conditions attached to authorisation requirements would bring the authorisation requirement (and corresponding authorisation requirements) within the scope of Part 2.

#### Clause 19 (services: exclusions)

39. Removal of Clause 19(2) to (4) (HL Report) (Non – Gov):

This amendment removed the power to amend Schedule 2.

#### Schedule 2 (services exclusions)

40. Amendments to Parts 1 and 2 (addition of notarial services) (HC Committee) (Gov)

#### Clause 23 (indirect discrimination in the regulation of services)

41. Amendment Clause 23(1) (HL Committee) (Gov):

This amendment makes clear that Clause 23 is concerned with incoming service providers.

42. Amendment to Clause 23(2) (HL Committee) (Gov):

This amendment would treat the concept of unequal treatment (or relevant disadvantage) as a test separate from adverse market effect

43. Replacement of clause 19(3) to (5) (as introduced) with new clause 23(3) to (6) (HL Committee) (Gov)

These amendments define the concept of relevant disadvantage and rephrase what is meant by “disadvantage” and “adverse market effect” in light of the addition of the concept of relevant disadvantage.

44. Removal of original subsections (8) and (9) (HL Report) (Non – Gov)

This amendment removed the power to amend Clause 23(7)

45. New subsection inserted at clause 23(8) (HL Report) (Gov):

This amendment would require the Secretary of State to consult the devolved administrations before making regulations amending the “legitimate aims” in Clause 23 (which can mean that provision does not count as indirectly discriminatory against service providers).

46. Insertion of new subsections after Clause 23(8) (HL Report) (Non – Gov):

“(9) Before making regulations under subsection (subsection removed) the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland.

(10) But the Secretary of State may make regulations under subsection (subsection removed) without the consent required by subsection (9) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(11) If the Secretary of State makes regulations without the consent required by subsection (9), the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with making the regulations.”

47. Removal of Clause 20 as introduced (definition of regulator) (HC Committee) (Gov)

New clause 24 (duty to review the use of Part 2 amendment powers)

48. New clause 24 inserted (HL Report) (Gov):

This new Clause 24 would require the Secretary of State to carry out a review of, and to lay a report to Parliament about, the use made of the amendment powers in Part 2. The review cannot start within three years of Royal Assent, and the steps required would need to be completed within five years.

49. As it is considered that the amendment powers in Part 2 engage matters within the legislative competence of the Senedd, this new clause also engages matters within the legislative competence of the Senedd and therefore requires the consent of the Senedd under standing order 29.1(i).

#### Clause 25 (interpretation of Part 2)

50. Amendments to clause 25(1) (HC Committee) (Gov):

This amendment is consequential on the omission of clause 20 as introduced (definition of “regulator”)

51. Insertion of new clause 25(2) and (3) (HC Report) (Gov):

This amendment deals with a case where a regulator has an obligation to apply discriminatory requirements.

52. Insertion of new clause 25(4) (HC Committee) (Gov):

This amendment ensures that a service provider may rely on an authorisation based on discriminatory requirements when demonstrating existing authorisations for mutual recognition.

### ***Part 3 – Professional Qualifications and Regulation***

#### Clause 29 (other exceptions from section 26)

53. Amendment to Clause 29(7) (definition of “legal profession”) to include profession of patent attorney or trade mark attorney (HL Committee) (Gov)

54. Amendment to clause 29(8) (HL Report) (Gov):

This amendment adds school teaching to the professions the regulation of which is excluded from Clause 29.

55. Insertion of new subsection 29(6):

“(6) Section 26(2) does not apply if the provision has been agreed through the common frameworks process.”

#### Clause 31 (interpretation of Part 3)

56. Technical amendment to clause 31(1)(c) (HC Committee) (Gov)

57. Insertion of new clause 31(2) (HL Committee) (Gov):

This amendment would provide that provision imposing qualification requirements on particular professional activities falls within Clause 26

only if the activities are, in a significant number of cases, essential to the practice of the profession in question.

***Part 4: Independent Advice on and Monitoring of UK Internal Market***

58. Insertion of new clause 33 (Objective and general functions) (HC Report) (Gov):

This new clause makes provision about the objective to which the Competition and Markets Authority must have regard in carrying out its functions under Part 4, and the application of certain general functions of the CMA in relation to its functions under Part 4.

59. The provisions in this new clause 33 create functions which concern matters within the legislative competence of the Senedd. As a result, the consent of the Senedd is required under standing order 29.1(i).

60. Insertion of new subsection Clause 33(3) (HL Report) (Gov):

This amendment would set out in more detail the considerations that the CMA (including while acting through the Office for the Internal Market) must have regard to in exercising its functions under Part 4.

61. Insertion of new clause 34 (Office for the Internal Market panel and task groups) (HC Report) (Gov):

This new clause enables functions of the Competition and Markets Authority under Part 4 to be carried out on the authority's behalf by Office for the Internal Market task groups constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013

62. The provisions in this new clause create functions which concern matters within the legislative competence of the Senedd. As a result, the consent of the Senedd is required under standing order 29.1(i).

