

Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date:

2 March 2015

Meeting time:

13.30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

1 Introduction, apologies, substitutions and declarations of interest

2 Evidence in relation to the Local Government (Wales) Bill (Pages 1 – 38)

(Indicative time 1.30pm)

Leighton Andrews AM, Minister for Public Services

CLA(4)–06–15– Paper 1 – Statement of Policy Intent

CLA(4)–06–15 – Research Service Briefing

CLA(4)–06–15 – Legal Advice Note

3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Pages 39 – 40)

CLA(4)–06–15 – Paper 2 – Statutory Instruments with clear reports

Negative Resolution Instruments

CLA490 – The Education Workforce Council (Main Functions) (Wales) Regulations 2015

Negative procedure; Date made: 3 February 2015; Date laid: 6 February 2015;
Coming into force date: 1 April 2015.

CLA492 – The Non-Domestic Rating (Small Business Relief) (Wales) Order 2015

Negative procedure; Date made: 11 February 2015; Date laid: 13 February 2015;
Coming into force date: 9 March 2015

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

Composite Negative Resolution Instruments

CLA491 – The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015

(Pages 41 – 56)

Composite Negative procedure; Date made: 8 February 2015; Date laid: 12 February 2015; Coming into force date: 6 March 2015.

CLA(4)–06–15 – Paper 3 – Report

CLA(4)–06–15 – Paper 4 – Order

CLA(4)–06–15 – Paper 5 – Explanatory Memorandum

5 Evidence in relation to the Inquiry into Making Laws in the Fourth Assembly (Pages 57 – 68)

(Indicative time 2.45pm)

Elaine Edwards

CLA(4)–06–15 – Paper 6 – Written evidence

CLA(4)–06–15 – Research Service Briefing

6 Papers to note (Pages 69 – 82)

CLA(4)–06–15 – Paper 7 – Written Statement: Microchipping of Dogs in Wales

CLA(4)–06–15 – Paper 8 – Written Statement: Referral of the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill to the Supreme Court

CLA(4)–06–15 – Paper 9 – Letter from Lord Boswell: European Commission Work Programme 2015

CLA(4)–06–15 – Paper 10 – Letter from Lord Boswell to President Juncker

CLA(4)–06–15 – Paper 11 – Letter from the Equality and Human Rights Commission: Equality and Human Rights – Welsh Devolution Settlement

7 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

Draft Report on the Qualifications Wales Bill (Pages 83 – 93)

CLA(4)–06–15 – Paper 12 – Draft Report

Update on the Inquiry into Making Laws in the Fourth Assembly

No paper – oral update



Llywodraeth Cymru
Welsh Government

Local Government (Wales) Bill

Statement of Policy Intent for Subordinate Legislation and Other Delegated Legislative Powers

January 2015

Local Government (Wales) Bill

Statement of Policy Intent for Subordinate Legislation and Other Delegated Legislative Powers

Introduction

1. This document provides an indication of the current policy intention for the subordinate legislation, directions, determinations and guidance which the Welsh Ministers are empowered or required to make under provisions of the Local Government (Wales) Bill (“the Bill”).
2. The Statement has been published in order to assist the responsible Assembly Committee during the scrutiny of the Bill. It should be read in conjunction with the Explanatory Memorandum and Explanatory Notes which accompany the Bill. Details of the Assembly procedure associated with each of these powers are set out in chapter 5 of the Explanatory Memorandum and are not repeated in this document.
3. The key purposes of the Bill are to:
 - allow for certain preparatory work to enable a programme of local government mergers and reform in Wales; and
 - facilitate voluntary early mergers of Principal Local Authorities, by April 2018.

The Bill also amends existing legislative provision in the Local Government (Wales) Measure 2011 (relating to the Independent Remuneration Panel for Wales; and the survey of councillors and unsuccessful candidates at local elections) and the Local Government (Democracy) (Wales) Act 2013 (in relation to electoral reviews).

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
Voluntary mergers of Local Authorities				
3(1)	<p>The Welsh Ministers have the power to make regulations which set an alternative date to that in the Bill (ie 30 November 2015) for receipt of an application proposing the voluntary merger of Principal Local Authority Areas.</p> <p>This power is linked to that in section 5(1) because the 30 November 2015 date is set out in the guidance, which will have statutory effect.</p>	The Welsh Ministers may need to change the date in the Bill by which applications for voluntary mergers are received.	The date in the Bill for receipt of applications by Principal Local Authorities to merge their areas is predicated on the Bill being approved by the National Assembly and receiving Royal Assent in November 2015. Any delay to this may necessitate use of the Welsh Ministers' powers to postpone the date for receipt of applications, until after a later Royal Assent in order to facilitate voluntary mergers.	This is a discretionary power to be utilised if required.
5(1)	<p>The Welsh Ministers may issue guidance to Principal Local Authorities on matters relating to applications under section 3(1) proposing the voluntary merger of existing Principal Local Authority Areas.</p> <p>This power links to that in section 6(1) because</p>	The Welsh Ministers need to issue guidance to assist Principal Local Authorities on matters relating to the making of an application for voluntary merger.	The Welsh Ministers issued guidance in the form of an 'Invitation to Principal Local Authorities in Wales to submit proposals for voluntary merger' ("the mergers prospectus") on 18 September 2014. The guidance, which is intended to facilitate the operation of the Bill, sets a process and	Guidance was issued on 18 September 2014 and is to be given retrospective statutory application by section 5(3) of the Bill.

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
	applications for early voluntary merger will form the basis for any merger regulations made under section 6(1)		timeline to achieve voluntary mergers by April 2018.	
6(1)	<p>The Welsh Ministers have the power to make regulations (“merger regulations”) to merge existing Principal Local Authority Areas following receipt of a merger application under section 3(1) of the Bill.</p> <p>This power will give effect to proposed voluntary early merger applications received under section 3(1) (and informed by the guidance issued under section 5(1)) which are deemed appropriate by the Welsh Ministers.</p>	Regulations will give effect to voluntary mergers following receipt by the Welsh Ministers of applications which, in the view of the Welsh Ministers, satisfy the principles and guidance contained in the guidance / mergers prospectus.	Regulations will, amongst other things, establish the new Principal Area and Council for that area. They will cover a range of practical matters including the establishment of Shadow Authorities, the timing of elections and consequential etc provision to give full effect to the mergers. A list of provisions, which must be made in merger regulations, can be found at section 6(2). Regulations will be tailored to the specific circumstances of each particular merger.	<p>It is anticipated that any merger regulations will be considered and made by the National Assembly by March 2016.</p> <p>Regulations will require the approval of the National Assembly.</p> <p>Vesting day for the new voluntarily merged Authority(ies) would be 1 April 2018.</p>
7(4)	The Welsh Ministers may issue guidance on the exercise of functions by Shadow Authorities and Shadow Executives established or appointed pursuant to merger regulations.	It will be necessary for the Welsh Ministers to issue guidance to Shadow Authorities and Shadow Executives on the exercise of their functions in preparing for the establishment of new	The Welsh Ministers may issue guidance on the functions of the Shadow Authority and Executive, such as, the timing of senior appointments for the new Principal Authority, determining the location of	Guidance will be published in advance of the establishment of Shadow Authorities by April 2017 and when required subsequently.

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
	The power in section 7(4) is dependent on that in section 6(1) because guidance will be required to inform the exercise of functions by the Shadow Authorities and Shadow Executives formed in accordance with the provisions within voluntary merger regulations.	Authorities.	Headquarters, Service Plans and Pay Policy Statements.	
10(2)	<p>The Welsh Ministers may by regulations of general application make supplementary, incidental, consequential, transitional and saving provision for the purposes of or in consequence of merger regulations, or for giving full effect to merger regulations.</p> <p>This power links to the power given to the Welsh Ministers in section 6(1), allowing the Welsh Ministers to make merger regulations.</p>	Merger regulations may include consequential etc. provision to facilitate and give full effect to mergers. The Welsh Ministers may also need to make regulations of general application to address other consequential matters.	It is intended each merger will be effected by way of a separate set of merger regulations. In the event that further consequential matters are identified which are common to all voluntary mergers, it is intended they will be addressed by way of regulations of general application under section 10(2). A list of matters which might be included in consequential etc. regulations is found at section 10(4).	At the appropriate times following the making of merger regulations and before Vesting Day.

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
10(10)	Enables the Welsh Ministers to vary merger regulations (made under section 6) or to vary or revoke regulations of general application (made under section 10(2)).	The Welsh Ministers may need to vary merger regulations (under section 6), or vary or revoke regulations of general application (under section 10(2)) to take account of changed circumstances in the merged authority.	<p>The Welsh Ministers might wish to vary merger regulations for example if the Shadow Authority for the new Authority has requested different names for the Authority from those listed in the merger regulations.</p> <p>The Welsh Ministers might want to vary or revoke regulations made under section 10(2) if new circumstances had arisen which had not been provided for in the regulations made.</p>	At the appropriate times following the making of merger regulations or regulations of general application and before Vesting Day.
Transition Committees				
11	<p>The Welsh Ministers must make regulations requiring the Principal Local Authorities for a proposed new Principal Area to establish a transition committee for that proposed Principal Area.</p> <p>Similar provision to establish transition committees was made in section 46 of the Local</p>	Previous Local Government reorganisations in Wales have required the establishment of statutory joint transition committees to consider and advise merging Principal Local Authorities on transitional matters. Previous experience indicates that these committees did valuable work, but they could have been more	The Bill requires the Welsh Ministers, by regulations, to require the Principal Local Authorities of the Principal Areas which are to be merged to create a new Principal Area (whether by way of voluntary merger regulations or a subsequent Bill or National Assembly Act), to establish a transition committee for that	It is intended that merger regulations, for voluntary mergers, will include provision for the establishment of transition committees and specify the date on which they will be established. The intention is for these transition committees to

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
	Government (Wales) Act 1994 and section 264 of the Local Government Act 1972.	useful if they had been established on a statutory basis earlier in the process.	proposed new area. The role of the transition committee is to prepare for the establishment of the new Authorities by undertaking essential preparatory activities, as well as considering anything else the committees consider expedient to ensure the new Principal Local Authority will be able to function effectively from the day it assumes the full range of its responsibilities.	be established as soon as possible after 1 April 2016. It is intended that separate regulations will be made for the establishment of transition committees for those mergers which are to be effected by way of the second Local Government Bill following the introduction of that Bill in autumn 2016.
12(3)	In default of agreement by merging Authorities, the Welsh Ministers will determine the number of members of a transition committee. This would not be subject to Assembly procedure. This power links to section 11 and the establishment of transition committees.	Merging Authorities may fail to reach agreement on the number of members of a transition committee. If the need arises, the Welsh Ministers will provide a determination so that the work of a transition committee is not delayed.	If merging Authorities fail to reach agreement, Welsh Ministers will determine the size of transition committee in order to ensure the important work of the committee is able to proceed.	To be utilised, in consultation with the merging Authorities as far as possible, if required in line with the above timetables for the establishment of transition committees.

