

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 18 February 2019

Meeting time: 13.00

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

2 Legislation (Wales) Bill: Evidence session 6 – Counsel General

(13.00 – 14.00)

(Pages 1 – 24)

Jeremy Miles AM, Counsel General

Dylan Hughes, First Legislative Counsel, Welsh Government

Dr James George, Legislative Counsel , Welsh Government

Claire Fife, Policy Advisor to the Counsel General, Welsh Government

[Legislation \(Wales\) Bill](#)

[Explanatory Memorandum](#)

CLA(5)–07–19 – Paper 1 – Letter from the Counsel General, 9 January 2019

CLA(5)–07–19 – Briefing

3 Proposed negative instruments that raise no reporting issues under Standing Order 21.3B

(14.00 – 14.10)

(Pages 25 – 31)

CLA(5)–07–19 – Paper 2 – Proposed negative statutory instruments with clear reports



Cynulliad
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Wales

- 3.1 pNeg(5)19 – The Local Government Finance (Amendment) (Wales) (EU Exit) Regulations 2019
- 3.2 pNeg(5)22 – The Teachers’ Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019
- 3.3 pNeg(5)24 – The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
- 3.4 pNeg(5)25 – The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019
- 3.5 pNeg(5)26 – The Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
- 3.6 pNeg(5)27 – The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
- 3.7 pNeg(5)28 – The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019
- 3.8 pNeg(5)29 – The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019
- 4 Proposed negative instruments that raise reporting issues under Standing Order 21.3B
(14.10 – 14.15)
- 4.1 pNeg(5)23 – The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019

(Pages 32 – 66)

CLA(5)–07–19 – Paper 5 – Regulations

CLA(5)–07–19 – Paper 4 – Explanatory Memorandum

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

(14.15 – 14.20)

(Page 67)

CLA(5)–07–19 – Paper 6 – Statutory instruments with clear reports

Negative Resolution Instruments

5.1 SL(5)317 – The Free School Lunches and Milk (Universal Credit) (Wales) Order 2019

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

(14.20 – 14.25)

Negative Resolution Instruments

6.1 SL(5)318 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2019

(Pages 68 – 87)

CLA(5)–07–19 – Paper 7 – Report

CLA(5)–07–19 – Paper 8 – Regulations

CLA(5)–07–19 – Paper 9 – Explanatory Memorandum

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

(14.25 – 14.30)

(Page 88)

CLA(5)–07–19 – Paper 10 – Report

8 Written statements under Standing Order 30C

(14.30 – 14.45)

8.1 WS–30C(5)83 – The Nutrition (Amendment etc) (EU Exit) Regulations 2019 – revised

(Pages 89 – 95)

CLA(5)–07–19 – Paper 11 – Statement

CLA(5)–07–19 –Paper 12 – Commentary

**8.2 WS–30C(5)91 – The Food and Feed (Chernobyl and Fukushima Restrictions)
(Amendment) (EU Exit)**

(Pages 96 – 99)

CLA(5)–07–19 –Paper 13 – Statement

CLA(5)–07–19 –Paper 14 – Commentary

8.3 WS–30C(5)92 – The Novel Food (Amendment) (EU Exit) Regulations 2019

(Pages 100 – 103)

CLA(5)–07–19 –Paper 15 – Statement

CLA(5)–07–19 –Paper 16 – Commentary

**8.4 WS–30C(5)93 – The Genetically Modified Food and Feed (Amendment etc.)
(EU Exit) Regulations 2019**

(Pages 104 – 110)

CLA(5)–07–19 –Paper 17 – Statement

CLA(5)–07–19 –Paper 18 – Commentary

**8.5 WS–30C(5)94 – The Official Controls for Feed, Food and Animal Health and
Welfare (Amendment etc.) (EU Exit) Regulations 2019**

(Pages 111 – 115)

CLA(5)–07–19 –Paper 19 – Statement

CLA(5)–07–19 –Paper 20 – Commentary

**8.6 WS–30C(5)95 – The Food and Feed (Maximum Permitted Levels of
Radioactive Contamination) (Amendment) (EU Exit) Regulations 2019**

(Pages 116 – 119)

CLA(5)–07–19 –Paper 21 – Statement

CLA(5)–07–19 –Paper 22 – Commentary

**8.7 WS–30C(5)96 – The Food and Feed Imports (Amendment) (EU Exit)
Regulations 2019**

(Pages 120 – 124)

CLA(5)–07–19 –Paper 23 – Statement

CLA(5)–07–19 –Paper 24 – Commentary

8.8 WS-30C(5)97 – The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019

(Pages 125 – 129)

CLA(5)-07-19 –Paper 25 – Statement

CLA(5)-07-19 –Paper 26 – Commentary

8.9 WS-30C(5)98 – The Animal Feed (Amendment) (EU Exit) Regulations 2019

(Pages 130 – 134)

CLA(5)-07-19 –Paper 27 – Statement

CLA(5)-07-19 –Paper 28 – Commentary

8.10 WS-30C(5)99 – The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019

(Pages 135 – 139)

CLA(5)-07-19 –Paper 29 – Statement

CLA(5)-07-19 –Paper 30 – Commentary

8.11 WS-30C(5)100 – The Sprouts and Seeds (Amendment) (EU Exit) Regulations 2019

(Pages 140 – 143)

CLA(5)-07-19 –Paper 31 – Statement

CLA(5)-07-19 –Paper 32 – Commentary

9 Papers to note

(14.45 – 14.55)

9.1 Letter from Sir Bernard Jenkin MP to the Rt Hon Greg Clark MP regarding the The State Aid (EU Exit) Regulations 2019

(Pages 144 – 147)

CLA(5)-07-19 – Paper 33 – Letter from Sir Bernard Jenkin MP to the Rt Hon Greg Clark MP regarding the The State Aid (EU Exit) Regulations 2019

9.2 Correspondence with the House of Lords Secondary Legislation Scrutiny Committee regarding The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018

(Pages 148 – 151)

CLA(5)-07-19 – Paper 34 – Letter to the House of Lords Secondary Legislation Committee

CLA(5)–07–19 – Paper 35 – Letter from the House of Lords Secondary Legislation Committee

9.3 Letter from the Minister for Health and Social Services regarding the Welsh Government's Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill

(Pages 152 – 158)

CLA(5)–07–19 – Paper 36 – Letter from the Minister for Health and Social Care

CLA(5)–07–19 – Paper 37 – Letter to the Minister for Health and Social Care

9.4 Letter from the Counsel General to the Older People's Commissioner for Wales and the Children's Commissioner for Wales regarding the Legislation (Wales) Bill

(Page 159)

CLA(5)–07–19 – Paper 38 – Letter from the Counsel General

9.5 Letter from the Minister for Environment, Energy and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee regarding the Fisheries Bill

(Pages 160 – 161)

CLA(5)–07–19 – Paper 39 – Letter from the Minister for Environment, Energy and Rural Affairs

9.6 Senedd and Elections (Wales) Bill: Correspondence

(Pages 162 – 176)

CLA(5)–07–19 – Paper 41 – Letter from the Llywydd

CLA(5)–07–19 – Paper 42 – Letter from the Counsel General

9.7 Letter on behalf of the Minister for Finance and Trefnydd regarding the Public Procurement (Amendment Etc.) (EU Exit) Regulations 2019

(Pages 177 – 181)

CLA(5)–07–19 – Paper 44 – Letter from the Minister for Finance and Trefnydd

CLA(5)–07–19 – Paper 45 – Letter to the Minister for Finance and Trefnydd

- 9.8 Letter on behalf of the Minister for Finance and Trefnydd regarding the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019**
- (Pages 182 – 185)
- CLA(5)–07–19 – Paper 46 – Letter from the Minister for Finance and Trefnydd
- CLA(5)–07–19 – Paper 47 – Letter to the Minister for Finance and Trefnydd
- 10 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business**
- (14.55)
- 11 Legislation (Wales) Bill – consideration of evidence and discussion of key issues arising during scrutiny of the Bill**
- (14.55 – 15.15)
- 12 Legislative Consent Memorandum: Animal Health (Service Animals) Bill – consideration of draft report**
- (15.15 – 15.35) (Pages 186 – 189)
- CLA(5)–07–19 – Paper 40 – Draft report
- 13 The Sewel convention – approach to future work**
- (15.15 – 15.25) (Pages 190 – 192)
- CLA(5)–07–19 – Paper 42 – Approach to future work
- 14 Senedd and Elections (Wales) Bill – approach to Stage 1 scrutiny**
- (15.25 – 15.55) (Pages 193 – 212)
- [Senedd and Elections \(Wales\) Bill](#)
- [Explanatory Memorandum](#)
- CLA(5)–07–19 – Paper 48 – Approach to scrutiny
- 15 Scrutiny of regulations made under the EU (Withdrawal) Act 2018: Update**
- (Pages 213 – 214)
- CLA(5)–07–19 – Paper 43 – Update

Date of the next meeting – 4 March 2019



Ein cyf/Our ref MA-L/CG/0009/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

09 January 2019

Dear Mick,

LEGISLATION (WALES) BILL

Thank you for your letter of 11 December asking for information on the matters which we did not reach during the Committee's scrutiny session on the Bill. I have responded to these in Annex A attached.

During my evidence session I outlined the opportunity the Bill may present to make provision about the interpretation of bilingual legislation. Further information on my initial thinking on these points is set out in Annex B.

Finally, having now had the opportunity to review the transcript from my evidence session I wanted to ensure the record was clear on a couple of matters:

- a. I was asked if the Government intended to consult on programmes prepared under section 2 of the Bill, and I was happy to confirm the intention is that the Government will consult. I want to make clear that the consultation will take place within the period of six months from the appointment of the First Minister after a new Assembly is elected. The length of the consultation will depend on the time available, but will need to be sufficient to enable users of legislation to comment on the proposals.
- b. In asking a question on costings for the Bill, I note you indicated that the estimated budget was £0.5m. For the avoidance of doubt, the estimated cost of Part 1 is £0.58m per year or £2.9m per Assembly term, as set out in the Regulatory Impact Assessment to the Bill.
- c. Further, I explained that I anticipated having resources in place at the "beginning of next year" to start to deal with consolidation before the statutory duty is in place. I should have said the beginning of the next financial year.

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

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy Miles'.

Jeremy Miles AM

Y Darpar Gwnsler Cyffredinol a'r Gweinidog Brexit
Counsel General Designate and Brexit Minister

Annex A – response to questions raised by the Committee

1. Are you content with the balance of powers, in terms of the detail on the face of the Bill and what is left to regulations and the programme under Part 1?

I am content that the Bill strikes the right balance between what is set out on its face and what is left to regulations and the programme.

The Bill contains only four powers for the Welsh Ministers to make subordinate legislation. In Parts 1 and 2, the duties of the Counsel General and the Welsh Ministers, and the interpretation provisions for future Welsh legislation, are set out in full on the face of the provisions.

Three of the powers to make subordinate legislation in the Bill provide the mechanics for ensuring that the Bill works properly in the future. These are the powers to amend Schedule 1 to keep it up-to-date (section 4), to make consequential etc. provision in connection with the Bill (section 40), and to bring Part 2 fully into force by order (section 42).

In Part 3, section 36 confers the power to amend legislation to spell out dates and times. This power could be used to amend not only existing legislation but also future legislation. It would therefore be impossible to set out all of the relevant amendments on the face of the Bill.

The programmes prepared under section 2 will set out the detailed steps that the Welsh Government intends to take in each Assembly term to improve accessibility. That is entirely appropriate because the duty will be ongoing. It would be impossible for the Bill to specify all of the detailed steps that should be taken to improve accessibility in all future Assembly terms.

2. Many pieces of legislation seem to be in force, but when you dig a little deeper, they are often only in force for some purposes. This is a potential serious trap for the unwary. How would Part 1 of the Bill address this lack of transparency of legislation?

The Government agrees that it is important that users of legislation should be able to find out easily which legislation is in force and for which purposes.

Clear information about commencement should be made available with the published legislation, and in fact legislation.gov.uk does provide detailed information identifying provisions which are not yet in force or which come into force in stages. The status of a provision which is not yet in force for any purpose is identified as “prospective”. Where the coming into force of any other provision is not straightforward, information is provided in notes to the provision. The notes will usually state whether the provision is wholly or partly in force, give the date or dates on which it came into force, and identify the relevant commencement provisions or orders.

The information which is provided on legislation.gov.uk deals with commencement issues as fully as possible, and there would be little point in the Government duplicating those efforts. However, there are other steps that the Government might take to reduce the amount of legislation that is not fully in force.

Where the Welsh Ministers have powers to bring provisions of Assembly Acts into force, they have a responsibility for bringing the provisions into force in a timely and orderly way, so that the volume of legislation which is not in force or is only partly in force is kept to a minimum. The activities that are included in a programme under Part 1 of the Bill might also include other steps to reduce the number of provisions that are redundant or not in force, for

example by taking the opportunity to bring those provisions into force or remove them from the statute book at the same time as consolidating the law.

3. Section 4(1) of the Bill says that the Part 2 rules will apply unless “express provision is made to the contrary”. Section 4(1) does not say where that expression provision may be made, therefore where do you expect such expression provision to the contrary to be set out? (Compare this to section 26 which clearly says that any express provision to the contrary must be in the relevant Assembly Act or Welsh subordinate instrument.)