63. Insertion of new Schedule 3 (Constitution etc of Office for the Internal Market panel and task groups) (HC Report) (Gov):

This new schedule is about the constitution of Office for the Internal Market task groups, to which functions of the Competition and Markets Authority may be delegated by virtue of the new clause 34, and the establishment of a panel from whose members such groups may be selected.

64. The Schedule provides the Devolved Governments with a consultee role where the Secretary of State intends to appoint to the OIM Panel.

65. The provisions in this Schedule create functions which concern matters within the legislative competence of the Senedd. As a result, the consent of the Senedd is required under standing order 29.1(i).

66. In Schedule 3, insertion of new paragraph 2(4) (HL Report) (Gov):

The amendment would require the Secretary of State to have regard to the desirability of having a variety of skills, knowledge and experience in the Office for the Internal Market panel and for a balance between members with specific skills, knowledge or experience in the internal market as operating in different parts of the United Kingdom.

67. In Schedule 3, insertion of new paragraph 2(3) (HL Report) (Non – Gov):

This amendment provides for each of the devolved administrations to appoint a member to the CMA Board.

68. In Schedule 3, amendment to paragraph 2(4) (HL Report) (Gov):

The amendment would require the Secretary of State to seek the consent of the devolved administrations to any proposed appointment to the OIM panel.

69. In Schedule 3, further amendment to paragraph 2(4) (HL Report) (Non-Gov):

The amendment would give the Secretary of State the option to proceed with an appointment to the OIM panel after an interval of at least one month, even if one or more of the devolved administrations have not given their consent

70. In Schedule 3, amendment of paragraph 5 to insert new subparagraph (3) (HL Report) (Non – Gov):

This amendment means that, if a CMA Board member appointed by one of the devolved administrations wishes to resign from membership, they must do so by giving notice to the devolved administration in question.

71. New clause 42 (laying of annual documents before devolved legislatures) (HL Report) (Gov):

This new Clause 42 would require the CMA to lay its annual plan, proposals for its annual plan and its performance report before the devolved legislatures as well as Parliament.

72. The provisions in this new clause create functions which concern matters within the legislative competence of the Senedd. As a result, the consent of the Senedd is required under standing order 29.1(i).

#### Clause 44 (enforcement)

73. Amendment to clause 44(9) (HL Report) (Gov):

This amendment would provide that the domestic administrations must be among the bodies consulted by the CMA in relation to its policy on enforcing information-gathering notices.

#### Clause 45 (penalties)

74. Amendment to clause 45(8) (HL Report) (Gov):

This amendment would provide that the other domestic administrations must be among the bodies consulted by the Secretary of State about regulations setting the level of penalties for contraventions of information-gathering notices issued by the CMA.

#### Clause 46 (interpretation of Part 4)

75. Amendments to clause 46(5) and removal of clause 39(7) (as introduced) and insertion of new clause 46(7) to (11) (HC Report) (Gov):

These amendments widen certain references to competence in Part 4 so that executive competence (as well as legislative competence) in each jurisdiction is included.

**[Part 5: Northern Ireland Protocol (as introduced):** Removed (HL Committee) (Non-Gov)]

#### **Part 5 – Financial Assistance Powers (as introduced)**

76. Clauses 42 and 43 (as introduced) removed (HL Report) (Non – gov)

#### **Clause 47 - State aid and the Office for the Internal Market**

77. New clause 47 inserted (HL Report) (Non-Gov):

“(1) Within the period of six months beginning with the day on which section 34 comes into force, and within the existing budget, the Secretary of State must by regulations establish the Office for the Internal Market (“the OIM”) as independent of the CMA.

(2) The Secretary of State must consult and seek the consent of Scottish Ministers, the Welsh Ministers, and the Department for the Economy in Northern Ireland on appointments to the OIM.

(3) Following public consultation about the United Kingdom’s state aid provisions and with the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland the

Secretary of State may by regulations make the OIM the competent body for—

(a) investigating harmful and distortive subsidies and subsidy races made by any administration within the United Kingdom and relating to harm in the United Kingdom;

(b) recommending to the Secretary of State and the Devolved Administrations changes to the test for a harmful subsidy, remedies, the scope of exemptions and time limits on approvals;

(c) recommending changes in its powers and functions.

(4) After two years and before three years, beginning with the day on which section 34 comes into force, there shall be a review of the competences of the OIM.(5) Regulations under this section are subject to the affirmative resolution procedure.”

78. The provisions in this new clause create functions which concern matters within the legislative competence of the Senedd. As a result, the consent of the Senedd is required under standing order 29.1(i).

### ***Part 6 – Final Provisions (including subsidy regulation)***

#### Clause 44 (regulation of distortive or harmful subsidies) (as introduced)

79. Clause removed (HL Report) (Non – Gov)

#### Clause 49 (further provision in connection with the Northern Ireland Protocol)

80. Amendments to clause 49 (HL Report) (Non – gov):

These amendments are consequential on the removal of Part 5 (Northern Ireland Protocol) at Committee Stage.