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
13(1)(c)	<p>The Welsh Ministers have the power to give directions as to additional matters in respect of which the transition committee must provide advice or recommendations to the merging Authorities and Shadow Authorities.</p> <p>This power links to section 11 and the establishment of transition committees.</p>	Unanticipated matters may arise during the transition period, and the Welsh Ministers may need to add to the matters upon which a transition committee or committees must provide advice or recommendations to the merging Authorities and Shadow Authorities.	Guidance to be issued under section 13(5) will spell out headline functions for transition committees. The circumstances of a particular merger could make it appropriate to issue directions specifically to the transition committee for that merger if, for example, it (alone among proposed mergers) crossed preserved county boundaries.	This is a discretionary power to be utilised if required.
13(2)	<p>The Welsh Ministers have the power to give directions to transition committees (individually, all or as a group) to exercise their functions in accordance with the direction.</p> <p>This power links to section 11 and the establishment of transition committees.</p>	It may be necessary for the Welsh Ministers to direct an individual transition committee, particular transition committees or all transition committees as to the exercise their functions.	The Welsh Ministers would exercise this power, for example, in circumstances where the transition committee was considered to have given inadequate attention to preparing a suitable Welsh language policy for the new Authority.	This is a discretionary power to be utilised if required.
13(5)	The Welsh Ministers may issue guidance to transition committees on the exercise of their functions.	The Welsh Ministers may issue guidance on the range of preparatory activities that merging Authorities need to address in order to ensure that the new Principal Authority can	The guidance would largely be concerned with the types and process of preparatory activities that it is considered the committees should undertake, and might include:	Guidance will be published to coincide with the establishment of transition committees, or as and when required in respect of unanticipated

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	This power links to section 11 and the establishment of transition committees.	function fully on Vesting Day.	Service Delivery Plans, recommendations for Pay Policy Statements, Welsh language considerations, agreeing first budgets, setting council tax rates and issuing council tax bills.	matters.
15(2)	<p>In default of agreement by merging Authorities, the Welsh Ministers will determine the apportionment of transition committee costs.</p> <p>This power links to section 11 and the establishment of transition committees.</p>	Merging Authorities may fail to reach agreement on the apportionment of transition committee costs. If the need arises, the Welsh Ministers will provide a determination as to the meeting of the committee's costs so that the work of a transition committee is not delayed.	<p>If merging Authorities fail to reach agreement, Welsh Ministers will determine the division of transition committee costs. This will ensure the work of a transition committee is not hindered by disagreement or potential administrative prevarication.</p> <p>Use of the power will be tailored to the circumstances of the particular merger.</p>	To be utilised, in consultation with the merging Authorities as far as possible, if required.
Electoral arrangements etc. for new Principal Areas				
16(1)	The Welsh Ministers may direct the Local Democracy and Boundary Commission for Wales ("the LDBCW" or "Commission") to conduct an initial review of the electoral	<p>The role of the LDBCW is to keep all Local Government areas in Wales and the electoral arrangements for the Principal Areas under review.</p> <p>Under current legislation, the</p>	The Welsh Ministers intend using their powers of direction to require the LDBCW to start work on reviews of proposed Principal Areas to be created by merger regulations or by a	Directions in respect of both voluntarily merging Authorities and mandatory mergers will be issued following Royal Assent to this Bill.

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
	<p>arrangements for a proposed Principal Area.</p> <p>This power is linked to section 6(1), in the case of early voluntary mergers, and also links to existing powers in section 29 of the Local Government (Democracy) (Wales) Act 2013 (“the 2013 Act”).</p>	<p>LDBCW can only undertake reviews of Principal Areas already established by statute. Section 16(1) of the Bill will enable the Welsh Ministers to direct the LDBCW to undertake an initial review of the electoral arrangements for a proposed Principal Area.</p> <p>This is intended to ensure that reviews are completed and new electoral arrangements are in place in time for the first elections to voluntarily merged Authorities in May 2018 and for Authorities merged by the second Bill in May 2019. These timelines could not be met under the existing legislative arrangements.</p>	<p>second Bill to be introduced into the National Assembly.</p> <p>A direction under section 16(1) will specify the proposed Principal Area concerned and the date by which the LDBCW must make a report to the Welsh Ministers containing recommendations for the electoral arrangements for the Principal Area concerned.</p>	<p>In relation to voluntary mergers, the issuing of directions will be timed to enable reviews to be completed and implemented prior to elections being held in 2018 and, in relation to mandatory mergers, to enable reviews to be completed and implemented prior to elections being held in 2019.</p>
17(3)	<p>The Welsh Ministers may give general directions to the LDBCW about the conduct of initial reviews, including the order in which reviews are to be conducted and specific matters to which the Commission must have regard</p>	<p>The Welsh Ministers will need to give general directions to the LDBCW about the conduct of initial reviews.</p>	<p>The directions will enable the Welsh Ministers to prescribe the order in which reviews are to be conducted, so priority is given to any Authorities being established by voluntary merger. Directions might also cover the potential maximum</p>	<p>Directions will be given following Royal Assent to this Bill.</p>

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
	<p>when conducting its reviews.</p> <p>This power links to section 16 and the Welsh Minister's directions to the LDBCW to conduct initial reviews of electoral arrangements in proposed Principal Areas.</p>		size of councils for Principal Authorities.	
17(8)	<p>The Welsh Ministers may issue guidance to the LDBCW on the conduct of initial reviews.</p> <p>This power links to section 16 and the Welsh Minister's directions to the LDBCW to conduct initial reviews of electoral arrangements in proposed Principal Areas.</p>	The Welsh Ministers may need to issue guidance to the LDBCW relating to the conduct of initial reviews.	Guidance might potentially cover the appropriateness of multi-member wards, rural sparsity and respecting community identity.	This a discretionary power to be used if required.
22(1)	<p>The Welsh Ministers may, through regulations, implement (with or without modification) any recommendation contained in a report by the LDBCW, following a review of the electoral arrangements for a proposed Principal Area.</p> <p>This power links to section 6(1)</p>	The Welsh Ministers will consider the reports and recommendations of the LDBCW and may implement any recommendation (with or without modification) contained in the reports.	The regulations are needed to establish the electoral arrangements for the new Principal Authorities. The content of the regulations will depend on the reviews undertaken and recommendations submitted by the LDBCW.	<p>For voluntary mergers, regulations will be made by September 2017 in readiness for May 2018 elections.</p> <p>For mandatory mergers, regulations will be made by September 2018 in readiness for May 2019</p>

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
	(insofar as voluntary mergers are concerned), and follows on from powers detailed in sections 16(1) and 17(3) of the Bill.		The procedure mirrors that already in place for the implementation of electoral arrangements reviews under the 2013 Act.	elections.
22(5)	Enables the Welsh Ministers to vary or revoke regulations made under section 22(1).	The Welsh Ministers may need to vary or revoke electoral arrangements regulations made under section 22(1) to take account of changed circumstances in the merged authority.	The initial regulations may need to be varied, for example, to take account of a name change in the case of a named electoral ward. The regulations will need to be revoked when the LDBCW does its next periodic review of electoral arrangements in the new Authority and recommends changes, necessitating the making of new regulations.	This is a discretionary power to be used if and when required.
23(2)	The Welsh Ministers may, through regulations, make provision for the electoral arrangements of a proposed Principal Area, if the LDBCW has not submitted a report and recommendations by the date specified in a direction under section 16(1).	The Welsh Ministers will exercise this power in the event that the LDBCW fails to submit a report and recommendations within the timescale specified in a direction under section 16.	This power will be used in order to avoid delay in creating the council of the new Principal Authority. In this eventuality, the LDBCW must conduct its first review of the new Principal Area under section 29 of the 2013 Act as soon as possible after the first ordinary elections to the new	To be exercised only in the circumstances where the LDBCW has failed to submit a report with recommendations within the timescale specified in the direction.

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
			Principal Local Authority. The power provides that the LDBCW must share with the Welsh Ministers any information that it has received or work that it has already carried out.	
23(5)	Enables the Welsh Ministers to vary or revoke regulations made under section 23(2).	The Welsh Ministers may need to vary or revoke regulations made under section 23(2) to take account of changed circumstances.	The initial regulations may need to be varied, for example, to take account of a name change in the case of a named electoral ward. The regulations will need to be revoked when the LDBCW does its next periodic review of electoral arrangements in the new Authority and recommends changes, necessitating the making of new regulations.	This is a discretionary power to be used if and when required.
24	The Welsh Ministers may, through regulations, amend section 29(3) of the 2013 Act to reset the start date of the next 10-year electoral arrangements review period, following the establishment of new merged Authorities.	Under the 2013 Act, the LDBCW is required to conduct electoral arrangements reviews for all Principal Local Authorities within a ten-year review cycle, beginning in 2013. The proposed programme of	The Welsh Ministers propose to use their regulation-making power to amend the 2013 Act to reset the 10-year review cycle to start once the initial reviews for new Areas have been completed.	It is intended that regulations will be made to reset the start date when all of the initial reviews and electoral arrangement orders have been made by 2019.

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
		Local Authority mergers will necessitate the LDBCW conducting initial electoral arrangements reviews for each new Principal Area prior to all first elections for those areas taking place by 2019.		
Remuneration etc. arrangements for new Principal Local Authorities				
25(1)	<p>The Welsh Ministers have the power to direct the Independent Remuneration Panel for Wales (“the Panel”), to exercise its functions under the 2011 Measure, as modified by the Bill, in relation to the pay and pensions of members of Shadow and merging Principal Local Authorities.</p> <p>Existing powers are set out in Part 8 of the 2011 Measure and, with regard to voluntary mergers, link with section 6(1) of the Bill.</p>	<p>The Panel has a range of functions under the 2011 Measure in respect of payments and pensions for members of Local Authorities.</p> <p>Like the LDBCW, under the current legislative framework, the Panel can only exercise functions in relation to existing Principal Local Authorities (amongst others).</p>	Section 25(1) of the Bill will enable the Welsh Ministers to direct the Panel to make determinations for payments in relation to members of Shadow Authorities (both those merged voluntarily and those merged by the second Bill); and for members of the new Principal Local Authorities in readiness for their coming into existence.	Directions to be given following Royal Assent to the Bill, and timed so determinations can be made (i) in advance of shadow authorities being established; and (ii) before the new Principal Local Authorities assume the full range of functions for their Areas.
27(3)	The Welsh Ministers may issue guidance to the Panel in relation to the exercise of its	It may be necessary for the Welsh Ministers to issue guidance to the Panel relating	Guidance could, for example, elaborate on the circumstances of members of	This is a discretionary power to be used if

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
	<p>functions under the Bill.</p> <p>Existing powers are set out in Part 8 of the 2011 Measure and, with regard to voluntary mergers, link with section 6(1) of the Bill.</p>	to the exercise of its functions.	shadow authorities who were also members of existing Authorities.	required.
28(6)	<p>The Welsh Ministers may issue guidance to transition committees and Shadow Authorities on their functions connected to the preparation of pay policy statements under the Bill.</p> <p>This builds on existing provision in section 38 of the Localism Act 2011.</p>	The Bill requires a transition committee to make and publish recommendations to a Shadow Authority in respect of the Shadow Authority's duty to prepare a pay policy statement. The Welsh Ministers may issue guidance in relation to this.	The intention is that the guidance will build on the existing guidance issued by the Welsh Ministers on pay policy statements.	Guidance to be published as close as possible to the establishment of transition committees.
35(3)	The Welsh Ministers may issue guidance to the Panel about the exercise of its temporarily extended functions under section 143A of the 2011 Measure concerning the pay of chief officers of Principal Local Authorities, in the period between commencement of section 35(1) of the Bill and 31	Under the 2011 Measure, currently the Panel may make recommendations in relation to an Authority's pay policy statement which relates to the salary, or any proposed change of salary, for the head of paid service (i.e. the Chief Executive or Managing Director) of a Principal Local	The intention is to ensure there are safeguards to ensure the remuneration of senior officers in local government in Wales during the reform period (until 31 March 2020) are subject to informed comment and advice from an independent public body.	Guidance to be published as soon as possible following Royal Assent to the Bill.