Section 3(3) of the Draft Legislation (Wales) Bill, which corresponded to section 4(1) of the Bill that has been introduced, referred to cases where the Assembly Act or Welsh subordinate instrument itself provided that any of the presumptions in Part 2 should not apply to it. On further consideration, we decided that the approach in the Draft Bill was too narrow in two respects.

First, there may be a provision in the Act or instrument which is clearly inconsistent with one of the presumptions in Part 2 of the Bill (for example a definition that is different from one in Schedule 1 to the Bill), but which does not state that the relevant presumption does not apply. The intention is that the inconsistent provision in the Act or instrument should prevail, whether or not it states that the relevant presumption is excluded. The reference in section 4(1)(a) of the Bill to “express provision ... to the contrary” is intended to cover both of these situations.

Secondly, the provision to the contrary might be contained either in the Assembly Act or Welsh subordinate instrument in question, or in another piece of legislation. For example, the Act under which a Welsh subordinate instrument is made might provide that subordinate legislation made under that Act is to operate in a different way from that set out in Part 2 of the Bill. Or another piece of legislation may make a change to the law which modifies a presumption in Part 2 generally or for certain purposes. Section 4(1) of the Bill therefore refers in general terms to whether “*provision is made*” to the contrary.

As noted in paragraph 85 of the consultation document accompanying the Draft Bill, this provision is not strictly necessary where the provision to the contrary is contained in another Act. However, section 4(1) mentions all of the ways in which a presumption in Part 2 could be displaced in order to make the position clear.

4. Schedule 1 to the Bill includes a long list of defined terms, such as “county court”, “land” and “person”. Whenever an Assembly Act that is passed after 1 January 2020 uses any of those defined terms, the meaning in Schedule 1 will, by default, apply to those terms (unless the Assembly Act says otherwise). Would it not be more transparent and accessible if all definitions were included on the face of each Assembly Act?

We considered carefully which general definitions to include in Schedule 1 to the Bill, and retained only those that were likely to be relevant and helpful in Welsh legislation. As a result, Schedule 1 to the Bill defines significantly fewer terms than Schedule 1 to the Interpretation Act 1978 (60 terms in the Bill, compared with over 90 in the 1978 Act following amendments made by the European Union (Withdrawal) Act 2018). In our view these definitions will promote several of the aims of Part 2 (see paragraphs 44 and 45 of the Explanatory Memorandum).

First, they will remove doubt about whether certain terms need to be defined, which will help to shorten Welsh legislation and improve consistency in its drafting. Where there is doubt about whether legislation can refer to a public body or concept without defining it, drafters of

different Acts and instruments may take different approaches. (For this reason, it is not necessarily the case that individual Acts and instruments would always include definitions of a term if it were not defined in Schedule 1 to the Bill.) For terms of this kind, having the definition in Schedule 1 avoids the question by dealing with the issue once and for all.

Secondly, the definitions in Schedule 1 will also remove doubt for certain readers of legislation while generally operating 'in the background'. Many of the definitions in Schedule 1 are intended to resolve minor or detailed questions of interpretation that would be unlikely to occur to the average reader. For example, most readers would not be troubled about the precise meaning of "*county court*" or "*Lord Chancellor*" but including definitions of those terms forestalls any arguments that might conceivably arise.

Thirdly, there are definitions in Schedule 1 that may be more significant, at least in some cases, such as "*land*" and "*person*". However, these terms are already defined in Schedule 1 to the 1978 Act. We have included them in Schedule 1 to the Bill, and kept changes to the minimum, in order to ensure continuity and consistency between the two Acts while also providing bilingual definitions of the terms for Welsh legislation. As with the other definitions, their inclusion in Schedule 1 will also help to shorten legislation and enable its drafting to be more consistent.

5. The Welsh Ministers have some powers to make subordinate legislation in reserved areas. For example, the Welsh Government recently made directions that required Local Health Boards in Wales to provide abortion services to women from Northern Ireland free of charge. Abortion is a reserved matter for the Assembly. If the Welsh Ministers make a Welsh subordinate instrument in a reserved area, how will Part 2 of the Bill affect the interpretation of that Welsh subordinate instrument?

Part 2 of the Bill will apply to a Welsh subordinate instrument made by the Welsh Ministers in a reserved area in the same way that it applies to an instrument they make in a devolved area.

The definition of "*Welsh subordinate instrument*" in section 3(2) of the Bill reflects the Welsh Government's view of the Assembly's competence to legislate about statutory interpretation. However, the way in which Part 2 of the Bill applies to an individual Welsh subordinate instrument will not be affected by whether the subject-matter of the particular instrument is reserved or devolved. The aims of clarity and simplicity would be undermined if readers of Welsh subordinate instruments were required to apply the tests of legislative competence in the Government of Wales Act 2006 in order to work out how Part 2 of the Bill applied to them.

Part 2 of the Bill will not apply to Acts of the UK Parliament, whether their subject matter is devolved or reserved. Nor will it apply retrospectively to existing Acts or Measures of the Assembly, for the reasons set out in paragraph 69 of the Explanatory Memorandum. Part 2 will therefore apply to Welsh subordinate instruments even in cases where it does not apply to the primary legislation under which they are made, as explained in paragraphs 26 to 40 of the Explanatory Notes. That approach is intended to ensure that Part 2 applies to as much of the subordinate legislation that is made bilingually in Wales as possible.

We do not expect any difficulties to be caused by the fact that Part 2 of the Bill will apply to a Welsh subordinate instrument even though the Interpretation Act 1978 may continue to apply to the primary legislation under which it was made. It is already the case that the application of the 1978 Act to subordinate legislation is independent of its application to the Act under which the subordinate legislation is made (see section 23 of the 1978 Act). So there is nothing novel in the fact that Part 2 of the Bill will apply to a Welsh subordinate

instrument in its own right rather than by virtue of the instrument being made under an Act to which Part 2 applies.

The fact that Part 2 of the Bill applies to a Welsh subordinate instrument will not change the meaning of the primary legislation under which it is made, nor will it affect the scope of any powers conferred by the primary legislation. Part 2 simply creates presumptions about how the Welsh Ministers (or other devolved Welsh authority) intend the instrument to operate. Section 4 makes clear that those presumptions are subject to the provisions of the Welsh subordinate instrument itself and any other provisions to the contrary. This means there will not be any conflict between Part 2 of the Bill and the parent Act or Measure, because the presumptions in Part 2 will always give way wherever it is clear that something different is intended.

6. Section 19 says that a power to give directions also includes a power to vary and withdraw the directions. Why is there not a similar provision for varying and withdrawing guidance?

Section 19 deals specifically with powers to give directions because it is common for Acts which confer powers to give directions to state that the directions may be varied (or amended) and withdrawn (or revoked). Making general provision to this effect in section 19 removes doubt and avoids the need to make separate provision about the issue in every Assembly Act.

A direction will usually impose a requirement on a person to take or avoid certain steps, or will produce some other legal effect such as an exemption from a statutory requirement or entitlement. The variation or withdrawal of a direction may therefore have considerable legal significance for the persons affected by the direction, and questions may arise about whether a power to vary or withdraw it is intended. Although such a power might be implied in many cases, it will often be desirable to ensure that there is no doubt about that.

Section 19 does not deal with guidance because guidance is usually different in nature from directions. The variation or withdrawal of guidance will not generally give rise to the same questions because guidance does not usually have such significant legal effects for the persons to whom it is addressed. It is therefore much less common for statutory provisions about guidance to say anything about whether the guidance can be revised or withdrawn.

7. What practical arrangements will Crown bodies have to make as a result of section 26 of the Bill?

Crown bodies will not be required to take any practical steps as a result of section 26. The section does not have any immediate effect on Crown bodies, but simply creates a presumption that future Assembly Acts and Welsh subordinate instruments will bind the Crown. It will be those Acts and instruments that change the substantive law. If they impose new duties that affect the Crown, Crown bodies may need to make arrangements at that time.

It is also important to remember that, although the presumption will be that Welsh legislation should bind the Crown, there may be cases where it is not appropriate for it to do so. In those cases it will still be possible for an Act or instrument to provide that it does not bind the Crown.

8. Is it correct to say that the Counsel General could not be convicted of a criminal offence by virtue of legislation binding the Crown but Welsh Government officials could?

This is not correct. Where a piece of Welsh legislation creates a criminal offence and does not modify or disapply section 26 of the Bill, everyone “*in the service of the Crown*” will be open to criminal liability, including both civil servants and members of the Government.

There have been clear judicial statements that Ministers of the Crown are “*persons in the service of the Crown*” (see *Bank voor Handel en Scheepvaart NV v. Administrator of Hungarian Property* [1954] AC 584). Members of the Welsh Government would be in the same position, because section 57(2) of the Government of Wales Act 2006 provides that the functions of the Welsh Ministers, First Minister and Counsel General are exercised on behalf of Her Majesty.

Section 26(3) of the Bill reflects the constitutional principle that the Sovereign has personal immunity from prosecution for criminal offences, even where legislation binds the Crown. Setting out the position in section 26(3) removes the need to say this in every Act or instrument.

9. Section 38 of the Bill sets out the rules that would apply when combining two pieces of subordinate legislation that are subject to different Assembly procedures. For example, if Regulations A are subject to affirmative procedure, and Regulations B are subject to negative procedure, section 38 allows Regulations A and B to be made in a single instrument, subject to the stricter of the two procedures (i.e. subject to affirmative procedure). What if Regulations A were subject to the negative procedure and required consultation, and Regulations B were subject to affirmative procedure and did not require consultation. What procedure would apply?

Section 38 deals only with differences in the Assembly procedures that would otherwise apply to different types of subordinate legislation; it does not affect any requirements for the Welsh Ministers to undertake consultation before making subordinate legislation. The reason for this is that the application of multiple Assembly procedures can give rise to greater difficulties and uncertainties where Ministers wish to combine provisions in a single statutory instrument.

In the example given by the Committee, Regulations A will be subject to negative Assembly procedure and Regulations B will be subject to affirmative Assembly procedure. If they are combined in a single statutory instrument, section 38(1) of the Bill will mean that the combined instrument is subject only to affirmative procedure.

Before making the combined instrument, the Welsh Ministers will be required to consult on the proposal to make Regulations A. Section 38(1) will neither remove that requirement in relation to Regulations A, nor extend it so that it applies in relation to Regulations B. There is no need for it to do so. The fact that the Welsh Ministers are not required to consult anyone before making Regulations B does not conflict with their duty to consult before making Regulations A, and does not prevent them making Regulations B in the same instrument as Regulations A.

In practice, there might be cases where a statutory instrument was drafted in a way that made it difficult to distinguish the provisions made under power A from those made under power B. So if the Welsh Ministers were to consult by publishing a draft of the instrument, it might not be practicable to consult on a draft containing Regulations A alone. A single consultation on all of the provisions might make most sense, for both the Welsh Government and consultees. But that would not be because section 38(1) had changed the legal effect of the consultation duty.

The Welsh Ministers might well wish to consult before making the regulations in any event. In many cases there is no statutory duty to consult on proposals to make subordinate

legislation, but consultation is nevertheless carried out in order to obtain input from stakeholders with a view to improving policy development.

10. Given that Part 2 of the Bill will not apply to subordinate legislation made by the Welsh Ministers and UK Ministers on a composite basis, will we see fewer composite statutory instruments being laid before the Assembly in future?

The fact that Part 2 of the Bill will not apply to composite instruments will not necessarily mean that fewer composite instruments are made in future, because other considerations may affect that decision.

The Government considers carefully whether it would be appropriate to join with UK Ministers in making a joint or composite instrument in each case where the question arises. In making that decision, a number of factors will be taken into account, including:

- whether the Welsh Ministers are required by law to make a joint or composite instrument;
- whether the Welsh Ministers acting alone will be able to make all of provision that is required to implement the policy, considering the way powers have been devolved;
- which approach would be most convenient for the reader, for example where the requirements for the relevant industry are the same in each part of the UK;
- how best to ensure consistency in approach and timing where there are significant cross-border operational overlaps.

One of the disadvantages of making a joint or composite instrument is that it involves making legislation in English only, and in future this disadvantage will be compounded by the fact that the legislation will be subject to a slightly different set of interpretation rules which also exist in English only.

However, as at present, these disadvantages will have to be weighed against the comparative ease of having all the relevant provisions across territorial boundaries in a single instrument; and there will continue to be cases where the extent of devolved powers means that a stand-alone instrument for Wales is not a realistic option.