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
	March 2020.	Authority. The Bill provides extra safeguards by extending the existing responsibility of the Panel to cover the salaries of all chief officers until March 2020.		
36(b)	<p>Section 36(b) adds a new subparagraph (1A) to schedule 2 to the 2011 Measure to provide a power for the Welsh Ministers, through regulations, to change the maximum number of persons to be appointed as members of the Panel.</p> <p>The requirement for this power results from the additional work initiated by section 35 of the Bill and links with the provision in section 36(a) which increases the maximum size of the Panel from 5 to 6 members.</p>	The purpose of this power is to facilitate the effective and efficient conduct of the Panel's functions. It provides flexibility for the Welsh Ministers to amend the number of persons appointed as Members of the Remuneration Panel.	<p>The change at section 36(a) recognises that the extension of the Panel's functions under this Bill represents a significant, albeit temporary, increase in its workload.</p> <p>The Welsh Ministers will use their regulation-making powers to further amend the prescribed maximum number of Panel members if its future workload suggests this is appropriate.</p>	This is a discretionary power to be utilised if required.
Restraints on transactions by merging Authorities				
32(4)	The Welsh Ministers have the power, through regulations, to	To safeguard against negative or otherwise potentially	The Welsh Ministers believe the values for each type of	This is a discretionary power to be utilised if

Section of the Bill	Description of Power and Linkages	Reason for the Power	Policy Intention	Anticipated Timescale
	<p>substitute a different value for transactions, specified in sub-sections 31(1), (3)(a), (3)(b), (5), (7) or (8), which are subject to the reporting or consent regimes in sections 29 and 30 of the Bill.</p> <p>The power is linked to the sections of this Bill mentioned in the preceding paragraph. A similar provision was made in Section 51 of the Local Government (Wales) Act 1994.</p>	<p>damaging behaviour by merging Authorities in the run up to the establishment of new Authorities, the Bill requires a merging Authority to seek an opinion from the relevant transition committee and, when established, the consent of the Shadow Authority before proceeding with transactions above a certain value stipulated in the Bill.</p>	<p>transaction on the face of the Bill are appropriate. However, the Bill enables the Welsh Ministers to substitute different values should they consider it appropriate to respond to changing circumstances.</p>	<p>required.</p>
32(5)	<p>The Welsh Ministers may issue guidance to merging Authorities, Shadow Authorities and transition committees on the operation of the restraint provisions in the Bill.</p> <p>Linked to sections 29 to 31.</p>	<p>The Welsh Ministers may need to issue guidance on administrative procedures for implementing the restraint requirements within sections 29 to 31 of the Bill.</p>	<p>Guidance might be needed to cover administrative procedures for seeking an opinion from transition committees, requiring merging authorities to advise third parties of the need to refer a transaction and on informing third parties of opinion, consent and implications.</p>	<p>Guidance to be published as soon as possible following Royal Assent to the Bill.</p>

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Agenda Item 3

Constitutional and Legislative Affairs Committee Statutory Instruments with Clear Reports 2 March 2015

CLA490 – The Education Workforce Council (Main Functions) (Wales) Regulations 2015

Procedure: Negative

The General Teaching Council for Wales (“the GTCW”) was renamed the Education Workforce Council by section 2 of the Education (Wales) Act 2014. These Regulations revoke old regulations that applied to the GTCW and make new provisions to set up and administrate the Council.

CLA492 – The Non-Domestic Rating (Small Business Relief) (Wales) Order 2015

Procedure: Negative

This Order re-enacts the Non-Domestic Rating (Small Business Relief) (Wales) Order 2008 (S.I. 2008/2770) with amendments. The Order provides for a rate relief scheme and a temporary rate relief scheme. The temporary rate relief scheme will run from 1 April 2015 to 31 March 2016 and applies only to certain categories of hereditament.

Agenda Item 4.1

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-06-14

CLA491 – The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015

This composite Order revokes obsolete instruments relating to fisheries. This includes England and Wales instruments which enforce EU restrictions and obligations relating to sea fishing which are no longer required following amendments made to the Fisheries Act 1981.

The Order also confers powers on courts to recover fines against persons convicted of offences under certain sections of the Fisheries Act 1981.

The Order also designates the Welsh Ministers, the Marine Management Organisation and Rural Development Northern Ireland as competent authorities for various monitoring, inspection and enforcement purposes.

The Order also updates references to EU legislation in various regulations.

Procedure: Negative

Technical Scrutiny

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

- This is a composite Order subject to parliamentary procedure at Westminster, and is in English only.

Standing Order 21.2(ix): the instrument is not made or to be made in both English and Welsh.

Merits Scrutiny

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

Legal Advisers

Constitutional and Legislative Affairs Committee

February 2015

STATUTORY INSTRUMENTS

2015 No. 191

SEA FISHERIES, ENGLAND AND WALES

SEA FISHERIES, NORTHERN IRELAND

**The Sea Fishing (Enforcement and Miscellaneous Provisions)
Order 2015**

<i>Made</i>	- - - -	<i>8th February 2015</i>
<i>Laid before Parliament</i>		<i>12th February 2015</i>
<i>Laid before the National Assembly for Wales</i>		<i>12th February 2015</i>
<i>Coming into force</i>	- -	<i>6th March 2015</i>

The Secretary of State and (acting only in relation to Wales and the Welsh zone(a)) the Welsh Ministers make this Order in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981(b), which are now vested in them(c).

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- (a) The Welsh zone is defined in section 158(1) of the Government of Wales Act 2006 (c.32), as amended by section 43(1) and (2) of the Marine and Coastal Access Act 2009 (c.23). The boundaries of the Welsh zone were specified in S.I. 2010/760. Article 5(3)(a) of S.I. 2010/2690 provides that the designation of the Welsh Ministers applies in relation to Wales and the Welsh zone.
- (b) 1981 c.29. See section 30(3) for the definition of “the Ministers”.
- (c) Section 30(2) provides for the Ministers to make provision for the enforcement of enforceable Community restrictions and obligations relating to sea fishing. The function of the Ministers under section 30(2) of the Fisheries Act 1981 (“the 1981 Act”) in relation to Wales was transferred to the National Assembly for Wales and then transferred from that body to the Welsh Ministers: see article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. In so far as that function was exercisable in relation to the Welsh zone, it has been transferred to the Welsh Ministers by article 4(1)(e) of the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760). The function under section 30(2) exercisable in relation to the Northern Ireland zone and Northern Ireland fishing boats outside that zone remains exercisable by the Ministers despite being transferred to the Department of Agriculture and Rural Development in Northern Ireland under article 3(2) of, and paragraph 3(1) of Schedule 2 to, the Sea Fisheries (Northern Ireland) Order 2002 (S.I. 2002/790): see paragraph 3(2) of Schedule 2 to that Order. Any remaining functions of the Secretaries of State concerned with sea fishing in Scotland and Wales under section 30(2) of the 1981 Act were transferred to the Minister of Agriculture, Fisheries and Food: see article 2(1) of, and the Schedule to, the Transfer of Functions (Agriculture and Fisheries) Order 2000 (S.I. 2000/1812). The function of that Minister and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly under section 30(2) was transferred to the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland acting jointly: see article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). The function of the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State concerned with sea fishing in Northern Ireland was transferred to the Secretary of State by article 3(1)(d) of the Transfer of Functions (Sea Fisheries) Order 2012 (S.I. 2012/2747).

The Secretary of State and the Welsh Ministers are each designated for the purposes of section 2(2) of the European Communities Act 1972(a) (“the 1972 Act”) in relation to the common agricultural policy of the European Union(b). The Secretary of State is designated for the purposes of section 2(2) of the 1972 Act in relation to the environment and the Welsh Ministers are designated for those purposes in relation to the conservation of natural habitats and of wild fauna(c)

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State and the Welsh Ministers that it is expedient for any reference in this Order, the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005(d), the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007(e), or the Tope (Prohibition of Fishing) Order 2008(f), to the following Regulations to be construed as a reference to those Regulations as amended from time to time:

- (a) Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing(g);
- (b) Council Regulation (EC) No. 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No. 1005/2008(h);
- (c) Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy(i);
- (d) Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009(j); and
- (e) Council Regulation (EU) No. 1380/2013 on the Common Fisheries Policy(k).

The Secretary of State and (acting only in relation to Wales) the Welsh Ministers make this Order (to the extent that it does not apply in relation to enforceable Community restrictions or obligations relating to sea fishing) in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2(l) to, the 1972 Act.

Citation, commencement and extent

1.—(1) This Order may be cited as the Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 and comes into force on 6th March 2015.

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- (a) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
 - (b) The Secretary of State is designated in relation to the common agricultural policy by S.I. 1972/1811. The Welsh Ministers are designated in relation to the common agricultural policy by S.I. 2010/2690. The function of the former Minister of Agriculture of making regulations under section 2(2) was transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order (S.I. 2002/794).
 - (c) The Secretary of State is designated in relation to the environment by S.I. 2008/301. The Welsh Ministers are designated in relation to the conservation of natural habitats and of wild fauna by S.I. 2002/248, amended by S.I. 2006/3329 and 2011/1043. The designation is subject to the exceptions set out in Schedule 2 to that Order. That Order continues to have effect, and the functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers, by virtue of paragraphs 28(1) and 30 of Schedule 11 to, the Government of Wales Act 2006.
 - (d) S.I. 2005/1605, amended by S.I. 2009/1309.
 - (e) S.I. 2007/1842, to which there are amendments not relevant to these Regulations.
 - (f) S.I. 2008/691.
 - (g) OJ No. L 286, 29.10.2008, p. 1, as last amended by Commission Regulation (EU) No. 202/2011 (OJ No. L 57, 2.3.2011, p. 10).
 - (h) OJ No. L280, 27.10.2009, p.5, as last amended by Commission Implementing Regulation (EU) N.865/2013 (OJ No. L 241, 10.9.2013, p.1).
 - (i) OJ. No L343, 22.12.2009, p.1, as last amended Regulation (EU) No. 508/20144 (OJ) N. L 149, 20.5.2014, p.1).
 - (j) OJ No. L 112, 30.4.2011, p. 1, as corrected by a corrigendum (OJ No. L 328, 10.12.2011, p. 58).
 - (k) OJ No. L 354, 28.12.2013, p. 22, as amended by Council Regulation (EU) No. 1385/2013 (OJ No. L 354, 28.12.2013, p. 86).
 - (l) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and by S.I. 2007/1388.

(2) Subject to paragraph (3) and, as regards the Schedule, to any contrary provision in the third column, it extends to England and Wales and, except for articles 3 and 4, to Northern Ireland.

(3) The revocations of the British Fishing Boats Act 1983 (Guernsey) Order 1985^(a) and the Undersized Lobsters Order 2000^(b) in the Schedule, and article 7 in so far as it applies to those revocations, extend to the Bailiwick of Guernsey.

(4) In the Schedule—

- (a) revocations which extend to Wales have effect, for the purposes of the application of the instruments revoked which apply to Wales and the Welsh zone, to Wales and the Welsh zone;
- (b) revocations which extend to Northern Ireland have effect, for the purposes of the application of the instruments revoked which apply to Northern Ireland and the Northern Ireland zone, to Northern Ireland and the Northern Ireland zone^(c).

Competent authorities

2.—(1) The competent authorities responsible for fisheries monitoring centres for the purposes of Article 9(8) of the Control Regulation are—

- (a) for the fisheries monitoring centre for English and Welsh fishing boats and for EU and third country fishing boats in British Fishery Limits (other than in Scotland, the Scottish zone^(d), Northern Ireland or the Northern Ireland zone), the Marine Management Organisation;
- (b) for the fisheries monitoring centre for Northern Ireland fishing boats and for EU and third country fishing boats in Northern Ireland or the Northern Ireland zone, the Department of Agriculture and Rural Development.

(2) The competent authority acting as the contact point for the purposes of Article 80(5) of the Control Regulation is the Marine Management Organisation.

(3) The competent national authority for the purposes of Article 125 of the Commission Implementing Regulation is—

- (a) in relation to vessels registered at a port in England, the Marine Management Organisation;
- (b) in relation to vessels registered at a port in Wales, the Welsh Ministers;
- (c) in relation to vessels registered at a port in Northern Ireland, the Department of Agriculture and Rural Development.

(4) In this article—

“the Commission Implementing Regulation” means Commission Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of the Control Regulation, as amended from time to time;

“the Control Regulation” means Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, as amended from time to time;

“fishing boat” means a vessel equipped for the commercial exploitation of living aquatic resources, including sea fish, and—

- (a) an “English fishing boat” is a fishing boat registered at a port in England;
- (b) a “Northern Ireland fishing boat” is a fishing boat registered at a port in Northern Ireland;
- (c) a “Welsh fishing boat” is a fishing boat registered at a port in Wales.

^(a) S.I. 1985/1203.

^(b) S.I. 2000/1503.

^(c) The Northern Ireland zone is defined in section 98(1) of the Northern Ireland Act 1998 (c.47).

^(d) The Scottish zone is defined in section 126(1) of the Scotland Act 1998 (c.46).

Recovery of fines

3.—(1) This article applies where a court in England or Wales imposes a fine on a person convicted of an offence under—

- (a) section 30(1) of the Fisheries Act 1981 (enforcement of Community rules)(a); or
- (b) an order extending to any part of the United Kingdom which is to any extent made under section 30(2) of that Act.

(2) The court may, for the purposes of recovering the fine—

- (a) issue a warrant of distress against the fishing boat involved in the commission of the offence, its gear or catch or any property of the person convicted;
- (b) order that the fishing boat, its gear or catch be detained until the earliest of—
 - (i) the expiry of a period not exceeding three months from the date of the conviction;
 - (ii) payment of the fine;
 - (iii) the recovery of the amount of the fine in pursuance of any such warrant.

(3) Sections 77(1) and 78 of the Magistrates' Courts Act 1980(b) (postponement of issue of, and defects in, warrants of distress) apply to a warrant of distress issued under this article as they apply to a warrant of distress issued under Part 3 of that Act.

(4) Where, in relation to a fine in respect of an offence referred to in paragraph (1), an order under article 95 of the Magistrates' Courts (Northern Ireland) Order 1981(c) or section 222 of the Criminal Procedure (Scotland) Act 1995(d) (which deal with the transfer of fines from one jurisdiction to another) specifies a local justice area in England or Wales, this article applies as if the fine were imposed by a court within that area.

(5) In this article, "fine" includes any pecuniary penalty, pecuniary forfeiture or pecuniary compensation payable under a conviction.

Amendment of the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005

4.—(1) The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005(e) are amended as follows.

(2) In regulation 1 (citation, commencement and extent)—

- (a) in paragraph (3)(b) and (c)(iv), after "Wales" insert "or the Welsh zone"; and
- (b) for paragraph (4) substitute—

“(4) In paragraph (3)(b) and (c)(iv), “Wales” and the “Welsh zone” have the same meanings as in section 158(1) of the Government of Wales Act 2006(f)”.

(3) In regulation 2 (interpretation)—

- (a) in paragraph (1)—
 - (i) omit the definition of “Article 9”;
 - (ii) omit the definition of “the CFP Regulation”;
 - (iii) after the definition of “British fishing boat” insert—

(a) Section 30(1) was amended by section 293(2) of the Marine and Coastal Access Act 2009 (c.23) and by S.I. 2011/1043.
 (b) 1980 c.43; section 77(1) was amended by paragraph 47 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 78 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c.48), and paragraph 219 of Schedule 8 to the Courts Act 2003.
 (c) S.I. 1981/1675 (N.I. 26).
 (d) 1995 c.46; section 222 was amended by paragraph 20(3) of Schedule 1 to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).
 (e) S.I. 2005/1605, amended by S.I. 2009/1309.
 (f) 2006 c.32. The definition of the “Welsh zone” was inserted into section 158(1) by section 43(2) of the Marine and Coastal Access Act 2009 (c.23).

““the Control Regulation” means Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, as amended from time to time”;

(iv) in the definition of “equivalent provisions”, for “Article 9, or Article 22 of the CFP Regulation” substitute “Chapter II of Title V”; and

(v) in the definition of “fish”, for “Article 9 or Article 22 of the CFP Regulation” substitute “the Control Regulation”; and

(b) for paragraph (3) substitute—

“(3) Terms used in these Regulations which are not defined in paragraph (1) or (2) and which appear in the Control Regulation have the same meaning in these Regulations as they have for the purposes of the Control Regulation.

(4) In these Regulations, a reference to an Article means an Article of the Control Regulation, and a reference to Chapter II of Title V means Chapter II of Title V of the Control Regulation”.

(4) In regulation 3 (registration of fish sellers)—

(a) in paragraph (1), for “Article 9” substitute “Chapter II of Title V (control of marketing: post-landing activities)”;

(b) in paragraph (4), for “Article 9, Article 22 of the CFP Regulation” substitute “Articles 59, 62, 63, 64, 66 and 67”; and

(c) in paragraph (8)(b), for “Article 9, Article 22 of the CFP Regulation” substitute “Article 59, 62, 63, 64, 66 or 67”.

(5) In regulation 5 (maintenance of records by registered fish seller), in paragraph (3), for “until the end of the second calendar year following that sale” substitute “for 3 years”.

(6) In regulation 6 (designation of fish auction sites)—

(a) in paragraph (1), for “Article 9 and Article 22 of the CFP Regulation” substitute “Chapter II of Title V”; and

(b) in paragraphs (3) and (7)(b), for “Article 9, Article 22 of the CFP Regulation” substitute “Chapter II of Title V”.

(7) In regulation 7 (registration of fish buyers)—

(a) in paragraph (1), for “Article 22(2)(b) of the CFP Regulation” substitute “Article 59”;

(b) in paragraph (3), for “Article 9, Article 22 of the CFP Regulation” substitute “Articles 62, 63, 64, 66 and 67”; and

(c) in paragraph (7)(b), for “Article 9, Article 22 of the CFP Regulation” substitute “Article 62, 63, 64, 66 or 67”.

(8) For regulation 8 (purchase of fish by an unregistered buyer), substitute—

“(8) Any person who buys fish contrary to Article 59(2) is guilty of an offence, unless the exemption in Article 59(3) applies”.

(9) In regulation 9 (maintenance of records by registered fish buyer), in paragraph (3), for “until the end of the second calendar year following that purchase” substitute “, for 3 years”.

(10) In Schedule 1 (conditions applicable to registrations of fish sellers), in paragraph 2, for “Article 9 of Council Regulation (EEC) 2847/1993(a)” substitute “Articles 62 to 64”.

(11) In Schedule 3 (conditions applicable to registrations of fish buyers), in paragraph 2, for “Article 22(2) of Council Regulation (EC) 2371/2002(b)” substitute “Articles 62 to 64”.

(a) OJ No. L 261, 20.10.1993, p. 1, repealed by Council Regulation (EC) No. 1224/2009 (OJ No. L 343, 22.12.2009, p. 1).

(b) OJ No. L 358, 31.12.2002, p. 59, repealed by Regulation (EU) No. 1380/2013 (OJ No. L 354, 28.12.2013, p. 22).

Amendment of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007

5. In the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007(a), in regulations 32(14)(b)(ii) (offences relating to European offshore marine sites), 34(6)(b)(ii) (protection of wild birds, their eggs and nests) and 39(11)(b)(ii) (protection of wild animals listed in Annex IV(a) to the Habitats Directive), for “Council Regulation (EC) No. 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy” substitute “Council Regulation (EU) No. 1380/2013 on the Common Fisheries Policy(b), as amended from time to time”.

Amendment of the Tope (Prohibition of Fishing) Order 2008

6. In the Tope (Prohibition of Fishing) Order 2008(c), in article 2 (application), for paragraph (2) substitute—

“(2) This Order does not apply to fishing vessels, as defined in Article 4 of Council Regulation (EU) No. 1380/2013 on the Common Fisheries Policy, which are registered in another member State or in a third country”.

Revocations

7. The instruments specified in the Schedule are revoked to the extent (including, in certain cases, geographical extent) specified there.

8th February 2015

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

5th February 2015

Carl Sargeant
Minister for Natural Resources, one of the Welsh Ministers

SCHEDULE

Article 7

Revocations

<i>Instruments revoked</i>	<i>References</i>	<i>Extent of revocation</i>
The Whaling Industry (Ship) Regulations 1955	S.I. 1955/1973(d)	The whole Regulations
The Whaling Industry (Ship) (Amendment) Regulations 1958	S.I. 1958/2042	The whole Regulations
The Whaling Industry (Ship) (Amendment) Regulations 1959	S.I. 1959/2054	The whole Regulations
The Whaling Industry (Ship) (Amendment) Regulations 1960	S.I. 1960/547	The whole Regulations
The Anglo-Norwegian Sea Fisheries Order 1961	S.I. 1961/342	The whole Order

(a) S.I. 2007/1842, to which there are amendments not relevant to these Regulations.

(b) OJ No. L 354, 28.12.2013, p. 22, as amended by Council Regulation (EU) No. 1385/2013 (OJ No. L 354, 28.12.2013, p. 86).

(c) S.I. 2008/691.

(d) Amended by S.I. 1958/2042, 1959/2054, 1960/547, and 1961/2336.