Annex B – interpreting bilingual legislation

1. The overall purpose of the Legislation (Wales) Bill is to make Welsh law more accessible, clear and straightforward to use. But a supplementary and complementary purpose is to facilitate more bilingual legislation and give greater effect to the equal status of our two languages in law.
2. Section 156(1) of the Government of Wales Act 2006 (GoWA 2006) makes clear that the English language and Welsh language versions of legislation passed by the National Assembly for Wales or made by the Welsh Ministers are equal. In other words one doesn't take precedence over the other, and any difference in meaning between the two texts cannot be reconciled by reference to one of the languages being more likely to be a proper reflection of the intended purpose of the legislator.
3. This is a widely known provision and there has been much focus, both within and outside the Welsh Government, on the need to ensure that the languages always have equivalent meaning. Much thought has been given within the Welsh Government in particular to the skills and processes we need, when promoting legislation, to ensure that the languages don't differ in legal meaning. It is also, of course, an issue scrutinised by the Constitutional and Legislative Affairs Committee.
4. The impression I am forming, however, is that less thought has been given to the implications of this after legislation has taken effect. Although the meaning of section 156(1) is relatively well understood in the abstract, the practical effect, in particular on the courts and on practitioners, may not be. If there is any doubt about the meaning of Welsh legislation you need to consider both languages – not just one – and some may be under the misapprehension that you can work with one language only.
5. The implications of the equal status of the English and Welsh languages have been considered in some detail by the Law Commission. Chapter 12 of its consultation paper, written personally by Lord Lloyd Jones, analyses the meaning and practical implications of section 156(1) of GoWA 2006 and considers how discrepancies between languages are dealt with in other jurisdictions. It is probably the first thorough analysis of the issue from a Welsh perspective.
6. The paper considers what is done elsewhere and whether anything similar should be adopted in Wales. Of most relevance is the Commission's assessment of custom and practice in Canada, and of a legislative provision on interpreting bilingual legislation in Hong Kong.
7. The Commission, rightly in my view, concludes that use of a "shared meaning rule" – under which any discrepancy between two languages is resolved by adopting an interpretation that is common to each language – is not helpful. Although intended to be a guide rather than a rule, this has the potential to lead the courts towards a narrow interpretation whenever there is inconsistency. A broader interpretation which could be construed from one but not the other of the languages may, however, have been the legislature's intention.
8. Statutory provisions contained in Hong Kong's Interpretation and General Clauses Ordinance go further than the corresponding provision in section 156(1) of GOWA. Section 10B begins by making a statement similar to that contained in section 156(1) by providing that the English language and Chinese language text of legislation is equally authentic. However, it goes on to also say, firstly, that both texts are presumed to have the same meaning (and guidance on this provides that this means the two texts are "but two expressions of the same intent and together constitute one law embodying a single

meaning”), and secondly, where there is a difference in meaning, the meaning which “best reconciles the texts, having regard to the object and purposes of the [legislation], shall be adopted”.

9. This last provision is of particular interest to us. This is because it makes clear that only a parallel reading of the two versions can reveal whether they are susceptible to different interpretations, and neither one of the versions should be preferred without considering the other. Although this may, to some at least, be self-evident, section 156(1) of GoWA 2006 does not contain an express obligation to consult and compare both texts, and as indicated above we are concerned that this is not fully understood.
10. The Law Commission for their part eventually concluded that this was an issue best left to the courts, determining that judges should not be fettered in their application of the ordinary rules of construction. This is something with which we agree in principle but wonder whether there is scope for retaining this discretion while at the same time clarifying certain fundamentals such as the need to understand both texts not merely one.
11. Guidance issued on the Hong Kong legislation suggests that this is what they consider their position to be. It is contended that the process of reconciliation of any differences in meaning must, ultimately, correspond with the legal meaning intended by the legislature. They conclude, on that basis, that a meaning shared “by both versions if one text is ambiguous and the other is plain and unequivocal, or if one text has a broader meaning than the other...may not be decisive.” The guidance goes on to say that the “process of reconciliation does not stop at extracting the highest common meaning in both texts, which may possibly be repugnant to the spirit of the legislation as a whole. It must still be related back to and tested against the backdrop of the overall objective of the legislation in question.” Perhaps for this reason, therefore, the view expressed is that section 10B “provides only broad guidelines for bilingual interpretation... Statutory interpretation is after all the province of the judiciary under the common law.”
12. Based on this, my thinking at present is that we should restate section 156(1) so that it can be found in our legislation on the interpretation of legislation, rather than in what is essentially our constitutional document. This would in turn facilitate the production of guidance, possibly in the explanatory note to the restated section 156(1), which would clarify the issues highlighted above. The aim would be to guide the courts and other users of legislation rather than attempting to be prescriptive. Going further than this, therefore, by legislating in a manner similar to Hong Kong, is in my view probably unnecessary.
13. I would be very grateful for any views you have on the best means of tackling this issue or indeed about whether you agree this is an issue that we should seek to address.

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

Document is Restricted

Proposed Negative Statutory Instruments with Clear Reports

18 February 2019

pN(5)019 – The Local Government Finance (Amendment) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations make minor consequential amendments to the following legislation in the area of local government finance:

1. The Central Rating List (Wales) Regulations 2005; and
2. The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013.

These Regulations correct deficiencies resulting from the UK's withdrawal from the EU, such as removing references to "EEA States", "European Licences" and "EEA firms" in the amended Regulations.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

pN(5)022 – The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations are made in exercise of the powers conferred on the Welsh Ministers by paragraph 1 of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c.16) in order to address



failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. They are also made in exercise of the powers in sections 132 and 135 of the Education Act 2002.

These Regulations make amendments to subordinate legislation relevant to the recognition of teachers' qualifications in Wales.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

pN(5)024 – The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations amend the following legislation relating to town and country planning —

The Town and Country Planning (Control of Advertisements) Regulations 1992;

The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005;

The Town and Country Planning (Development Management Procedure) (Wales) Order 2012; and

The Planning (Hazardous Substances) (Wales) Regulations 2015.

The amendments are being made in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.



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

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

pN(5)025 – The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations make amendments to the Air Quality Standards (Wales) Regulations 2010 in order to address failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

pN(5)026 – The Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations make amendments to subordinate legislation applying in Wales in the field of food composition and labelling.

These Regulations, other than regulation 6, are to be made in exercise of the powers conferred on the Welsh Ministers by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act



2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Regulation 6 is made under section 16 of the Food Safety Act 1990 to amend the Honey (Wales) Regulations 2015 to set the method of analysis that food authorities must use to verify compliance with those Regulations' requirements.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

pN(5)027 – The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ("instrument") amends the existing implementation of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of GMOs ("the Deliberate Release Directive"), which specifies a framework of controls on the release of GMOs. Proposed releases require prior authorisation and this is subject to the GMO in question passing a science-based assessment of its potential impact on human health and the environment. Decisions on whether to approve GMO trial releases are delegated to Member States and regions within Member States. In the UK GMO trial decisions are devolved. Decisions on the release of GMOs for commercial marketing are taken collectively at EU level. In the



specific case of GMO seeds for cultivation, the Directive provides discretionary provisions which allow Member States, or devolved Governments with Member States, to block the cultivation of EU-approved seeds in their territory. The Directive is implemented in Wales by The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002

This instrument also amends our domestic implementation of Regulation (EC) No. 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms, as implemented in Wales by the Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005, which regulates the export of GMOs from the EU to third (non-EU) countries. The key requirement is for the planned first export of a GMO intended for environmental release to be notified to the receiving country to obtain its approval before shipment. The regulation implements requirements of the Cartagena Biosafety Protocol to the United Nations Convention on Biological Diversity (to which the EU and UK are each a Party).

The amendments can be broadly categorised as:

- Removing references to provisions being ‘in accordance with EU legislation’ and other references to EU law or obligations, and instead referring to retained EU law or obligations;
- Copying out definitions within the regulations themselves, instead of referring to definitions that sit within EU Directives, or specifying that references should be to specific ‘versions’ of pieces of EU legislation;
- Updating references to other sets of legislation that will be changed following EU exit or where an update was required anyway due to the reference being to an out of date piece of legislation;
- Changing references from ‘Member State level’ to ‘any law of any part of the UK’; and



- Modifying the provision which requires Welsh Ministers to notify ‘other EU Member States’ about transboundary environmental impacts to reflect Wales’ new status outside of the EU.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes

pN(5)028 – The Fisheries and Marine Management (Amendment) (EU Exit) (Wales) Regulations 2019

Procedure: Negative

These Regulations make amendments to the following domestic instruments:

- a. The Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006,
- b. The Marine Licencing (Exempted Activities) (Wales) Order 2011; and
- c. The European Maritime and Fisheries Fund (Grants) (Wales) Regulations 2016.

The amendments are required to ensure that the statute book remains operable following the UK’s exit from the EU by addressing deficiencies in domestic legislation arising from the UK’s exit from the EU.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes



pN(5)029 – The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations make amendments to the Seed Marketing Regulations (Wales) 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017. They address deficiencies in domestic legislation on the marketing of seeds and fruit plant and propagating material arising from the withdrawal of the United Kingdom from the European Union so that such will continue to be operable after EU exit.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift Requirements Satisfied: Yes



Agenda Item 4.1

pN(5)023 – The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019

Background and Purpose

These Regulations amend four pieces of Welsh legislation relating to waste which implement various European Directives related to waste management to ensure that the waste regime can continue to operate effectively after the UK leaves the EU.

The Regulations do not make any changes to or remove any environmental standards. The modifications are necessary to the text of the domestic legislation, removing or amending references to EU Directives and associated EU terms to ensure that waste legislation continues to operate as intended after EU exit. The changes do not change the effect of any existing definitions but are made in order that definitions contained in Directives, which will not form part of EU retained law after exit day will work effectively.

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

Committee Recommendation as to Appropriate Procedure

We have considered the criteria set out in Standing Order 21.3C.

[We recommend that the appropriate procedure for these Regulations is the negative resolution procedure. Although the Regulations make changes to primary legislation, which would normally be subject to the affirmative scrutiny procedure, the changes made do not change the substance of the environmental standards and only make the necessary changes to the law that are required for it to work effectively after exit day.]

OR

[For the following reason, we recommend that the appropriate procedure for these Regulations is the affirmative resolution procedure:

1. Amendment of primary legislation

Part 3 of these Regulations amend primary legislation – the Waste (Wales) Measure 2010. Whilst these amendments could be viewed as ‘technical and minor’ they nevertheless deal with references to important legal definitions. It is therefore appropriate for these changes to primary legislation be subject to the affirmative scrutiny procedure.

Government Response

[If there is no recommendation to uplift, insert the following text here: No Welsh Government explanation is required in accordance with Standing Order 27.9B.]

[If there is a recommendation to uplift, insert the following text here: If the Welsh Government does not agree with the Committee’s recommendation as to the appropriate procedure for these Regulations, the



Welsh Government must explain why it disagrees with the Committee's recommendation in accordance with Standing Order 27.9B.]

Legal Advisers

Constitutional and Legislative Affairs Committee

12 February 2019



2019 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

**ENVIRONMENTAL PROTECTION,
WALES**

WASTE, WALES

**The Waste (Wales) (Miscellaneous
Amendments) (EU Exit)
Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

These Regulations make amendments to legislation in the field of waste. Part 3 amends primary legislation and Part 4 amends subordinate legislation.

Part 2 of these Regulations is made in exercise of the powers in section 2(2) of the European Communities Act 1972 (c. 68), and update references to Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3) and Directive 1999/31/EC on the landfill of waste (OJ No L 182, 16.07.1999, p1).

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

2019 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

**ENVIRONMENTAL PROTECTION,
WALES**

WASTE, WALES

**The Waste (Wales) (Miscellaneous
Amendments) (EU Exit)
Regulations 2019**

Sift requirements satisfied ***

Made ***

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers make these Regulations in exercise of the powers conferred by—

- (a) in relation to Part 1, the powers mentioned in paragraphs (b) and (c);
- (b) in relation to Part 2, section 2(2) of the European Communities Act 1972⁽¹⁾;
- (c) in relation to the remainder of the Regulations, paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018⁽²⁾.

(1) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), the Schedule, Part 1. It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (see section 20 of that Act).

(1) 2018 c.16.

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972 in relation to—

- (a) measures relating to the prevention, reduction and elimination of pollution caused by waste and the management of packaging and packaging waste⁽²⁾;
- (b) the prevention, reduction and management of waste⁽³⁾.

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

PART 1

Introductory

Title and commencement

2.—(1) The title of these Regulations is the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019.

(2) They come into force as follows—

- (a) as regards this Part and Part 2, 21 days after the day on which they are made;
- (b) as regards the remainder, on exit day.

PART 2

Amendments to out of date references

The Waste (Wales) Measure 2010

3.—(1) The Waste (Wales) Measure 2010⁽⁴⁾ is amended as follows.

(2) In section 9(3), at the end insert “, as last amended by Council Directive 2011/97/EU⁽⁵⁾”.

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- (1) By virtue of section 59(2) of the Government of Wales Act 2006, the Welsh Ministers may exercise the power conferred by section 2(2) of the European Communities Act 1972 in relation to any matter, or for any purpose, if they have been designated in relation to that matter or for that purpose.
 - (2) S.I. 2005/850, to which there is an amendment not relevant to these Regulations. By virtue of paragraph 28(1) of Schedule 11 to the Government of Wales Act 2006, S.I. 2005/850 has effect as if made under section 59(1) of that Act.
 - (3) S.I.2010/1552.
 - (4) 2010 nawm 8, to which there are amendments not relevant to these Regulations.
 - (5) OJ No L 328, 10.12.2011, p 49.

(3) In section 17(2), at the end insert “, as last amended by Council Regulation (EU) 2017/997(1)”.

The Landfill Allowance Scheme (Wales) Regulations 2005

4.—(1) The Landfill Allowance Scheme (Wales) Regulations 2004(2) are amended as follows.

(2) In regulation 2(1), in the definition of “waste facility” (“*cyfleuster gwastraff*”), for “as last amended by Commission Directive (EU) 2015/1127” substitute “as last amended by Council Regulation (EU) 2017/997.

(3) In regulation 7(10), at the end insert “as last amended by Council Regulation 2011/97/EU.

The Hazardous Waste (Wales) Regulations 2005

5.—(1) The Hazardous Waste (Wales) Regulations 2005(3) are amended as follows.

(2) In regulation 47(5B), after “waste,” insert “as last amended by Council Directive 2011/97/EU”.

(3) In regulation 48(6B), after “waste,” insert “as last amended by Council Directive 2011/97/EU”.

The Recycling, Preparation for Re-use and Compositing Targets (Monitoring and Penalties) (Wales) Regulations 2011

6. In regulation 2(1) of the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011(4) in the definition of “the Waste Framework Directive” (“*y Gyfarwydddeb Fframwaith Gwastraff*”) for “as last amended by Commission Directive (EU) 2015/1127” substitute “as last amended by Council Regulation (EU) 2017/997”.

(1) OJ No L 150, 14.6.2017, p 1.

(2) S.I. 2004/1490 (W. 155), as amended by S.I. 2011/971 (W. 141); there are other amending instruments but none is relevant to these Regulations.

(3) S.I. 2005/1806 (W. 138), as amended by S.I. 2011/971 (W. 141) and S.I. 2018/721 (W. 140); there are other amending instruments but none is relevant to these Regulations.

(4) S.I. 2011/1014 (W. 152), amended by S.I. 2016/691 (W. 189); there are other amending instruments but none is relevant to these Regulations.

PART 3

Amendment of primary legislation

The Waste (Wales) Measure 2010

7.—(1) The Waste (Wales) Measure 2010(1) is amended as follows.

(2) In section 9(3) (as amended by regulation 3(2)), at the end insert—

“, and read as if—

(a) in Article 2—

(i) for point (a) there were substituted—

“(a) ‘waste’ has the meaning given by Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive;”;

(ii) for point (c) there were substituted—

“(c) ‘hazardous waste’ has the meaning given in Article 3(2) of the Waste Framework Directive.”;

(b) in Article 3(2), “Without prejudice to existing Community legislation,” were omitted.”.

(3) In section 9A(3)—

(a) in the definition of “waste incineration plant” (*“peiriant llosgi gwastraff”*), for “Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)” substitute “Industrial Emissions Directive”;

(b) in the definition of “waste co-incineration plant” (*“peiriant cydlosgi gwastraff”*) for “that Directive” substitute “the Industrial Emissions Directive”;

(c) after subsection (3) insert—

“(4) In this section, “Industrial Emissions Directive” means “Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions(2), and read as if in Article 3—

(1) 2010 nawm 8. Section 9A was inserted by the Environment (Wales) Act 2016, s 67.

(2) OJ No L 334, 17.12.2010, p 17, as corrected by a corrigendum (OJ No L 158, 19.6.2012, p 25).

- (a) in point (37), for “Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste” there were substituted “the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
- (b) in point (38), for “Directive 2008/98/EC” there were substituted “the Waste Framework Directive.

(5) In reading the Industrial Emissions Directive in accordance with subsection (4), references in that Directive to the “Waste Framework Directive” (as inserted by subsection (4)) have the meaning given by section 17(2) of this measure.”.

(4) In section 17—

- (a) in subsection (2) (as amended by regulation 3(3)), at the end insert “, and read in accordance with subsections (3) to (8)”;
- (b) after subsection (2) insert—

“(3) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the Welsh Ministers, the Natural Resources Body for Wales or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of Wales.

(4) Article 2 is to be read as if—

- (a) in paragraph 2—
 - (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
 - (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
 - (iii) in point (d), for the words from “Directive 2006/21/EC” to the end there were substituted “the Mining Waste Directive (see section 17A) ”;
- (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
- (c) paragraph 4 were omitted.

(5) Article 5 is to be read as if paragraph 2 were omitted.

(6) Article 6 is to be read as if—

- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—

- (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where waste ceases to be waste in accordance with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013”;

- (ii) the second sentence were omitted.

(7) Article 7 is to be read as if—

- (a) in paragraph 1—

- (i) the first and second sentences were omitted;

- (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;

- (b) after paragraph 1, there were inserted—

“1A. Paragraph 1 is subject to—

- (a) a determination by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005(1) that a specific batch of waste is to be treated as hazardous waste;

- (b) a decision made by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005(2) that a specific batch of waste is to be treated as non-hazardous waste;

- (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulations 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005(3);

- (d) regulations (if any) made by the Welsh Ministers under section 62A(2) of the Environmental

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- (1) Regulation 8(1) has been amended by S.I. 2011/971 (W.141) and S.I. 2015/1417 (W.141).
 - (2) Regulation 9(1) has been amended by S.I. 2011/971 (W.141) and S.I. 2015/1417 (W.141).
 - (3) Regulations 8(2) and 9(2) has been amended by S.I. 2015/1417 (W.141)

Protection Act 1990 (lists of waste displaying hazardous properties)(1).”;

(c) paragraphs 2, 3 and 5 were omitted;

(d) after paragraph 6 there were inserted—

“**6A.** In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;

(e) paragraph 7 were omitted.

(8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.”

(5) After section 17 insert—

“Meaning of the “Mining Waste Directive”

17A.—(1) In reading Article 2 of the Waste Framework Directive in accordance with section 17(4), “the Mining Waste Directive” (as inserted by paragraph (a)(iii) of section 17(4)) means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries(2), read in accordance with subsections (2) to (5).

(2) Article 2 is to be read as if—

(a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC(3) were a reference to that Article read in accordance with subsection (4);

(b) paragraphs 3 and 4 were omitted.

(3) Article 3(1) is to be read as if, for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”.

(4) For the purposes of subsection (2)(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(a) the first reference to “Member States” were a reference to the Welsh Ministers or the Natural Resources Body for Wales;

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- (1) 1990 c.43. Section 62A was inserted by S.I. 2005/894, and amended by S.I. 2011/988, 2015/1360, 2018/721 (W.140) and 2018/942.
- (2) OJ No L 102, 11.4.2006, p 15, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ No L 118, 18.7.2009, p 14).
- (3) OJ No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

(b) at the end there were inserted—

“and “environmental objectives”, in relation to a river basin district within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017⁽¹⁾ has the same meaning as in those Regulations..

(5) In reading the Mining Waste Directive in accordance with subsection (3), the reference in that Directive, to the “Waste Framework Directive” (as inserted by subsection (3)) has the meaning given by section 17(2) of this measure.”.

PART 4

Amendment of subordinate legislation

The Landfill Allowances Scheme (Wales) Regulations 2004

8.—(1) The Landfill Allowances Scheme (Wales) Regulations 2004⁽²⁾ are amended as follows.

(2) In regulation 2(1)⁽³⁾, in the definition of “waste facility” (“*cyfleuster gwastraff*”) (as substituted by regulation 4(2)), for “Directive 2008/98/EC of the European Parliament and of the Council on waste as last amended by Council Regulation (EU) 2017/997”, substitute “the Waste Framework Directive”.

(3) After the definition of “waste facility” (“*cyfleuster gwastraff*”) insert—

“the Waste Framework Directive” (“*y Gyfarwydddeb Fframwaith Gwastraff*”) means Directive 2008/98/EC of the European Parliament and of the Council on waste⁽⁴⁾ as last amended by Council Regulation (EU) 2017/997⁽⁵⁾, and read in accordance with paragraphs (3) to (9).

(4) After paragraph (2) insert—

“(3) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the Welsh Ministers, the Natural Resources Body for Wales or local authority which, immediately

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|-----|--|
| (1) | S.I. 2017/407, to which there are amendments not relevant to these Regulations. |
| (2) | S.I. 2004/1490 (W.155). |
| (3) | The definition of Waste Facility has been amended by SI.2011/971 (W.141) and S.I. 2016/691 (W.189). There are other amendments but none is relevant. |
| (4) | OJ No L 312, 22.11.08, p 3. |
| (5) | OJ No L 150, 14.6.2017, p 1. |

before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of Wales.

(4) Article 2 is to be read as if—

(a) in paragraph 2—

- (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
- (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
- (iii) in point (d), for the words from “Directive 2006/21/EC” to the end there were substituted “the Mining Waste Directive (see regulation 2A)”;

(b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;

(c) paragraph 4 were omitted.

(5) Article 5 is to be read as if paragraph 2 were omitted.

(6) Article 6 is to be read as if—

(a) paragraphs 1 to 3 were omitted;

(b) in paragraph 4—

- (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where waste ceases to be waste in accordance with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013”;

(ii) the second sentence were omitted.

(7) Article 7 is to be read as if—

(a) in paragraph 1—

- (i) the first and second sentences were omitted;
- (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;

(b) after paragraph 1, there were inserted—

“1A. Paragraph 1 is subject to—

- (a) a determination by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as hazardous waste;
- (b) a decision made by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as non-hazardous waste;
- (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulations 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;
- (d) regulations (if any) made by the Welsh Ministers under section 62A(2) of the Environmental Protection Act 1990 (lists of waste displaying hazardous properties).”;
- (c) paragraphs 2, 3 and 5 were omitted;
- (d) after paragraph 6 there were inserted—

“6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;
- (e) paragraph 7 were omitted.
- (8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
- (9) In paragraph (3) “local authority” means a county council or a county borough council.”.
- (5) After regulation 2, insert—

“Meaning of “the Mining Waste Directive” in regulation 2

2A.—(1) In regulation 2(4)(a)(iii), “the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs (2) to (4).

(2) Article 2 is to be read as if—

- (a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with paragraph (4) of this regulation;
- (b) paragraphs 3 and 4 were omitted.

(3) Article 3(1) is to be read as if, for “Article 1(a) of Directive 75/442/EC” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”.

(4) For the purposes of paragraph (2)(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(a) the first reference to “Member States” were a reference to the Welsh Ministers or the Natural Resources Body for Wales;

(b) at the end, there were inserted—

“and “environmental objectives”, in relation to a river basin district within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 has the same meaning as in those Regulations.”.”

(6) In regulation 7(10) (as amended by regulation 4(3)), at the end, insert “read in accordance with paragraph (11).

(7) After paragraph (10) insert—

“(11) For the purposes of regulation 7(10), the Directive is to be read as if—

(a) in Article 2—

(i) for point (a) there were substituted—

“(a) ‘waste’ has the meaning given by Article 3(1) of the Waste Framework Directive, as read with Article 5 and 6 of that Directive;”;

(ii) for point (c) there were substituted—

“(c) ‘hazardous waste’ has the meaning given by Article 3(2) of the Waste Framework Directive.”.

(b) in Article 3(2), “Without prejudice to existing Community legislation,” were omitted.”.

The Hazardous Waste (Wales) Regulations 2005

9.—(1) The Hazardous Waste (Wales) Regulations 2005⁽¹⁾ are amended as follows.

(2) In regulation 2(1)—

(1) S.I. 2005/1806 (W.138).

- (a) in sub-paragraph (a), at the end insert “, and read in accordance with regulation 2A”;
 - (b) in sub-paragraph (b)(i), at the end insert “, as read with Articles 5 and 6 of that Directive”.
- (3) After regulation 2 insert—

“Meaning of the Waste Directive

2A.—(1) For the purposes of these Regulations, the Waste Directive is to be read in accordance with this regulation.

(2) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of Wales.

(3) Article 2 is to be read as if—

- (a) in paragraph 2—
 - (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
 - (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
 - (iii) in point (d), for the words from “Directive 2006/21/EC” to the end there substituted “the Mining Waste Directive”;
- (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
- (c) paragraph 4 were omitted.

(4) Article 3(20) is to be read as if for “Article 2(11) of Directive 96/61/EC” there were substituted “Article 3(10) of the Industrial Emissions Directive”.

(5) Article 5 is to be read as if paragraph 2 were omitted.

(6) Article 6 is to be read as if—

- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where waste ceases to be waste in accordance

with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013”;

(ii) the second sentence were omitted.

(7) Article 7 is to be read as if—

(a) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;

(b) after paragraph 1, there were inserted—

“**1A.** Paragraph 1 is subject to—

(a) a determination by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as hazardous waste;

(b) a decision made by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as non-hazardous waste;

(c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulations 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;

(d) regulations (if any) made by the Welsh Ministers under section 62A(2) of the Environmental Protection Act 1990 (lists of waste displaying hazardous properties).”;

(c) paragraphs 2, 3 and 5 were omitted;

(d) after paragraph 6 there were inserted—

“**6A.** In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;

(e) paragraph 7 were omitted.

(8) Article 19 is to be read as if—

(a) in paragraph 1, for “Community” there was substituted “national”;

(b) in paragraph 2, for “a Member State” there were substituted “Wales”.

(9) Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

(10) In paragraph (2) “local authority” means a county council or a county borough council.