The Whaling Industry (Ship) (Amendment) Regulations 1961	S.I. 1961/2336	The whole Regulations
The Foreign Sea-Fishery Officers Order 1973	S.I. 1973/1998	The whole Order
The Fishing Vessels (Temporary Financial Assistance) Scheme 1982	S.I. 1982/1686	The whole Scheme
The Sea Fishing (Enforcement of Community Licensing Measures) (North of Scotland Box) Order 1984	S.I. 1984/291(a)	The whole Order, in England and Wales
The Fish Farming (Financial Assistance) Scheme 1984	S.I. 1984/341(b)	The whole Scheme, in England and Wales
The British Fishing Boats Act 1983 (Guernsey) Order 1985	S.I. 1985/1203	The whole Order, in the Bailiwick of Guernsey
The Sea Fishing (Enforcement of Community Measures for Spanish and Portuguese Vessels) Order 1986	S.I. 1986/110(c)	The whole Order
The Importation of Salmonid Viscera Order 1986	S.I. 1986/2265	The whole Order
The Fish Farming (Financial Assistance) Scheme 1987	S.I. 1987/1134(d)	The whole Scheme, in England and Wales
The Fishing Vessels (Acquisition and Improvement grants) Scheme 1987	S.I. 1987/1135(e)	The whole Scheme
The Fishing Vessels (Financial Assistance) Scheme 1987	S.I. 1987/1136(f)	The whole Scheme
The Sandeels Licensing Order 1989	S.I. 1989/1066	The whole Order
The Fishing Vessels (Acquisition and Improvement) (Grants) (Amendment) Scheme 1990	S.I. 1990/685	The whole Scheme
The Sea Fishing (Specified Western Waters) (Restrictions on Landing) Order 1990	S.I. 1990/2052(g)	The whole Order
The Agricultural, Fishery and Aquaculture Products (Improvement Grant) Regulations 1991	S.I. 1991/777(h)	The whole Regulations, in England and Wales
The Sea Fishing (Specified Western Waters) (Restrictions on Landing) (Variation) Order 1991	S.I. 1991/2565	The whole Order
The Sea Fishing (Days in Port) Regulations 1992	S.I. 1992/130	The whole Regulations
The Sea Fishing (Days in Port) (Amendment) Regulations 1992	S.I. 1992/670	The whole Regulations
The Shellfish and Specified Fish (Third Country Imports) Order 1992	S.I. 1992/3301(i)	The whole Order, in England and Wales
The Fishing Boats (Marking and Documentation) (Enforcement) Order 1993	S.I. 1993/2015(j)	The whole Order, in England and Wales

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- (a) Amended by section 51 of the Criminal Justice Act 1988 (c.33).
 (b) Amended by S.I. 2011/1043.
 (c) Amended by section 51 of the Criminal Justice Act 1988 and by S.I. 2011/1043.
 (d) Amended by S.I. 2011/1043.
 (e) Amended by S.I. 1990/685.
 (f) Amended by S.I. 2011/1043.
 (g) Amended by S.I. 1991/2565.
 (h) Amended by S.I. 1999/1820, 2011/1043.
 (i) Revoked in relation to Scotland by S.S.I. 2011/427.
 (j) Amended by S.I. 1997/2971.

The Fisheries and Aquaculture Structures (Grants) Regulations 1995	S.I. 1995/1576(a)	The whole Regulations
The Fishing Vessels (Decommissioning) Scheme 1997	S.I. 1997/1924(b)	The whole Scheme
The Fisheries and Aquaculture Structures (Grants) Amendment Regulations 1998	S.I. 1998/1365	The whole Regulations
The Sea Fishing (Enforcement of Community Control Measures) Order 2000	S.I. 2000/51(c)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2000	S.I. 2000/181(d)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) Order 2000	S.I. 2000/827(e)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Measures for the Recovery of the Stock of Cod) (Irish Sea) (Wales) Order 2000	S.I. 2000/976 (W.46)(f)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Community Control Measures) (Wales) Order 2000	S.I. 2000/1075 (W.69)(g)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Community Conservation Measures) Order 2000	S.I. 2000/1081(h)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Wales) Order 2000	S.I. 2000/1096 (W.74)(i)	The whole Order, in England and Wales
The Undersized Lobsters Order 2000	S.I. 2000/1503	The whole Order, in England and Wales and in the Bailiwick of Guernsey
The Sea Fishing (North-East Atlantic Control Measures) Order 2000	S.I. 2000/1843(j)	Part 2, and articles 1 to 3 and the Schedule in so far as they relate to Part 2, in England and Wales
The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures (Amendment) Order 2000	S.I. 2000/2008(k)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Community Conservation Measures) (Wales) Order 2000	S.I. 2000/2230 (W.148)(l)	The whole Order, in England and Wales
The Fishing Vessels (Decommissioning) Scheme 2001	S.I. 2001/3390	The whole Scheme, in England and Wales

(a) Amended by S.I. 1998/1365, 1999/1820 and 2011/1043.

(b) Amended by S.I. 2011/1043.

(c) Amended by S.I. 2003/229, 1535, 2004/38, 398, 2005/393, 617, 2624 and 2009/1847 and, in relation to Northern Ireland, by S.R. 2005/350 and 2010/168.

(d) Revoked in relation to England by S.I. 2000/ 3226, and amended by S.I. 2001/3912, 2002/794, 2005/617 and 2011/1043. Revoked in relation to Northern Ireland by S.R. 2005 No.452.

(e) Revoked in relation to England and Northern Ireland by S.I. 2001/1631.

(f) Amended by S.I. 2005/617, 2010/630 and 2011/1043.

(g) Amended by S.I. 2003/559, 2005/617 and 2011/1043.

(h) Amended by S.I. 2002/426, 794, 2005/617 and 2011/603.

(i) Amended by S.I. 2005/617 and 2011/1043.

(j) Amended by S.I. 2005/617.

(k) Revoked in relation to England and Northern Ireland by S.I. 2001/1631, and amended by S.I. 2000/2008 and 2011/1043.

(l) Amended by S.I. 2005/617, 2010/630 and 2011/1043.

The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2000 Amendment Regulations 2001	S.I. 2001/3912(a)	The whole Regulations, in Northern Ireland
The Sea Fishing (Enforcement of Community Conservation Measures) (Amendment) Order 2002	S.I. 2002/426	The whole Order, in England and Wales
The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002	S.I. 2002/794	Schedule 1, paragraph 46, and article 5(1) in so far as it has effect in relation to that paragraph
The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002	S.I. 2002/794	Schedule 1, paragraph 47, and article 5(1) in so far as it has effect in relation to that paragraph, in England and Wales
The Sea Fishing (Enforcement of Community Control Measures) (Wales) (Amendment) Order 2003	S.I. 2003/559 (W.79)	The whole Order, in England and Wales
The Sea Fishing (Restriction on Days at Sea) (No. 2) Order 2003	S.I. 2003/1535(b)	The whole Order, in England and Wales
The Fishing Vessels (Decommissioning) Scheme 2003	S.I. 2003/2669(c)	The whole Scheme, in England and Wales
The Sea Fishing (Restriction on Days at Sea) (No. 2) (Amendment) Order 2004	S.I. 2004/38(d)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2004	S.I. 2004/3226(e)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Amendment (Revocation) (England) Regulations 2004	S.I. 2004/3227	The whole Regulations, in England and Wales
The Incidental Catches of Cetaceans in Fisheries (England) Order 2005	S.I. 2005/17(f)	The whole Order, in England and Wales
The Courts Act 2003 (Consequential Provisions) (No. 2) Order 2005	S.I. 2005/617	Paragraphs 179, 180, 183 to 185, 187 to 190, 212, 235 and 236 of the Schedule, and article 2 in so far as it has effect in relation to those paragraphs, in England and Wales; paragraph 180 and article 2 in so far as it has effect in relation to that paragraph, in Northern Ireland
The Sea Fishing (Enforcement of Community Control Measures) (Amendment) Order 2005	S.I. 2005/2624	The whole Order, in England and Wales
The Sea Fishing (Marking and	S.I. 2006/1549	The whole Order, in England

(a) Revoked in relation to England by S.I. 2004/3227.

(b) Amended by S.I. 2004/38, 2005/617 and 2011/2043, and revoked in relation to England by S.I. 2004/398.

(c) Amended by S.I. 2011/1043.

(d) Revoked in relation to England by S.I. 2004/398.

(e) Amended by S.I. 2005/617 and 2011/1043.

(f) Amended by S.I. 2005/617 and 2011/603.

Identification of Passive Fishing Gear and Beam Trawls) (England) Order 2006		and Wales
The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2006	S.I. 2006/2798 (W.237)(a)	The whole Order, in England and Wales
The Sea Fishing (Restriction on Days at Sea) Order 2007	S.I. 2007/927	The whole Order, in England and Wales
The Decommissioning of Fishing Vessels Scheme 2007	S.I. 2007/312	The whole Scheme, in England and Wales
The Sea Fishing (Prohibition on the Removal of Shark Fins) Order 2007	S.I. 2007/2554	The whole Order, in England and Wales
The Sea Fishing (Recovery Measures) Order 2008	S.I. 2008/2347(b)	The whole Order, in England and Wales
The Sea Fishing (Enforcement of Community Control Measures) (Amendment) Order 2009	S.I. 2009/1847	The whole Order, in England and Wales
The Sea Fishing (Landing and Weighing of Herring, Mackerel and Horse Mackerel) Order 2009	S.I. 2009/1850	The whole Order in England and Wales
The Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010	S.I. 2010/630	In Part 1 of Schedule 1, paragraphs 5 and 6, and article 4(a) in so far as it has effect in relation to those paragraphs, in England and Wales
The Marine and Coastal Access Act 2009 (Transitional and Savings Provisions) Order 2011	S.I. 2011/603	In Part 1 of Schedule 2, paragraphs 6 and 11, and article 9(a) in so far as it has effect in relation to those paragraphs, in England and Wales; Part 2 of Schedule 2, and article 9(b), in England and Wales.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends to England and Wales and, except for articles 3 and 4, to Northern Ireland. The revocation of the British Fishing Boats Act 1983 (Guernsey) Order 1985 (S.I. 1985/1203) and the Undersized Lobsters Order 2000 (S.I. 2000/1503) extend to the Bailiwick of Guernsey. The Order makes amendments to instruments relating to the enforcement of EU obligations and restrictions relating to sea fishing. It also revokes a number of instruments.

Following amendments made to section 30(1) of the Fisheries Act 1981 (c.29) (“the 1981 Act”) by section 293 of the Marine and Coastal Access Act 2009 (c.23), a breach of enforceable EU restrictions and obligations relating to sea fishing is an offence in England and Wales under section 30(1) of the 1981 Act. Accordingly, instruments which enforce EU restrictions and obligations relating to sea fishing are revoked by this Order for England and Wales (article 8 and the Schedule, which also revoke other obsolete instruments).

Article 2 designates the Marine Management Organisation, the Welsh Ministers and the Department of Agriculture and Rural Development in Northern Ireland as competent authorities

(a) Amended by S.I. 2011/1043.
(b) Amended by S.I. 2011/1043.

for various purposes of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ No. L 343, 22.12.2009, p. 1), and of Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009 (OJ No. L 112, 30.4.2011, p. 1).

Article 3 confers powers as to the recovery of fines by courts imposing fines on persons convicted of an offence under section 30(1) of the 1981 Act or under an order made under section 30(2) of the 1981 Act.

Articles 4 to 6 amend the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005 (S.I. 2005/1605), the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842) and the Tope (Prohibition of Fishing) Order 2008 (S.I. 2008/691), updating references to relevant EU legislation.

Article 7 and the Schedule revoke 57 instruments in their entirety and 5 partially with (in some cases) specified limits of territorial extent.

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

Explanatory Memorandum to The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015

This Explanatory Memorandum has been prepared by Marine and Fisheries Division and is laid before the National Assembly for Wales 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 Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015.

Carl Sargeant AM
Minister for Natural Resources

5 February 2015

1. Description

The primary purpose of this instrument is to revoke obsolete instruments related to fisheries. This includes England and Wales instruments which enforce EU restrictions and obligations relating to sea fishing which are no longer required following amendments made to section 30(1) of the Fisheries Act 1981 (c.29) by section 293 of the Marine and Coastal Access Act 2009 (c.23).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The making of this Order on a composite basis will provide more clarity for fishermen who often operate on both sides of the border. In this circumstance there is no difference in policy between the Welsh and UK governments and many of the instruments being revoked extend to England and Wales.

3. Legislative background

The primary purpose of this instrument is to revoke obsolete instruments related to fisheries. This includes England and Wales instruments which enforce EU restrictions and obligations relating to sea fishing which are no longer required following amendments made to section 30(1) of the Fisheries Act 1981 (c.29) by section 293 of the Marine and Coastal Access Act 2009 (c.23). As a result of these amendments a breach of enforceable EU restrictions and obligations relating to sea fishing is an offence in England and Wales.

Article 2 designates the Marine Management Organisation, the Welsh Ministers and the Department of Agriculture and Rural Development in Northern Ireland as competent authorities for various purposes of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ No. L 343, 22.12.2009, p. 1), and of Commission Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009 (OJ No. L 112, 30.4.2011, p. 1).

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Article 7 and the Schedule revoke 57 instruments in their entirety and 5 partially with (in some cases) specified limits of territorial extent.

4. Purpose & intended effect of the legislation

Section 30(1) of the Fisheries Act 1981 (c.29) as amended by section 293 of the Marine and Coastal Access Act 2009 (c.23) makes a breach of enforceable EU restrictions and obligations relating to sea fishing an offence in England and Wales. This reduces the number of instruments that need to be made to implement and enforce EU fisheries legislation in England and Wales. It also means that a number of existing instruments are no longer required and can be revoked.

5. Consultation

No consultation was undertaken as this exercise produces no material change to existing regulation where references are merely updated and also is to remove obsolete and redundant legislation.

6. Regulatory Impact Assessment (RIA)

No Regulatory Impact Assessment has been undertaken because the Order imposes no costs or no savings, or negligible costs or savings on the public, private or charities and voluntary sectors. The Order will remove redundant legislation rather than introducing any new burdens on the industry.

(This response has been received in the medium of Welsh and has been translated by the Assembly Commission)

Making laws in the Fourth Assembly

Drafting techniques

1. As a general rule, are there specific respects in which the quality of legislative drafting for the National Assembly appears particularly admirable?

We greatly admire the fact that legislation is made in Welsh and English from the offset and that both versions are of equal status. The standard of the work drafted in both languages is commendable.

2. As a general rule, are there specific causes for concern in the quality of legislative drafting for the National Assembly?

In general, we have no concerns. However, in the context of the recent Education (Wales) Bill, there was a perception amongst a wide range of stakeholders that the Bill was trying to address too many different issues in one piece of legislation, and that it was impossible, therefore, to do all of those issues justice. However, this was an issue regarding policy rather than technical drafting.

3. As a general rule, do Bills of the National Assembly appear to be drafted with the aim of making them reasonably accessible to, and intelligible by, the appropriate target audiences for each Bill?

It is natural that Assembly Bills contain technical and legal language and vocabulary that might seem unfamiliar to the target audiences. However, we are of the general opinion that the Bills are accessible enough to those that deal with legislation in the course of their work. The documents accompanying the Bills, such as the Explanatory Memoranda, offer an opportunity to explain certain things.

4. In particular, is the practice in relation to any of the following matters particularly admirable, or a cause for concern?

translation – the standard of translation, and the fact that the Welsh and English versions of (proposed) legislation have equal status is particularly admirable.

5. In general, do Bills before the National Assembly appear to follow equivalent or similar Acts of Parliament or other enactments:

a. to the extent appropriate;

~~b. more than is appropriate;~~

~~c. less than is appropriate?~~

In general, we feel that Bills laid before the Assembly are independent of other Acts to an appropriate extent in line with the devolution settlement.

6. Are there significant differences, as a general rule, between the quality of the drafting style of Bills and amendments presented by the Welsh Government and other Bills and amendments?

We are yet to work on any Bills other than those laid by the Welsh Government, and so we cannot comment on this matter.

In terms of amendments, the process of making recommendations or proposals for amendments, in discussion with Ministers or Assembly Members, can be complicated for external organisations. The need for legal advice and expertise can make the process difficult – or expensive. UCAC welcome the opportunity to respond to this inquiry by the Constitutional and Legislative Affairs Committee into making laws in the Fourth Assembly. UCAC is a trade union representing teachers, school leaders, local authority staff and lecturers in each education sector in Wales.

7. In general, are appropriate opportunities taken for the consolidation of legislation, whether as a separate exercise or in the course of making new substantive legislation?

The lack of consolidation can cause considerable frustration. Often, when working on a Bill, or Regulations (in particular), you have to print pieces of the original legislation, work out how many amendments have been made to that legislation/those Regulations, and then work from these numerous documents. You are rarely able to find a consolidated version of the legislation/Regulations containing the amendments.

It is possible that professional lawyers are used to this practise – but it is very challenging for organisations trying to respond to the consultation process and scrutinise in an intelligent and comprehensive way.

8. Might a different model have advantages or disadvantages in relation to the form of, or techniques used in, the drafting of Bills?

A reserved powers model would be much simpler and clearer and it would avoid considerable bickering between the Assembly and Westminster regarding legislative competence in different areas.

Policy development and explanation

9. As a general rule, is there evidence to show that the processes for policy development lead to Bills being brought into the National Assembly with a properly constructed and tested policy?

In particular—

a. do the processes for consultation in the development of policy appear to be appropriate and effective?

In general, in the area of education, there is no lack of consultation when developing policies. However, it is fairly common for many stakeholders to have responded to a consultation, or even a series of consultations on a particular policy issue, and possibly to have voiced the same opinion in meetings with politicians and/or civil servants, and to have sent correspondence on that issue, only to discover that their efforts have had no influence. The problems foreseen and forewarned by the stakeholders come to light after passing the legislation and implementing the policies. An example of this was the deregulation of the further education sector (Further and Higher Education (Governance and Information) (Wales) Act 2014), and the same thing is likely to happen with the appointment of members to the Education Workforce Council (in the Higher Education (Wales) Bill 2014).

b. do the processes for impact assessment appear to be appropriate and effective?

Not sure. The impact assessment documents are usually very longwinded, and we are not sure whether they always address "grass roots" issues, they tend to concentrate on a wider financial/environmental level, and do not necessarily assess the effect on practitioners and stakeholders.

c. are the policy purposes of legislation accurately and sufficiently explained to Assembly Members and to the public?

On the whole, yes – but time will tell the exact purposes for which the legislation will be used.

10. Are there appropriate and effective mechanisms for determining whether the policy underpinning a legislative proposal is accurately and effectively addressed by the form of the legislation proposed?

We feel that the scrutiny process is appropriate and effective to accomplish this task.

11. In general, do the Explanatory Memoranda provided with Bills serve the purpose for which they are designed?

In our experience, the Explanatory Memoranda are not particularly effective, and therefore an important opportunity is being missed. They tend to be very long and very repetitive. Despite their length, they do

not always manage to throw further light on the provisions of Bills (in the Explanatory Notes), beyond that which is in the Bill itself. We believe that there is considerable room to improve these documents, and documents of a higher standard could be very helpful for those trying to contribute constructively to the scrutiny process.

12. In particular, is the practice in relation to any of the following matters particularly admirable, or a cause for concern?

a. the length of Explanatory Memoranda; far too long, and their length does not equate to additional value

b. the inclusion of background policy material; background policy material is an important part of the Explanatory Memoranda

c. the use of examples to illustrate the intended effect of provisions; it is important to offer examples

d. the use of tables, diagrams and other illustrations: this is also important.

13. Are there significant differences, as a general rule, between the quality of Explanatory Memoranda for Bills presented by the Welsh Government and other Bills?

We are yet to gain experience in this area.

14. Are there specific Bills before the Fourth Assembly which provide particular illustrations of, or significant exceptions to, any of the answers given to Questions 15 to 20 above?

We have tried to offer examples in the answers above.

Balance between primary and secondary legislation

15. Overall, does primary legislation passed by the National Assembly in the Fourth Assembly appear to strike the correct balance between detail on the face of the Act and powers to make subordinate legislation?

We understand that balance is needed between the details on the face of legislation and the powers to make subordinate legislation – this offers an opportunity to create a degree of flexibility for the future (within the confines of the Act) and to avoid going into too much detail within the Acts themselves.

However, we tend to think that too many details are set aside for subordinate legislation, and are subject to less scrutiny as a result. Ultimately, this leads to Ministers being given more power.

Some issues are a matter of basic principle, and it is therefore inappropriate for them to be set aside for subordinate legislation. An example of this is the Education (Wales) Bill 2014, where all aspects, from decisions regarding fee increases to registration with the Education Workforce Council, were set aside for regulations. We agree that it is appropriate to set some aspects of this process aside for subordinate legislation, however, we firmly believe that decisions regarding who sets the fees (e.g. the Welsh Ministers/the National Assembly for Wales/the Education Workforce Council) should be on the face of the Bill.

16. Overall, where powers are granted to make subordinate legislation do they appear to be subjected to an appropriate level of scrutiny by the National Assembly?

We feel that it would be worth increasing the level of scrutiny for subordinate legislation. Very important issues are set aside for subordinate legislation, and apart from the rare occasions where the positive procedure is used, Regulations are subject to little scrutiny beyond the general consultation process. We do not feel that the consultation process offers an appropriate level of scrutiny for material issues.

17. Are there appropriate and effective arrangements for explaining and justifying the taking of powers to make subordinate legislation?

It is possible that there are not.

18. What principles should the National Assembly apply in considering the appropriate balance between detail on the face of Bills and powers to make subordinate legislation?

If it is generally agreed that it is important to maintain flexibility (i.e. the likelihood that changes will need to be made over time), it is appropriate to set aside powers to make subordinate legislation. An example of this is the number of courses that are required in the Local Curriculum under the Learning and Skills (Wales) Measure 2007. It was wise to set the exact numbers aside for subordinate legislation, as it was highly likely that the figures would need to be changed within a comparatively short period of time –and, indeed, that is what happened.