Meaning of the “Mining Waste Directive” and “Industrial Emissions Directive”

2B.—(1) In regulation 2A(3)(a)(iii), “the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs (2) and (3).

(2) Article 2 is to be read as if—

(a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with paragraph (7) of this regulation;

(b) paragraphs 3 and 4 were omitted.

(3) Article 3(1) is to be read as if, for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of the Waste Directive, as read with Articles 5 and 6 of that Directive”.

(4) In regulation 2A(4), “the Industrial Emissions Directive” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)(1), read in accordance with paragraphs (5) and (6).

(5) Article 3 is to be read as if—

(a) in point (1)(a), for the words from “Article 1” to the end there were substituted “Article 4(78) of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation(2)”;

(b) in point (10)(b), for “Member State in question” there were substituted “United Kingdom”;

(c) in point (23), for the words from “point 1” to the end there were substituted

(1) OJ No L 334 , 17.12.2010, p 17, as corrected by a corrigendum (OJ No L 158, 19.6.2012, p 25).

(2) OJ L 13, 17.1.2014, p 1, as corrected by a corrigendum (OJ No L 072, 17.3.2016, p 69).

“point 1 of the second subparagraph of Article 2 of Council Directive 2009/158/EC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs⁽¹⁾”;

(d) in point (37), for “Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste” there were substituted “the Waste Directive, as read with Articles 5 and 6 of that Directive”.

(6) Annex 1 is to be read as if—

(a) in the words before point 1, the second paragraph were omitted;

(b) in point 5.3—

(i) in point (a), in the words before point (i), for “Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994⁽²⁾”;

(ii) in point (b), in the words before point (i), for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;

(c) in point 5.4, the reference to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste were a reference to the Landfill Directive;

(d) in point 6.9, for “Directive 2009/31/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2009/31/EC in respect of Wales”;

(e) in point 6.11, for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”.

(7) For the purposes of paragraph (2)(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(1) OJ No L 343, 22.12.2009, p 74, as last amended by Commission Implementing Decision 2011/879/EU (OJ No L 343, 23.12.2011, p 105).

(2) S.I. 1994/2841.

(a) the first reference to “Member States” were a reference to the appropriate authority;

(b) at the end, there were inserted—

“and “environmental objectives”, in relation to a river basin district within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, has the same meaning as in those Regulations”.

(4) In regulation 5(1)—

(a) in the relevant place insert—

“appropriate authority” (“awdurdod priodol”) means the Welsh Ministers, NRBW or the Agency;”;

(b) after the definition of “hazardous waste” (“gwastraff peryglus”) insert—

“the Landfill Directive” (“y Gyfarwydddeb Dirlenwi”) means Council Directive 1999/31/EC on the landfill of waste⁽¹⁾, as last amended by Council Directive 2011/97/EU⁽²⁾, and read as if—

(a) in Article 2—

(i) for point (a) there were substituted—

“(a) ‘waste’ has the meaning given by regulation 2(1)(b) of the Hazardous Waste (Wales) Regulations 2005;”;

(ii) for point (c) there were substituted—

“(c) ‘hazardous waste’ has the meaning given in regulation 6 of the Hazardous Waste (Wales) Regulations 2005.”;

(b) in Article 3(2), “Without prejudice to existing Community legislation,” were omitted.”.

(5) In regulation 8—

(a) in paragraph (2)—

(i) omit the words from “by the Secretary of State” to “may be,”;

(ii) for “Article 7(2) of the Waste Directive” substitute “paragraph (3)”;

(b) after paragraph (2) insert—

(1) OJ No L 182, 16.7.1999, p 1.

(2) OJ No L 328, 10.12.2011, p 49.

“(3) For the purposes of paragraph (2), a specific batch of waste is determined to be hazardous—

- (a) in relation to England if—
 - (i) of a type listed in regulations made under section 62A(2) of the 1990 Act;
 - (ii) it is the subject of a determination by the Secretary of State under regulation 8 of the Hazardous Waste (England and Wales) Regulations 2005⁽¹⁾;
- (b) in relation to Northern Ireland, it is the subject of a determination by the Department of Agriculture, Environment and Rural Affairs under regulation 9 of the Hazardous Waste Regulations (Northern Ireland) 2005⁽²⁾;
- (c) in relation to Scotland, it is the subject of a determination by the Scottish Ministers, because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex III.”.

(6) In regulation 9—

- (a) in paragraph (2)—
 - (i) omit the words from “by the Secretary of State” to “may be,”;
 - (ii) for “Article 7(2) of the Waste Directive” substitute “paragraph (3)”;

(b) after paragraph (2) insert—

“(3) For the purposes of paragraph (2), a specific batch of waste is determined to be non-hazardous if it is the subject of a decision—

- (a) in relation to England, by the Secretary of State under regulation 9 of the Hazardous Waste (England and Wales) Regulations 2005;
- (b) in relation to Northern Ireland, by the Department of Agriculture, Environment and Rural Affairs under regulation 10 of the Hazardous Waste Regulations (Northern Ireland) 2005;
- (c) in relation to Scotland, by the Scottish Ministers that the Scottish Ministers consider that the waste displays none

(1) S.I. 2005/894, amended by S.I. 2011/988, 2015/1360, 2016/738, 2018/575.
(2) S.R. 2005 No. 300; relevant amending instruments are S.R. 2011 No. 127 and S.R. 2015 No. 288.

of the hazardous properties listed in Annex III.”.

(7) In regulations 47(5B) and 48(6B) (as amended by regulation 5(2) and 5(3)), for “Council Directive 1999/31/EC on the landfill of waste as last amended by Council Directive 2011/97/EU” substitute “the Landfill Directive”.

(8) In regulation 60(1), in the words before subparagraph (a), omit from “and” to “Directive”.

The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011

10.—(1) The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011⁽¹⁾ are amended as follows.

(2) In regulation 2(1), in the definition of “the Waste Framework Directive” (“y Gyfarwydddeb Fframwaith Gwastraff”) (as substituted by regulation 6), at the end, insert “and read in accordance with paragraphs (3) to (8)”.

(3) After paragraph (2) insert—

“(3) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the Welsh Ministers, the Natural Resources Body for Wales or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of Wales.

(4) Article 2 is to be read as if—

(a) in paragraph 2—

- (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
- (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
- (iii) in point (d), for the words from “Directive 2006/21/EC” to the end there substituted “the Mining Waste Directive (see regulation 2A)”;

(1) S.I. 2011/1014 (W.152), amended by S.I.2016/691 (W.189); there are other amending instruments but none is relevant.

- (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
- (c) paragraph 4 were omitted.(5) Article 5 is to be read as if paragraph 2 were omitted.
- (6) Article 6 is to be read as if—
 - (a) paragraphs 1 to 3 were omitted;
 - (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where waste ceases to be waste in accordance with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013”;
 - (ii) the second sentence were omitted.
- (7) Article 7 is to be read as if—
 - (a) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
 - (b) after paragraph 1, there were inserted—
 - “**1A.** Paragraph 1 is subject to—
 - (a) a determination by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as hazardous waste;
 - (b) a decision made by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005 that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulations 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;
 - (d) regulations (if any) made by the Welsh Ministers under section 62A(2) of the Environmental Protection Act 1990 (lists of

waste displaying hazardous properties).”;

(c) paragraphs 2, 3 and 5 were omitted;

(d) after paragraph 6 there were inserted—

“**6A.** In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;

(e) paragraph 7 were omitted.

(8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.”

(4) After regulation 2, insert—

“Meaning of “the Mining Waste Directive” in regulation 2

2A.—(1) In regulation 2(4)(a)(iii), “the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with subsections (2) to (4).

(2) Article 2 is to be read as if—

(a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with subsection (4);

(b) paragraphs 3 and 4 were omitted.

(3) Article 3(1) is to be read as if, for “Article 1(a) of Directive 75/442/EC” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”.

(4) For the purposes of paragraph (2)(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(a) the first reference to “Member States” were a reference to the Welsh Ministers or the Natural Resources Body for Wales;

(b) at the end, there were inserted—

“and “environmental objectives”, in relation to a river basin district within the meaning of the Water Environment

(Water Framework Directive) (England and Wales) Regulations 2017 has the same meaning as in those Regulations.”.

Name

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

Date

Explanatory Memorandum to The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019.

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

Hannah Blythyn

Deputy Minister for Housing and Local Government

5 February 2019

PART 1

1. Description

This instrument makes amendments using powers under the European Union (Withdrawal) Act 2018 (except part 2 – see below) to the following legislation:

- The Waste (Wales) Measure 2010
- The Landfill Allowance Scheme (Wales) Regulations 2004
- The Hazardous Waste (Wales) Regulations 2005
- The Recycling Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011

The amendments are to ensure that the statute book remains functional following the UK's exit from the EU and will address deficiencies in Welsh domestic legislation arising from EU Exit.

Part 2 of the Instrument is made under section 2(2) of the European Communities Act 1972 and corrects out of date references to European law and domestic legislation prior to, and in readiness for the UK's exit from the EU. This is required because out of date references to legislation are not necessarily interpreted as references to the correct (updated) legislation and there is therefore a risk that the statute book would not work effectively and inaccessible post-Brexit.

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

This instrument (with the exception of Part 2) is being made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (hereafter “the Withdrawal Act”).

As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure. Such instruments must first be laid for sifting by the Constitutional and Legislative Affairs Committee. The instrument makes minor and technical changes and as such should be subject to annulment.

3. Legislative background

This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 to the Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations are proposed to be made subject to annulment and laid for the purpose of being sifted by the Constitutional and Legislative Affairs Committee (proposed negative).

4. Purpose and intended effect of the legislation

What did any relevant retained EU law do before exit day?

The instrument amends four pieces of Welsh legislation relating to waste which implement various European Directives related to waste management to ensure that the waste regime can continue to operate effectively after the UK leaves the EU. No environmental standards are being removed or amended. Modifications are necessary to the text of the domestic legislation, removing or amending references to EU Directives and associated EU terms to ensure that waste legislation continues to operate as intended after EU exit.

EU law lays down rules and frameworks for the management of waste. These are implemented in Wales primarily via domestic legislation. The instrument amends that domestic legislation under powers in the Withdrawal Act (except Part 2 see section on 'out of date references below) to make the necessary technical changes to ensure that it will continue to operate effectively after the UK has left the EU, as set out below.

The Waste (Wales) Measure 2010 ("the 2010 Measure")

The 2010 Measure makes provision, amongst other things:

- about targets to be met by local authorities in relation to waste;
- about prohibiting or otherwise regulating the deposit of waste in a landfill;
- to provide for site waste management plans for works involving construction or demolition.

The 2010 Measure borrows various definitions by reference to the Waste Framework Directive (Directive 2008/98/EC), the Industrial Emissions Directive (Directive 2010/75/EU) and the Landfill Directive (Directive 1999/31/EC). These references need to be modified to ensure the 2010 Measure remains operable post EU Exit.

The Landfill Allowances Scheme (Wales) Regulations 2004 ("the 2004 Regulations")

The Waste and Emissions Trading Act 2003 aims to significantly reduce the quantity of biodegradable municipal waste sent to landfills, as required by Article 5 of the Landfill Directive. The Act sets the framework for the creation of a landfill allowance scheme and obliges the Assembly to allocate allowances to waste disposal authorities in Wales, not exceeding the maximum specified in relation to Wales.

The 2004 Regulations supplement the Waste and Emissions Trading Act 2003, by making detailed provision for the monitoring and enforcement of the land-fill allowances allocated to waste disposal authorities in Wales under the Act. The 2004 Regulations refer to various defined terms by reference to various waste related directives. Therefore these references need to be modified, similar to that in the 2010 Measure, to ensure the Regulations remain operable post EU Exit.

The Hazardous Waste (Wales) Regulations 2005 (“the 2005 Regulations”)

The 2005 Regulations set out the regime for the control and tracking of hazardous waste in Wales, identical regulations are in force in England. The 2005 Regulations introduced a process for registration of hazardous waste producers and a system for recording the movement of waste from the point of production to the final point of disposal or recovery. The 2005 Regulations likewise refer to, and borrow defined terms such as waste, hazardous waste properties, recovery and disposal of waste by reference to the Waste Framework Directive and the Landfill Directive. Therefore, the 2005 Regulations need to be amended to ensure they remain operable post EU exit.

The Recycling, Preparation for Reuse and Composting Targets (Monitoring and Penalties (Wales) Regulations 2011 (the “2011 Regulations”)

Section 3 of the 2010 Measure establishes statutory targets for the percentage of a local authority's municipal waste which must be recycled, prepared for re-use and composted and impose a financial liability on a local authority if it fails to meet a target. The 2011 Regulations supplement the 2010 Measure, by making detailed provision for the monitoring and enforcement of the targets. The 2011 Regulations refer to various provisions of the Waste Framework Directive which need to be amended to ensure they remain operable after EU exit.

Out of date references

In addition to the modifications described above, the 2019 Regulations correct out of date references to European Directives and Regulations in domestic legislation, using powers under section 2(2) of the European Communities Act 1972. The 2019 Regulations update references in the four pieces of domestic legislation set out above so that they refer to the correct version of the Waste related directives. This is consistent with other updates that have been made and to ensure the statute book works effectively post EU Exit.