However, if the matter is one of basic principle, where there is no foreseeable need for flexibility (e.g. deciding who should set the Education Workforce Council's registration fees), provision should be made on the face of the Bill. It is too easy to revoke or vary subordinate legislation, and therefore the basic principles should appear on the face of the Bill.

Also, if it is a matter of offering a defence for a specific sector or group, this should count as a matter of basic principle which appears on the face of the Bill; it would be inappropriate for it to be aside for subordinate legislation e.g. the responsibility to promote the availability of and access to Welsh

medium courses in the Learning and Skills (Wales) Measure 2007, or the responsibility to promote access to Welsh medium education in the Learner Travel (Wales) Measure 2008. It was a struggle to ensure that both these matters appeared on the face of the relevant Bills, after it was suggested that they should be set aside for subordinate legislation.

19. How can those principles be applied effectively in practice?

It might be useful to have a basic list of principles for allocating issues for legislation and ones for subordinate legislation, as a basis for committee scrutiny.

Assembly scrutiny

20. As a general rule, are appropriate and effective arrangements made for the pre-legislative scrutiny of draft legislation?

We are not convinced that there is consistency in this area. A consultation White Paper is sometimes published, but not every time – and we do not know the logic for deciding to publish such a paper, or not.

We are aware that scrutiny of the Qualifications (Wales) Bill is currently underway – and this is certainly to be welcomed (especially in light of the controversial policy background). However, we are unsure of the arrangements for that process, e.g. who are the persons viewed as stakeholders to be contacted for this initial process? It is not completely transparent.

21. As a general rule, is scrutiny at Stage 1 sufficient and effective for probing the fundamental policy objectives of legislation before the National Assembly?

On the whole, we feel that Stage 1 is a detailed and thorough process, and an excellent opportunity to sound out all of the relevant issues.

22. Could more effective use be made of the optional Report Stage following Stage 3?

In general, all of the stages after Stage 1 move swiftly and are a lot less interactive with stakeholders.

It would be very useful to establish some sort of email list (optional, of course) for each stakeholder who was part of Stage 1, to send regular updates on the Bill's progress and any relevant deadlines, any reports that have been published, or any new evidence that has been given.

23. Are the arrangements for expedited processing of emergency Bills efficient and effective?

UCAC feels that there is a need to tread very carefully when implementing processes for emergency Bills. Emergency Bills should not be passed unless there is real justification for doing so. The principle of detailed and thorough scrutiny, with a wide range of stakeholders being given the opportunity to express their views and present evidence, is central to the National Assembly's integrity; the pros and cons of omitting any part of that process need to be weighed up very carefully.

24. Does the experience of the Fourth Assembly suggest that the present capacity of the Welsh Government to bring forward legislation is:

a. sufficient;

b. insufficient; or

c. unnecessarily large?

The Fourth Assembly has caused frustration for those trying to respond to the legislative scrutiny process. There was a long period at the start of the Fourth Assembly where there was very little legislation, and the Bills have been piling up since then. We must remember that most of the organisations who respond to the scrutiny committees' calls for evidence are relatively small organisations, with a limited number of staff – nothing like the hundreds of staff working in government departments. Given that the National Assembly was established on the principle of engaging proactively with civil society, the process of tabling legislation can make such engagement challenging.

25. Does the experience of the Fourth Assembly suggest that the present capacity of the National Assembly to process Government legislation is:

a. sufficient;

b. insufficient; or

c. unnecessarily large?

We assume that Assembly Members are under exceptional pressure in terms of their scrutiny responsibility, in addition to inquiries and the functions of the committees and the Assembly more generally. It would be beneficial to widen the Assembly's capacity to process legislation.

26. Does the experience of the Fourth Assembly suggest that the present capacity of the National Assembly to propose and process legislation other than Government legislation is:

a. sufficient;

b. insufficient; or

c. unnecessarily large?

The lack of Member's Bills strongly suggests that there is a lack of expertise, support or capacity for proposing legislation.

27. Do any aspects of the Welsh Government's management of its legislative programme appear particularly admirable or to give cause for concern?

As mentioned above, imbalance in terms of timing, with a lack of work at the beginning of the period and work piling up over the remaining period.

28. Have there been any particular successes in the National Assembly's ability to pass Acts acquired under the Government of Wales Act 2006?

The process is now much more efficient as there is no need to go through the process of passing Legislative Competence Orders before moving on to the Bills themselves.

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Microchipping of Dogs in Wales**

DATE **Monday 16 February**

BY **Rebecca Evans AM, Deputy Minister for Farming and Food**

Following the successful passage of the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2014 through the National Assembly for Wales, I am now writing to provide an update on the next steps regarding the proposal to introduce compulsory microchipping for all dogs in Wales.

I have advised in previous Written Statements that the date whereby all dogs should be microchipped in Wales, i.e., 1 March 2015, would be unlikely to be met.

In 2012, a consultation exercise took place on the general policy principles of microchipping all dogs in Wales. 84% of respondents were supportive of introducing compulsory microchipping for dogs. As work has progressed, specific areas of the policy have been developed with key stakeholders and now certain aspects need further attention. I have therefore determined that a further eight week focused consultation exercise should take place as soon as possible. This is in order to take wider views on some of the specific elements that I am proposing to include in the Regulations. These include enforcement, the matter of who actually undertakes the implantation of microchips, and how any information is recorded.

Following the consultation process and the drafting of the proposed Regulations, it is proposed that the Welsh Ministers will advise Member States via the European Commission about the Regulations. A standstill period of three months from the date of notification to the Commission will have to then be observed before the draft Regulations can be laid before the National Assembly for Wales.

Due to these commitments, we are now working to bring in compulsory microchipping for all dogs in Wales in the spring of 2016, in line with the date announced for compulsory microchipping in England.

Defra's Microchipping Regulations have been introduced and the microchipping of dogs will be compulsory in England from April 2016. My officials will continue to work closely with counterparts in England on cross-border issues; dogs are moved routinely between

England and Wales, and I recognise the value that close collaboration can bring. **Given that providers of microchipping services work across Wales and England there is a need to harmonise standards and to synchronise our work with that taking place in England.**

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Assembly returns I would be happy to do so.

STATEMENT BY THE WELSH GOVERNMENT

TITLE Referral of the Recovery of Medical Costs for Asbestos Diseases (Wales)
Bill to the Supreme Court

DATE 10 February 2015

BY Theodore Huckle QC, The Counsel General for Wales

The Recovery of Medical Costs for Asbestos Diseases (Wales) Bill was a private member's bill introduced into the National Assembly for Wales by Mick Antoniw AM on 3 December 2012. The Recovery of Medical Costs for Asbestos Diseases (Wales) Bill was passed by the Assembly on 20 November 2013.

On 11 December 2013, I published a written statement in the Assembly to announce my decision to refer the Bill to the Supreme Court. I took the view that the Bill was within the legislative competence of this Assembly. I considered, however, that it was appropriate in this case to have the issue of the competence of this Bill clearly resolved before it came into force, given that bodies representing the insurance industry had consistently disputed the Assembly's competence to pass this Bill. The alternative option of allowing the Bill to proceed to Royal Assent would have resulted in an inevitable challenge in potentially far more expensive court proceedings perhaps when substantial amounts of money had been recouped under the Bill's provisions.

Before the Supreme Court I argued strongly that the Bill was within the Assembly's legislative competence. Yesterday, the Supreme Court delivered its judgment. The Court ruled that the Bill is outside the legislative competence of the National Assembly for Wales.

Whilst the Court is unanimous in its conclusion it was divided in its analysis of the extent of the Assembly's legislative competence. Lord Mance delivers the majority judgment with which Lord Neuberger and Lord Hodge agree. The Supreme Court ruled that the Bill falls outside the legislative competence of the Welsh Assembly as it is not within section 108 (4) or 108 (5) of the Government of Wales Act 2006. Lord Mance further concludes that the Bill infringes Article 1 Protocol 1 of the European Convention on Human Rights and is outside competence on that ground also.

Lord Thomas delivers a separate judgment with which Lady Hale agrees. Whilst Lord Thomas agrees that s14 of the Bill – the retroactive provision providing for liability of insurers which was the single provision I referred to the Court - is outside competence he supports the primary submissions made about the legislative

competence basis for the Bill and two justices in the minority of the Court would not have found the Bill as a whole to be outside competence.

Whilst I am disappointed, I of course accept the decision of the Supreme Court.

The Government will give careful consideration to the judgment.



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David Melding AM
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12 February 2015

Commission Work Programme 2015

Thank you for your letter dated 6 February in relation to the Commission's annual work programme. The paper included alongside it was of great use to the Committee, and we have considered it alongside our own scrutiny of the work programme.

We have now written to President Juncker, and I hope that the questions we have raised are congruent with the areas of concern that you have raised. I will share the response with you, when we have received it. I attach a copy of our letter for your reference.

Lord Boswell of Aynho
Chairman of the European Union Committee



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President Juncker
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

11 February 2015

Dear President Juncker

Commission Work Programme 2015

I am writing in response to the Commission Work Programme for 2015, published in December 2014, and to the letter from First Vice-President Timmermans which accompanied it. We warmly welcome the overall approach adopted in the work programme, and thank you for it. In particular we welcome the Commission's focus on growth, which is apparent in the substantial reduction in the number of new proposals, and the equally substantial increase in the number of proposals to withdraw dossiers or subject them to the REFIT programme, thereby simplifying and reducing the burden of compliance.

We have considered the Work Programme in detail over the past month, and in line with the political dialogue, seek your response to the questions and observations in the annex, attached to this letter. We have consulted the devolved administrations in the United Kingdom, and our questions also reflect some of their concerns.

We have asked for a lot of information from you, but I hope this is indicative of our willingness to work closely with you in the preparation and agreement of proposals for EU-level action.

Looking ahead, I hope that the Commission Work Programme for 2016 will be published in enough time for national parliaments to consider the proposals contained within it in more depth; I also trust that it will include an outline of the Commission's planned work in future years, which will be enormously helpful to national parliaments in engaging earlier in the process of policy formation and legislation.

I look forward to your response.

I copy this letter to First Vice-President Frans Timmermans; Danuta Hübner, chair of AFCO in the European Parliament; the chairpersons of all European Affairs Committees of national parliaments in the EU; Jacqueline Minor, head of representation for the Commission in the UK; the Rt Hon David Lidington MP, Minister for Europe; and the chairs of the relevant committees in the Scottish Parliament and the Welsh and Northern Irish Assemblies

Yours sincerely
Tim Boswell

Lord Boswell of Aynho
Chairman of the European Union Select Committee

Annex A – Commission Work Programme 2015 questions and observations

Annex I – New Initiatives		
No.	Initiative	Questions and observations
<i>A New Boost for Jobs, Growth and Investment</i>		
1	The Investment Plan for Europe	We believe that the European Fund for Strategic Investments will have to be carefully implemented in order to mitigate its possible effect on the EU budget. What steps will be taken to ensure that this risk is avoided?
2	Promoting integration and employability in the labour market	During our follow-up work to our report <i>Youth unemployment in the EU: a scarred generation?</i> , published in April 2014, we have been disappointed to learn of the slow disbursement so far of the Youth Employment Initiative funds. We sincerely hope that the actions foreseen under the heading, 'promoting integration and employability in the labour market', will address this problem.
<i>A Connected Digital Single Market</i>		
4	Digital Single Market (DSM) Package	The Digital Single Market (DSM) Package will be of significant interest to us, and all Member States. We welcome the proposals, and, in relation to the modernisation of copyright, ask that you share the results of the July 2014 review on copyright rules with national parliaments.
<i>A Resilient Energy Union with a Forward-Looking Climate Change Policy</i>		
5	Strategic Framework for the Energy Union	In relation to the proposals under the Energy Union, we note that the focus is likely to be on implementing current initiatives more effectively. As appropriate governance will be key, have you assessed what level of oversight national energy policies will be subject to? An important aspect of any successful Energy Union is the development of infrastructure, for which it is clear that huge investment is required, as we found in our 2013 Report on EU energy policy. We therefore trust that the forthcoming Energy Union Strategy will recognise the links with the Investment Plan for Europe.
<i>A Deeper and Fairer Internal Market with a Strengthened Industrial Base</i>		
8	Labour Mobility Package	While we support the aims of the Work Programme's 'labour mobility package', we would like to know how far, in developing this package, you have taken into account the fact that many Member States are increasingly hostile to the idea of more migrant EU workers within their borders?

9	Capital Markets Union	On 2 February, we published a report, entitled <i>The post-crisis EU financial regulatory framework: do the pieces fit?</i> This is a considered and in-depth review of the impact of the financial crisis on the EU institutions. We note in this report that the Capital Markets Union provides an ideal opportunity to review the Prospectus Directive, and we hope to make a contribution to the REFIT programme in relation to this Directive. We will also be publishing a short report focusing on the Capital Markets Union in March, following a useful meeting with Lord Hill of Oareford on 3 February.
10	Framework for resolution of financial institutions other than banks	The Work Programme refers to a framework for resolution of non-financial institutions. This has previously been flagged as an area of systemic financial risk, and the UK has already put in place a domestic framework. We are concerned that this could be an area of tension should an overly burdensome regulatory proposal be put forward. Have you considered the UK's domestic framework and those of other Member States, and how you will introduce a framework which complements the various frameworks already in place in Member States?
11	Aviation Package	The issue of Gibraltar has been prominent in discussions on EU aviation in recent months, for example, Single European Sky II Plus. Our view is that Gibraltar must be included within the scope of EU aviation legislation. What are the Commission's plans vis-à-vis Gibraltar in the forthcoming aviation package?
<i>A Deeper and Fairer Economic and Monetary Union</i>		
14	Action Plan on efforts to combat tax evasion and tax fraud, including a Communication on a renewed approach for corporate taxation in the Single Market in the light of global developments	Our recommendations on the Financial Transaction Tax are set out clearly in our report, entitled <i>Financial Transaction Tax: Alive and Deadly</i> , published on 3 December 2013. We are particularly concerned that the FTT, as currently designed, could be damaging not only for participating Member States but for non-participants such as the UK.
<i>Trade: A Reasonable and Balanced Free Trade Agreement with the U.S.</i>		
15	Trade and Investment Strategy for Jobs and Growth	The Transatlantic Trade and Investment Partnership is hugely significant, and we have maintained our interest in its successful completion since the publication of our report on TTIP in May 2014. We urge you to reflect on our recommendations in relation to the Investor State Dispute Settlement, and on communicating the benefits of TTIP more effectively, as you continue the negotiations on TTIP.

<i>An Area of Justice and Fundamental Rights Based on Mutual Trust</i>		
16	Proposals to complete EU accession to the ECHR	We appreciate the frustration that must be felt following the European Court of Justice's opinion on the EU's accession to the ECHR. We ask for your assessment of this opinion, particularly with regard to the timescale for completing accession to the ECHR and your plans for remedying the agreement to the satisfaction of the Court.
17	European Agenda on Security	On the European Agenda for Security, we draw your attention to our report, published in 2011, on The EU Internal Security Strategy. The Strategy has five objectives: the disruption of international crime networks, the prevention of terrorism, security in cyberspace, improved border management, and increased resilience to crises and disasters. We believe these objectives are sensible, practical and achievable, and in our report we stated that "all future proposals in this area should be developed on a sound evidential base, with priority given to tackling identifiable threats, and with full impact assessments and cost-benefit analyses." We reaffirm this belief, and seek an assurance that these recommendations will be taken into account.
<i>Towards a New Policy on Migration</i>		
18	European Agenda on Migration	In relation to the European Agenda on Migration, in December 2012 we published a report on <i>The EU's Global Approach to Migration and Mobility</i> . This report stated that the current approach in the GAMM "is too diffuse", and that in reforming it the EU should adopt "a more focused approach, concentrating on the EU's geographical and strategic priorities", as well as focusing on "a smaller number of key objectives and instruments, which have a sound evidence base." Again, we reiterate these conclusions, and invite you to take them into consideration as the Agenda is progressed.
<i>A Stronger Global Actor</i>		
20	Communication on the post 2015 Sustainable Development Goals	We welcome the move towards a Communication on a common approach to financing the post-2015 Sustainable Development Goals, and support the Council conclusions in June 2013, that "the mobilisation of all resources, public and private, domestic and international and their effective and innovative use will be vital for the successful development and implementation of the framework. The new framework should reflect the existing commitments to improve aid and development effectiveness agreed at the High Level Forums in Rome, Paris, Accra and Busan.

A Union of Democratic Change			
21	Proposal for an inter-institutional agreement on better law-making	We welcome the desire to improve the inter-institutional agreement for better law-making. What will the IIA seek to cover? Will the new IIA reflect the approach to policy formulation and changes to the use of impact assessments that are currently underway elsewhere in the Commission?	
23	Review of the GMO decision-making process	With regard to the inclusion of a review of the GMO decision-making procedure as one of the 23 new initiatives, and given that agreement on changing the procedure for GMO decision-making has only just been agreed, following four years of challenging negotiations, we urge you to let the new arrangements settle in before undertaking a review.	
Annex II: List of withdrawals or modifications of pending proposals			
No.	COM reference	Title	Comment
Environment, Maritime Affairs & Fisheries			
37	COM/2013/0920 Proposal for a Directive ... on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC	We welcome the emphasis that the Commission has placed on your intention to re-table revised texts of the existing initiatives on air quality and waste. We would like to draw your attention to our 2014 report entitled <i>Counting the Cost of Food Waste: EU Food Waste Prevention</i> , which contained a number of recommendations and suggestions that may be relevant to any proposal on a circular economy. We may seek to bring forward more specific proposals in this area, in partnership with other national parliaments, in coming months. The House of Lords Science and Technology Committee also published a report in February 2014, entitled <i>Waste or resource? Stimulating a Bioeconomy</i> , which details a number of useful recommendations in this area.	
38	COM/2013/0920 Proposal for a Directive ... on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC		
39	COM/2014/0397 Proposal for a Directive ... amending Directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste, 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic Equipment		

<i>Health and food safety</i>		
47	COM/2013/0262 Proposal for a Regulation...on the production and making available on the market of plant reproductive material (plant reproductive material law)	We believe that the animal and plant health package ought to be negotiated together where possible. We are concerned that the removal of plant reproductive material from the negotiations could have significant implications on the successful negotiation of these packages. What assessment have you made of the impact of this withdrawal?
<i>Justice, Consumers & Gender Equality</i>		
60	COM/2011/0635 Proposal for a Regulation...on a Common European Sales Law	Under the proposal to withdraw the Common European Sales Law, you state that you want to “fully unleash the potential of ecommerce in the Digital Single Market.” What does this mean? How do you intend to amend the existing proposal for the CESL?
Annex III: REFIT actions		
No.	Title	Comment
34	Natura 2000 (Birds and Habitats Directives)	We note that both a fitness check of the Habitats and Birds Directives and a Cumulative Cost Assessment of the regulatory costs incurred by forest based industries as a result of the most relevant EU legislation and policies are planned. As some would point to the Habitats and Birds Directives as sources of some of the costs incurred by forest-based industries, we would welcome a commitment by the Commission to ensure that the two exercises are aligned. We would also like to emphasise the need for the fitness check of the Habitats and Birds Directives to reflect synergies with other environmental legislation, including the Marine Strategy Framework Directive. Finally, we would hope that the fitness check will not weaken the EU's approach to protecting its biodiversity.
55	Forest-based industries	
62	Legislative framework related to consumer rights and advertising	We note with interest the intended fitness check on the legislative framework related to consumer rights and advertising. What instigated the check? What do you hope it will achieve? What are the timescales involved? Will you consult with national parliaments in

		the course of your evaluation?
	<p>Alongside our comments against the 2015 work programme, we are aware that concern has been expressed by stakeholders about the difficulties of implementing the Plant Protection Products (pesticides) Regulation.¹ We advocate the inclusion of an evaluation of that Regulation in the REFIT Programme.</p>	

¹ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market



David Melding AM

Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

03 February 2015

Dear David,

Equality and Human Rights - Welsh Devolution Settlement

I write to you in your capacity as Chair of the Constitutional and Legislative Affairs Committee, as the date for determining the new devolution settlement for Wales approaches, I thought it would helpful to remind you of the EHRC's recommendations to the Commission on Devolution in Wales, which are set out at the end of this letter.

Paragraph 4.6, of our submission, sets out the risk of unintended consequences in a new devolution settlement:

"There are concerns that introducing the reserved model could inadvertently harm the equality and human rights agenda in Wales. It is important that care is taken to safeguard against this and that competence in this area is increased in the drafting of the new competence of the National Assembly." ¹

Although equal opportunities is reserved in the Scotland Act 1998 the position in Wales is different. As Elisabeth Jones, Director of Legal Services, National Assembly for Wales, said in August 2014:

"The Scottish settlement is generally considered to be wider than the Welsh one. However, even before 9th July (Supreme Court Judgement on Agricultural Wages Board), the Welsh settlement was in fact wider in some limited respects. For instance, the Assembly has some competence in relation to equality law, whereas the Scottish Parliament has none."

¹ Government of Wales Act 2006, Schedule 7, Part 1, Section 14 Public Administration, equal opportunities public authorities

As you will know, this has enabled the Welsh Government to build equality into regulatory regimes for health and social care, while this has not been an option in Scotland. The National Assembly's competence in relation to equality law has considerable value.

In the event of a move to a reserved model, care should be taken to maintain the ability of the National Assembly for Wales and Welsh Government to promote equality and human rights, challenge discrimination and hold public authorities to account.

Please do let me know if you would like any further information.

Yours sincerely,

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

Kate Bennett
EHRC National Director for Wales

EHRC recommendations to the Commission on Devolution in Wales

1. The National Assembly should be given powers to build on equality and human rights legislation including the Equality Act 2010 and the Human Rights Act 1998.
2. The National Assembly should be given full primary legislative competence in relation to the Public Sector Equality Duty.
3. The National Assembly should be given competence to strengthen its relationship with the EHRC.

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