Why is it being changed?

Directives are not being incorporated into domestic law under the Withdrawal Act and will not form part of retained EU law. Therefore, the 2019 Regulations make provision so that the domestic legislation that cross-refer to the various directives are amended (e.g. the directives are modified, where necessary, for the purpose of that legislation) to ensure that it continues to operate as intended after EU Exit. The minor and technical changes made by the instrument are necessary to ensure that the legislation it amends continues to operate effectively following the UK's withdrawal from the European Union.

What will it now do?

The instrument will ensure that the legislation being amended continues to operate effectively after the UK leaves the EU. There is no change in environmental standards.

5. Consultation

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

6. Regulatory Impact Assessment (RIA)

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

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Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

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

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

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

Part 2

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

1. Sifting statement(s)

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

“In my view The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because the changes being made are technical in nature and make no substantive changes to waste law in Wales.”

2. Appropriateness statement

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

“In my view The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 does no more than is appropriate”. This is the case because the instrument makes technical amendments only which are designed to address failures of retained EU law to operate effectively after exit day.”

3. Good reasons

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

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because the provisions ensure that protections provided by the Welsh legislation being amended continue to be operable after the UK leaves the European Union.”

4. Equalities

- 4.1 The Deputy Minister for Housing and Local Government, Hannah Blythyn has made the following statement(s)

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

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

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

5. Explanations

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

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.

Statutory Instruments with Clear Reports

18 February 2019

SL(5)317 – The Free School Lunches and Milk (Universal Credit) (Wales) Order 2019

Procedure: Negative

This Order amends the current eligibility criteria for free school lunches and milk ("free school meals") by specifying that, from 1 April 2019, families that receive Universal Credit are eligible for free school meals if their annualised net earned income is £7,400 or less.

This Order also provides for transitional protection to ensure that no child will lose their eligibility for free school meals during the rollout period of Universal Credit.

Parent Act: Education Act 1996

Date Made: 5 February 2019

Date Laid: 6 February 2019

Coming into force date: 1 April 2019



Agenda Item 6.1

SL(5)318 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2019

Background and Purpose

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (“the Principal Regulations”), which were made under section 22 of the Teaching and Higher Education Act 1998. The Principal Regulations make provision for the repayment of income-contingent student loans in England and Wales. These Regulations make changes to the way in which repayments are administered to reduce the extent of overpayment by borrowers. The Regulations are made on a composite basis by the Secretary of State (for Education) and the Welsh Ministers (as were the Principal Regulations). The Explanatory Memorandum explains the relevant powers that are still exercisable by the Secretary of State in relation to Wales.

Procedure

Negative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2(ix) in respect of this instrument.

As with the Principal Regulations, these Regulations are made in English only. The Explanatory Memorandum states that: “Given the composite nature of the Regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will be made in English only.”

Merits Scrutiny

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

Implications arising from exiting the European Union

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

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

7 February 2019



STATUTORY INSTRUMENTS

2019 No. 189

EDUCATION

The Education (Student Loans) (Repayment) (Amendment) Regulations 2019

Made - - - - *5th February 2019*

Laid before Parliament *7th February 2019*

Laid before the National Assembly for Wales *7th February 2019*

Coming into force - - *6th April 2019*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 22 and 42 of the Teaching and Higher Education Act 1998(a).

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the Secretary of State by sections 22 and 42 of the Teaching and Higher Education Act 1998, now exercisable by them(b).

Citation and commencement

1. These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) Regulations 2019 and come into force on 6th April 2019.

Amendment of the Education (Student Loans) (Repayment) Regulations 2009

2. The Education (Student Loans) (Repayment) Regulations 2009(c) are amended as follows.

3. In regulation 17—

-
- (a) 1998 c. 30. Section 22 was amended by section 146 of the Learning and Skills Act 2000 (c. 21), Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147 of the Finance Act 2003 (c. 14), sections 42 and 43 of and Schedule 7 to the Higher Education Act 2004 (c. 8), section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 76 of the Education Act 2011 (c. 21) and S.I. 2013/1881. Section 22 is also amended by section 86(2) to (7) of the Higher Education and Research Act 2017 (c. 29) but those amendments are not yet in force. Section 43(1) of the Teaching and Higher Education Act 1998 defines “prescribed” and “regulations”.
 - (b) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), (3)(e) and (f) and (5). Functions under subsections (2)(a), (c) and (k) are exercisable by the Secretary of State concurrently with the National Assembly for Wales. The section 22 functions which were transferred to, or became exercisable by, the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The functions of the Secretary of State under section 42 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The section 42 functions which were transferred to the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
 - (c) S.I. 2009/470, amended by S.I. 2010/661, 2010/1010, 2011/784, 2012/836, 2012/1309, 2013/388, 2013/591, 2013/607, 2013/1881, 2014/651, 2017/831, 2018/284, 2018/599 and 2018/810.

- (a) in paragraph (c)—
 - (i) after “Part 4”, insert “in respect of the tax year ending on 5 April 2019 or any previous tax year”;
 - (ii) at the end of sub-paragraph (iii), omit “and”;
- (b) after paragraph (c), insert—
 - “(ca) where an amount is deducted by an employer under Part 4 in respect of the tax year beginning on 6 April 2019 or any subsequent tax year, a repayment of that amount is considered to have been received by the Authority on—
 - (i) the day on which it was deducted by the employer; or
 - (ii) where an adjustment is made in relation to the deduction, such other day as HMRC specifies in order to take account of that adjustment; and”.

4. In regulation 18A—

- (a) before “Where” insert “(1) Subject to paragraph (2),”;
- (b) at the end, insert “(2) For the purposes of repayments under Part 4 in respect of the tax year beginning on 6 April 2019 or any subsequent tax year, the references in paragraph (1) to the repayment thresholds in regulations 29(7) and 29(8) are to be read as references to an apportionment of those thresholds in respect of each month of the tax year in question, calculated by dividing the relevant repayment threshold into twelve equal parts.”.

5. In regulation 21A—

- (a) in paragraph (2), after “Subject to paragraphs (2A), (2B), (2C),”, insert “(2D), (2E), (2F),”;
- (b) after paragraph (2C), insert—

“(2D) Subject to paragraphs (2E) and (2F), for a borrower to whom Part 4 applies and has applied for the whole or part of the previous tax year, where the borrower repays all of the outstanding balance of the post-2012 student loan by way of deductions from earnings under Part 4 during the tax year beginning on 6 April 2019, any subsequent tax year or any part of those tax years, that loan bears interest at the rate which will result in an annual percentage rate of charge determined in accordance with total charge for credit rules equal to—

- (a) where the interest income the borrower received in the previous tax year is the lower interest threshold or less, the standard interest rate;
- (b) where the interest income the borrower received in the previous tax year is more than the lower interest threshold but not more than the higher interest threshold, the standard interest rate plus the additional interest rate;
- (c) where the interest income the borrower received in the previous tax year is more than the higher interest threshold, the standard interest rate plus 3%.

(2E) The interest income applied in paragraph (2D) will be from the tax year in which a borrower repays all of the outstanding balance of the post-2012 student loan by way of deductions from earnings under Part 4 where—

- (a) the borrower requests that their interest rate is recalculated after the end of the tax year; and
- (b) the borrower’s interest income in that tax year is less than the interest income the borrower received in the previous tax year.

(2F) Where, during the tax year beginning on 6 April 2019 or any subsequent tax year or any part of those tax years, a borrower repays all of the outstanding balance of the post-2012 student loan by way of deductions from earnings under Part 4 in the tax year specified by regulation 15(2), that loan bears interest at the rate which will result in an annual percentage rate of charge determined in accordance with total charge for credit rules equal to the standard interest rate.”.

5th February 2019

Chris Skidmore
Minister of State
Department for Education

5th February 2019

Kirsty Williams
Minister for Education, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“the Principal Regulations”), which were made under section 22 of the Teaching and Higher Education Act 1998 (c. 30) and make provision for the repayment of income-contingent student loans in England and Wales.

Regulations 2 to 5 amend the Principal Regulations.

Regulation 3 makes provision, in respect of the tax year 2019/20 and subsequent tax years, for when an amount paid by a borrower via deductions by their employer under Part 4 of the Principal Regulations is considered to have been paid by the borrower and received by the Authority.

Regulation 4 provides, in respect of the tax year 2019/20 and subsequent tax years, for apportionments of the relevant repayment thresholds to be used in place of the repayment thresholds by the Authority when dividing repayments between loans under Regulation 18A of the Principal Regulations for those borrowers repaying via deductions by their employer under Part 4 of the Principal Regulations.

Regulation 5 makes provision, in respect of the tax year 2019/20 and subsequent tax years, for the calculation of interest in the final year of repayment of borrowers who repay via deductions by their employer under Part 4 of the Principal Regulations.

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

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

The Explanatory Memorandum laid before Parliament is published alongside the instrument on www.legislation.gov.uk.

**Explanatory Memorandum to the Education (Student Finance)
(Miscellaneous Amendments) (Wales) Regulations 2019**

This Explanatory Memorandum has been prepared by the Higher Education 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.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Cabinet Secretary for Education
13 February 2019

1. Description

The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2019 ('the Regulations') amend:

- a) the Education (Fees and Awards) (Wales) Regulations 2007; ("2007 Regulations");
- b) the Education (European University Institute) (Wales) Regulations 2014 ("2014 Regulations");
- c) the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provisions) (Wales) Regulations 2015 ("2015 Regulations");
- d) the Education (Student Support) (Wales) Regulations 2017 ("2017 Regulations");
- e) the Education (Student Support) (Wales) Regulations 2018 ("2018 Regulations"); and
- f) the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations ("Doctoral Regulations").

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

None.

3. Legislative background

The Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983 (in relation to the amendments made to the 2007 Regulations); Section 5(5)(b) of the Higher Education (Wales) Act 2015 (in relation to the amendments made to the 2015 Regulations) and sections 22 and 42(6) of the Teaching and Higher Education Act 1998 (in relation to the amendments to the 2014 Regulations, the 2017 Regulations, the 2018 Regulations and the Doctoral Regulations).

Sections 1 and 2 of the 1983 Act provide the Welsh Ministers with powers to make regulations requiring or authorising the charging of higher fees to certain students and to prescribe the persons who may be eligible for certain awards in connection with education, training or research. Section 22 of the 1998 Act provides the Welsh Ministers with the power to make regulations authorising or requiring the payment of financial support to students studying courses of higher or further education designated by or under those regulations. In particular, this power enables the Welsh Ministers to prescribe the amount of financial support (grant or loan) and who is eligible to receive such support.

Section 5 of the 2015 Act allows the Welsh Ministers to make regulations prescribing the qualifying courses and qualifying persons that will benefit from the fee limits set out in an institution's fee and access plan. This applies to certain higher education providers in Wales regulated by HEFCW under the 2015 Act.

Section 44 of the Higher Education Act 2004 ('the 2004 Act') provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State under section 22 of the 1998 Act (except insofar as they relate to the making of any provision authorised by subsections (2)(j), (3)(e) or (f) or (5) of section 22). Section 44 of the 2004 Act also provided for the functions of the Secretary of State in section 22(2)(a), (c) and (k) of the 1998 Act to be exercisable concurrently with the National Assembly for Wales.

The functions of the Secretary of State under section 2 of the 1983 Act and section 42(6) of the 1998 Act were transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

The functions of the Secretary of State under section 1 of the 1983 Act were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2006 (S.I. 2006/1458).

The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.

This instrument will follow the Negative Resolution procedure.

4. Purpose and intended effect of the legislation

The Welsh Ministers make regulations to provide the basis for the system of financial support for students taking designated courses of higher education who are eligible students undertaking designated courses. The Regulations apply to academic years beginning on or after 1 September 2019 and introduce a number of changes to student support and related matters, as set out below.

The 2017 Regulations and 2018 Regulations provide for financial support for students taking designated higher education courses which begin on or after 1 September 2017 and on or after 1 August 2018 respectively. The 2018 Regulations also provide support for courses which begin before 1 August 2018 and are subsequently converted from full-time to part-time or part-time to full-time on or after 1 August 2018.

Increase the amount of Disabled Student's Grant

The amount of Disabled Student's Grant available to eligible students under the 2017 Regulations and the 2018 Regulations will increase by 6.1 per cent. Table 1 below sets out the existing and increased amounts of support. The increased amounts will apply to both new and continuing students (i.e. all cohorts) in 2019/20.

The maximum amounts of support available to eligible disabled students has not changed since 2012. The maximum amounts available to students ordinarily resident in England were increased by the UK Government in 2018/19, including a rise to £20,000 in the amount of the Disabled Student's Grant available to postgraduate students. The increase provided for by the Regulations will ensure that eligible students receive increased support and are not disadvantaged when compared to their English counterparts.

Table 1

Case	Current amount in 2018/19	Increased amount in 2019/20
Expenditure required on a non-medical personal helper	£21,181 (full-time) £15,885 (part-time)	£22,472 (full-time) £16,853 (part-time)
Expenditure required on major items of specialist equipment	£5,332	£5,657
Other expenditure	£1,785 (full-time) £1,338 (part-time)	£1,894 (full-time) £1,420 (part-time)
Amount of postgraduate Disabled Student's Grant	£10,590	£20,000

Increase the amount of maintenance support available to 2018 cohort students

The amount of maintenance loan available under the 2018 Regulations to those eligible students who began their courses on or after 1 August 2018 will be increased. The Diamond Review of Higher Education and Student Finance in Wales ('the Diamond Review') introduced the principle that maintenance support should be based upon the National Living Wage and the increase reflects the National Living Wage projection for 2019. The amount of base grant and maintenance grant and the associated income thresholds for means-testing are unchanged. Increasing loan rather than grant ensures continued affordability.

Table 2 below sets out the existing rates and the increased amounts.

Table 2

Table reference in 2018 Regulations	Loan amount in 2018/19	Loan amount in 2019/20
Table 7, Category 1, Living at home	£6,650	£6,840
Table 7, Category 1, London rate	£10,250	£10,530
Table 7, Category 1, Elsewhere rate	£8,000	£8,225
Table 7, Category 2, Elsewhere rate	£3,325	£3,420
Table 7, Category 3, London rate	£5,125	£5,265
Table 7, Category 3, London rate	£4,000	£4,110
Table 8, Living at home	£7,650	£7,840
Table 8, London rate	£11,250	£11,530
Table 8, Elsewhere rate	£9,000	£9,225
Table 8A, Living at home	£3,325	£3,420
Table 8A, London rate	£5,125	£5,265
Table 8A, Elsewhere rate	£4,000	£4,110
Table 9, Living at home	£80	£84
Table 9, London rate	£153	£162
Table 9, Elsewhere rate	£120	£127
Table 10	£5,650	£5,815
Table 10 A	£6,650	£6,815

Maintenance support for 2012 cohort students

The amount of maintenance support made available under the 2017 Regulations to eligible students who began their courses on or after 1 September 2012 but before 1 August 2018 is increased each year in order to reflect cost of living increases. For 2019/20, maintenance support is being increased in the way established for previous cohorts, via an uplift to the maintenance loan equivalent to the projected increase in RPIX of 2.8% for the 2019-20 financial year (OBR projection). The amount of maintenance grant and the associated income thresholds for means-testing are unchanged.

Table 3 below sets out the existing rates and the increased amounts.

Table 3

Regulation reference in the 2017 Regulations	Loan amount in 2018/19	Loan amount in 2019/20
Regulation 43, paragraph 2(i)	£5,529	£5,684
Regulation 43, paragraph 2(ii)	£10,007	£10,288
Regulation 43, paragraph 2(iii)	£8,517	£8,756
Regulation 43, paragraph 2(iv)	£8,517	£8,756
Regulation 43, paragraph 2(v)	£7,143	£7,344
Regulation 43, paragraph 3(i)	£5,006	£5,147
Regulation 43, paragraph 3(ii)	£9,112	£9,368
Regulation 43, paragraph 3(iii)	£7,408	£7,616
Regulation 43, paragraph 3(iv)	£7,408	£7,616
Regulation 43, paragraph 3(v)	£6,617	£6,803
Regulation 45, paragraph (1) (a) (i)	£2,625	£2,699
Regulation 45, paragraph (1) (a) (ii)	£4,920	£5,058
Regulation 45, paragraph (1) (a) (iii)	£3,500	£3,598
Regulation 45, paragraph (1) (a) (iv)	£3,500	£3,598
Regulation 45, paragraph (1) (a) (v)	£3,500	£3,598
Regulation 45, paragraph (1) (b) (i)	£2,625	£2,699
Regulation 45, paragraph (1) (b) (ii)	£4,920	£5,058
Regulation 45, paragraph (1) (b) (iii)	£4,186	£4,304
Regulation 45, paragraph (1) (b) (iv)	£4,186	£4,304
Regulation 45, paragraph (1) (b) (v)	£3,500	£3,598
Regulation 45, paragraph (1) (c) (i)	£4,147	£4,263

Regulation reference in the 2017 Regulations	Loan amount in 2018/19	Loan amount in 2019/20
Regulation 45, paragraph (1) (c) (ii)	£7,505	£7,716
Regulation 45, paragraph (1) (c) (iii)	£6,388	£6,567
Regulation 45, paragraph (1) (c) (iv)	£6,388	£6,567
Regulation 45, paragraph (1) (c) (v)	£5,357	£5,508
Regulation 45, paragraph (2) (a) (i)	£1,996	£2,052
Regulation 45, paragraph (2) (a) (ii)	£3,763	£3,869
Regulation 45, paragraph (2) (a) (iii)	£2,727	£2,804
Regulation 45, paragraph (2) (a) (iv)	£2,727	£2,804
Regulation 45, paragraph (2) (a) (v)	£2,727	£2,804
Regulation 45, paragraph (2) (b) (i)	£1,996	£2,052
Regulation 45, paragraph (2) (b) (ii)	£3,763	£3,869
Regulation 45, paragraph (2) (b) (iii)	£3,060	£3,146
Regulation 45, paragraph (2) (b) (iv)	£3,060	£3,146
Regulation 45, paragraph (2) (b) (v)	£2,727	£2,804
Regulation 45, paragraph (2) (c) (i)	£3,755	£3,860
Regulation 45, paragraph (2) (c) (ii)	£6,834	£7,026
Regulation 45, paragraph (2) (c) (iii)	£5,556	£5,712
Regulation 45, paragraph (2) (c) (iv)	£5,556	£5,712
Regulation 45, paragraph (2) (c) (v)	£4,963	£5,102
Regulation 50 paragraph 1 (a)	£80	£84
Regulation 50 paragraph 1 (b)	£153	£162
Regulation 50 paragraph 1 (c)	£166	£177
Regulation 50 paragraph 1 (d)	£166	£177
Regulation 50 paragraph 1 (e)	£120	£127

Adjust the balance between tuition fee grant and tuition fee loan for 2012 cohort students

In line with policy introduced in the 2012/13 academic year, the amount of tuition fee grant is being decreased and tuition fee loan increased for 2012 cohort students (i.e. students who start their course on or after 1 September 2012 but before 1 August 2018) by the projected rate of inflation (RPIX OBR projection, as above).

Table 4 below sets out the existing rates and the amended amounts.

Table 4

Regulation reference in the 2017 Regulations	Amount in 2018/19	Amount in 2019/20
<i>Fee grant</i>		
Regulation 16, paragraph 3, sub-paragraph (a)	£4,800	£4,665
Regulation 16, paragraph 3, sub-paragraph (b)	£4,200	£4,335
Regulation 16, paragraph 4, sub-paragraph (a)	£2,480	£2,410
Regulation 16, paragraph 4, sub-paragraph (b)	£2,020	£2,090
<i>Fee loan</i>		
Regulation 19, paragraph 3, sub-paragraph (a)	£4,200	£4,335
Regulation 19, paragraph 4, sub-paragraph (a)	£2,020	£2,090

Student support for unaccompanied children

The Regulations will create a new eligibility category in respect of individuals granted leave to remain under Section 67 of the Immigration Act 2016 for the purposes of the 2014 Regulations, the 2017 Regulations, the 2018 Regulations and the Doctoral Regulations. Consequential amendments are also made to the 2017 Regulations and the 2015 Regulations to provide that such students are treated for tuition fee purposes as home students and qualifying persons respectively.

In June 2018 the Home Office introduced a new category of limited leave – Section 67 of the Immigration Act 2016 leave ('section 67 leave') – for those unaccompanied children transferred to the UK under Section 67 of the Immigration Act 2016 who do not qualify for leave under the current Immigration Rules as refugees or other protection-based leave. This is the so-

called 'Dubs amendment', designed to assist unaccompanied children who are refugees. Individuals who qualify for section 67 leave will have the right to study, work, access public funds (claim benefits and housing support) and healthcare, and apply for indefinite leave to remain without paying a fee after five years.

The new eligibility category will also include dependent children of those granted leave to remain. The Immigration Act 2016 will permit the dependent child of a person granted leave to be granted leave to enter or remain for the same duration as that person provided that certain requirements are met. For the purposes of this eligibility category, a dependent child means a child who is under 18 years of age and for whom the person has parental responsibility.

Additionally, all other residency criteria must be met. The student must be:

- ordinarily resident in Wales on the first day of the first academic year of the course; and
- lawfully ordinarily resident in the UK and Islands throughout the three year period immediately preceding the first day of the first academic year of the course.

The UK Government is making the same change. New and continuing students with section 67 leave will be eligible for support.

Designation of courses in England for the purpose of student support

Until 2017, courses offered by publicly funded providers in England were designated by the student support regulations – so-called 'automatic designation'. From 2017, courses offered by providers maintained or assisted by recurrent grants from the Higher Education Funding Council for England were so designated. The Higher Education Funding Council for England was abolished in March 2018. A new system for course designation in England, operated by the Office for Students, is to take effect from 1 August 2019, making it necessary to revise the conditions of designation in the 2017 Regulations, the 2018 Regulations and the Doctoral Regulations.

The Higher Education and Research Act 2017 makes provision for the establishment of an Office for Students ('OfS'). The OfS must establish and maintain a register of English higher education providers ('the Register'), which may be divided into different parts representing such different categories of registration as the OfS may determine. The OfS has commenced publishing the

Register and is in the process of registering higher education providers for 2019/20 onwards.

The Register is in two parts: i) Approved (fee cap) providers and ii) Approved providers. Within the Approved (fee cap) part of the register, providers are further classified according to whether they have an Access and Participation Plan or not. Providers with an Access and Participation Plan may charge higher fees, up to a legal maximum, than those without a plan, who may only charge a lower amount (fee limits are unchanged from 2018/19). Access and Participation plans set out how higher education providers will improve equality of opportunity for underrepresented groups to access, succeed in and progress from higher education. The UK Government will make available fee support to students accordingly. Providers on the Register are regulated by the OfS.

Full and part-time undergraduate, postgraduate Master's and doctoral courses, as well as postgraduate courses for the purpose of providing Disabled Student's Grants, provided by a provider in the Approved (fee cap) part of the Register will be automatically designated by the Welsh Ministers. Providers of higher education which are not in this part of the Register will be able to apply to the Welsh Ministers, via the Higher Education Funding Council for Wales, for 'specific designation' in accordance with established policy. The franchised courses (except postgraduate courses for the purpose of providing Disabled Student's Grants) of providers who are in the Approved (fee cap) part of the Register and have an Access and Participation Plan will, where the franchisee is on the Register, be automatically designated. A franchisor not in this part of the Register, or not on the Register, will have to apply for specific designation of franchised courses.

Continuing support is also provided for in the Regulations in order that continuing students at providers who before 1 August 2018 had courses automatically designated but who do not register in the relevant part of the register or those who may face a fee increase (up to the legal maximum) are protected and able to complete their course. In both cases, courses will be designated, and continuing students will be eligible for support at the ordinary provider rate, the maximum made available.

Consequential amendments as a result of the change from JACS to HECoS course coding

Students who have an equivalent level qualification to that which the regulations provide support for are not usually eligible for support. One exception to this is for certain part-time STEM courses, which have been

specified in the regulations using the Joint Academic Coding System ('JACS'), which is maintained by the Universities and Colleges Admission Service ("UCAS"). JACS is being replaced in AY 2019/20 with a new subject coding system – the Higher Education Classification of Subjects ('HECoS'), which is maintained by UCAS and the Higher Education Statistics Agency. JACS is used by various bodies involved in the administration of higher education. The Regulations have been updated to the new standard.

HECoS does not directly align with JACS. Whilst single headings from the JACS system were used to describe the courses which were subject to an exemption, this is no longer possible under the HECoS system. HECoS subject codes have been used which preserve the original exceptions.

5. Regulatory Impact Assessment

Options

Option 1: Business as usual

In the event of the Regulations not being made the principal implications are:

- students eligible for a Disabled Student's Grant would not receive an increase in the value of support and would be worse off than their counterparts in England;
- 2012 and 2018 cohort students would not receive a cost-of-living increase to their maintenance loan;
- 2012 cohort students would not have their tuition fee loan and grant amounts adjusted according to established policy. This would put pressure on Welsh Government budgets for student support;
- those with section 67 leave would be unable to access student support for higher education and the benefits its confers;
- new students undertaking part-time exception courses from 2019/20 may not be eligible for support as intended; and
- courses provided by institutions in England would cease to be designated for the purposes of student support and there would be inadvertent policy changes to the designation of others.

Option 2: Make the Regulations

Making the Regulations ensures that the problems noted above are avoided, the legislative framework reflects the Welsh Ministers' policy for student support, and students are able to apply for appropriate support.

Costs and benefits

Option 1: Business as usual

Leaving the previous regulations in place would mean no additional costs are incurred via the student support system. There would be no benefit to students ordinarily resident in Wales, as the changes described above would not be implemented.

Option 2: Make the Regulations

By making the Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2019 the Welsh Ministers ensure that the Welsh student support system has a proper underpinning legal framework and that policy commitments to higher education and students can be met. Students who are ordinarily resident in Wales will benefit from the changes to support outlined above. The benefits of a higher education to the individual, to the economy and to society are well established.

Disabled Student's Grant

The uplifts to the maximum amounts of support available to disabled students are estimated to cost between £0.3m and £0.4m. This does not represent an additional cost against projected budget requirements, as default forecasting assumptions include inflationary increases in support provided.

Maintenance and tuition fee support

The cost of ongoing reforms and routine changes to student support for living costs and tuition fees were established when new support arrangements were introduced by the Education (Student Support) (Wales) Regulations 2018. Now that the new policies are established, additional costs reflect the continued 'phase-in' of a new cohort of students on the new arrangements and routine inflationary changes to the maximum levels of relevant student support products. These drivers are included in student finance forecasts by default and do not, therefore, represent any cost in addition to established budget requirements.

The requirement for the provision of additional loans from Her Majesty's Treasury to enable the continuation of existing undergraduate student support policy is established. The estimated cost of the additional loans between 2018-19 and 2019-20 is around £100m. In addition, the Government subsidy on the provision of loans (Resource Accounting and Budgeting ('RAB') charge, or non-cash) will increase by around £40m between 2018-19 and 2019-20. Most of the increased budget requirements result from a new intake of students on the arrangements established by the Education (Student Support) (Wales) Regulations 2018, with a relatively small proportion as a consequence of routine uplifts to maximum loan amounts. Also largely as a consequence of the continuation of established policy, the combined cost of maintenance and tuition fee grants for undergraduate students is estimated to be around £45m lower in 2019-20 than in 2018-19.

Section 67 leave – unaccompanied children

The changes outlined relating to the unaccompanied children are expected to have no or negligible financial implications for the Welsh Government. It is not possible to determine how many unaccompanied children may take up support for study, but the number will be very small. The UK Government will grant leave to 480 refugees, a small proportion of which can be expected to become ordinarily resident in Wales, and fewer still to pursue a higher education.

Designation of courses in England

Making the regulations will ensure courses currently designated for the purposes of student support continue to be. There may be some additional cost if students at providers subject to the lower rate of fee support are provided a higher rate of fee support as part of transitional protection. This is unlikely to be extensive and the cost implications are expected to be nil or negligible.

Changes in the coding of part-time exception courses

The regulations will ensure courses currently considered as exceptions to equivalent level qualifications restrictions on access to support for part-time study continue to be considered as such. There is, therefore, no additional cost.

CONSULTATION

There is no statutory requirement to consult on the Regulations, but a short consultation was carried out in December and February 2019 to ascertain views from stakeholders in two policy areas:

- a. a new residency category in the regulations so that individuals granted leave to remain under Section 67 of the Immigration Act 2016 will be eligible students for the purpose of student support;
- b. new designation arrangements for English HEIs as a result of the introduction of the Office for Students (OfS).

A summary of the consultation responses has been published. A Student Finance Wales Information Notice detailing some of the changes was issued in December 2018.

COMPETITION ASSESSMENT

The making of the Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

POST-IMPLEMENTATION ASSESSMENT

The main regulations governing the student support system are revised annually and are continually subject to detailed review, both by policy officials and delivery partners in their practical implementation of the Regulations.

SUMMARY

The making of these Regulations is necessary to establish the basis for, and update aspects of, the higher education student support system (and connected matters) for students ordinarily resident in Wales and EU students studying in Wales in the 2019/20 academic year.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The European Union (Withdrawal) Act and Common Frameworks**

DATE **12 February 2019**

BY **Jeremy Miles AM, Counsel General and Brexit Minister**

The European Union (Withdrawal) Act requires the UK Government to report to Parliament periodically on matters relating to common frameworks and the use made by the UK Government of powers under section 12 of the Act (the so-called 'freezing powers') temporarily to maintain existing EU law limits on devolved competence. The Assembly's Standing Orders require that any such report is laid before the Assembly within one day of having been laid in Parliament.

[The second such report was laid in Parliament on 7 February.](#)



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Nutrition (Amendment etc) (EU Exit) Regulations 2019**

DATE **8 February 2019**

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

The Nutrition (Amendment etc) (EU Exit) Regulations 2019 (“the Regulations”)

This written statement has been re-issued due to the Regulations being laid by the UK Government on 16 January, withdrawn, re-laid on 17 January, withdrawn then laid again on 30 January. This was due to the need to correct errors in the Regulations which were picked up at scrutiny post laying. The amendments made do not change the purpose or effect of the Regulations.

The main retained EU law which is being amended

- Regulation (EC) 1924/2006 sets out the legal framework businesses must comply with if they want to make nutrition or health claims to ensure that claims are accurate and consumers are not mislead.
- Regulation (EC) 1925/2006 which stipulates which vitamins, minerals, and certain other substances may be added to foods; sets out how new substances may be assessed and approved; and outlines compositional and labelling requirements for foods that have substances added to them.
- Regulation (EC) 609/2013 sets general compositional and labelling rules for four food categories those being infant and follow-on formula, processed cereal-based food and baby foods, food for special medical purposes (foods necessary for the management of particular medical conditions) and total diet replacement for use in energy restricted diets for weight reduction.

The EU tertiary legislation which is subject to minor and technical amendment

- Commission Regulation (EC) No 353/2008
- Commission Regulation (EC) No 953/2009
- Commission Regulation (EC) No 983/2009
- Commission Regulation (EC) No 984/2009
- Commission Regulation (EC) No 1024/2009
- Commission Regulation (EC) No 1025/2009

- Commission Regulation (EC) No 1167/2009
- Commission Regulation (EC) No 1168/2009.
- Commission Regulation (EU) No 375/2010
- Commission Regulation (EU) No 382/2010
- Commission Regulation (EU) No 383/2010
- Commission Regulation (EU) No 384/2010
- Commission Regulation (EU) No 957/2010
- Commission Regulation (EU) No 958/2010
- Commission Regulation (EU) No 1161/2010
- Commission Regulation (EU) No 1162/2010
- Commission Regulation (EU) No 432/2011
- Commission Regulation (EU) No 440/2011
- Commission Regulation (EU) No 665/2011
- Commission Regulation (EU) No 666/2011
- Commission Regulation (EU) No 1160/2011
- Commission Regulation (EU) No 1170/2011
- Commission Regulation (EU) No 1171/2011
- Commission Implementing Regulation (EU) No 307/2012
- Commission Regulation (EU) No 378/2012
- Commission Regulation (EU) No 379/2012
- Commission Implementing Regulation (EU) No 489/2012
- Commission Regulation (EU) No 1048/2012
- 2013/63/EU: Commission Implementing Decision
- Commission Regulation (EU) No 851/2013
- Commission Regulation (EU) No 1017/2013
- Commission Regulation (EU) No 1066/2013
- Commission Regulation (EU) No 40/2014
- Commission Regulation (EU) No 155/2014
- Commission Regulation (EU) No 175/2014
- Commission Regulation (EU) No 1135/2014
- Commission Regulation (EU) No 1154/2014
- Commission Regulation (EU) No 1226/2014
- Commission Regulation (EU) No 1228/2014
- Commission Regulation (EU) No 1229/2014
- Commission Regulation (EU) 2015/7
- Commission Regulation (EU) 2015/8
- Commission Regulation (EU) 2015/391
- Commission Regulation (EU) 2015/402
- Commission Regulation (EU) 2015/539

- Commission Regulation (EU) 2015/1041
- Commission Regulation (EU) 2015/1052
- Commission Regulation (EU) 2015/1886
- Commission Regulation (EU) 2015/1898
- Commission Regulation (EU) 2015/2314
- Commission Delegated Regulation (EU) 2016/128
- Commission Regulation (EU) 2016/371
- Commission Regulation (EU) 2016/372
- Commission Implementing Regulation (EU) 2016/854
- Commission Regulation (EU) 2016/862
- Commission Regulation (EU) 2016/1379
- Commission Regulation (EU) 2016/1381
- Commission Regulation (EU) 2016/1389
- Commission Regulation (EU) 2016/1390
- Commission Regulation (EU) 2016/1411
- Commission Regulation (EU) 2016/1412
- Commission Regulation (EU) 2017/236
- Commission Implementing Regulation (EU) 2017/672
- Commission Implementing Regulation (EU) 2017/676
- Commission Regulation (EU) 2017/1200
- Commission Regulation (EU) 2017/1201
- Commission Regulation (EU) 2017/1202
- Commission Regulation (EU) 2018/199
- Commission Regulation (EU) 2018/1555
- Commission Regulation (EU) 2018/1556

The EU tertiary legislation which is being revoked

- Commission Regulation (EU) No 907/2013

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

The Regulations contain provision which enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance. It also contains provision whereby the Welsh Ministers could provide consent to the Secretary of State to exercise functions in relation to Wales on their behalf.

Functions transferred to the Secretary of State with consent would constitute functions of a Minister of the Crown for the purposes Schedule 7B to Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union in the retained direct EU legislation relating to nutrition. The Regulations

will make technical amendments to the retained direct EU law without making any material change in the level of protection given to human health or to the high standard of food consumers expect from both domestically produced and imported products.

The Regulations will make technical fixes such as removing references to EU institutions and other Member States and will define 'third countries' as any country outside of the UK. The main corrections proposed by these Regulations involve the transfer of scientific advisory functions currently undertaken by European Food Safety Authority (EFSA) to existing appropriate UK bodies or to a newly established UK Nutrition and Health Claims Committee (UKNHCC). This new committee will be established under the remit of Public Health England and will be responsible for the scientific substantiation and providing advice to the four UK administrations on any new nutrition and health claims made within the UK post exit.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/SqFamWTC>

Why consent was given

There is no divergence between the Welsh Government and the UK Government (Department of Health and Social Care) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

83 - The Nutrition (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 8 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 11
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 23 of, and paragraph 21 of Schedule 7 to, of the European Union (Withdrawal) Act 2018.

The purpose of this instrument is to remedy deficiencies in UK legislation relating to nutrition, arising from the withdrawal of the UK from the European Union ("EU"), in the event that the UK leaves without a deal having been agreed. This instrument amends existing domestic, and retained EU, legislation as well as revoking some pieces of related EU tertiary legislation which will no longer have any application to the UK after withdrawal.

The subject areas covered by this nutrition legislation are: nutrition and health claims made on food; the addition of vitamins, minerals and certain other substances to foods; composition and labelling of food supplements; the composition and labelling of food for specific groups; and the sale of products containing Kava-kava.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 8 February 2019 regarding the effect of these regulations:

1. These regulations were originally laid on 16 January 2019 but subsequently withdrawn. A new version of the regulations were laid on 17 January 2019. This version was later withdrawn, and the regulations were laid for a third time on 30 January 2019.
2. The original Welsh Government written statement was laid on 18 January 2019 but seemed to refer to the original version of the regulations. The Committee considered the statement on 28 January 2019 and agreed to write to the Minister to seek clarification on certain issues, including whether the Welsh Government had provided consent to the re-laid regulations, the Welsh Government's role, if any, in the re-drafting of the regulations, any effect on the Assembly's legislative competence, and the 11 day consultation period.
3. The Welsh Government written statement was amended and re-issued on 29 January 2019. As the re-issued statement merely amended the hyperlink to refer to the updated regulations, without providing any additional commentary, the Committee considered this unsatisfactory. This was made clear in the Committee's letter of 31 January 2019 to the Minister, which also raised the issues previously considered.
4. A response was received from the Minister for Finance and Trefnydd on 7 February 2019. The Welsh Government written statement was also re-issued on 8 February 2019.
5. The current written statement, like previous versions, states the following:

"While these Regulations contain provision which enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance, they also contain provision whereby the Welsh Ministers could provide consent to the Secretary of State to exercise functions in relation to Wales on their behalf.

Functions transferred to the Secretary of State with consent would constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in the subject areas outlined in the summary to this report."

6. Clarification was sought by the Committee on this point. In her response of 7 February 2019 to the Committee's letter of 31 January

2019, the Minister referred to her response to queries raised in relation to the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018. Here, the Minister states that:

"Welsh Government officials are in contact with the Wales Office about the unintended restrictions on the Assembly's competence created by powers conferred in EU Exit SIs and other legislation, which engages paragraphs 8, 10 and 11 of Schedule 7B of the Government of Wales Act. Officials are examining the issue in detail and considering how it can best be resolved. The Welsh Government will keep the National Assembly, including the Constitutional and Legislative Affairs Committee, informed about the progress of these discussions."

7. In relation to the drafting of the Welsh Government's written statement dated 8 February 2019, the following EU law has been included in the list of tertiary legislation subject to minor and technical amendment, when in reality they are being revoked by this instrument:
- 2013/63/EU: Commission Implementing Decision adopting guidelines for the implementation of specific conditions for health claims laid down in Article 10 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council;
 - Commission Implementing Regulation (EU) No 489/2012 establishing implementing rules for the application of Article 16 of Regulation (EC) No 1925/2006 of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods.

Save for the points mentioned above, the above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE The Food and Feed (Chernobyl and Fukushima Restrictions)
 (Amendment) (EU Exit) Regulations 2019

DATE 5 February 2019

BY Rebecca Evans AM, Minister for Finance and Trefnydd

The Food and Feed (Chernobyl and Fukushima Restrictions) (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No 1635/2006 laying down detailed rules for the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station;
- Regulation (EC) No 733/2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station;
- Regulation (EU) 2016/6 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) No 322/2014.

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current legislative powers under Regulation 733/2008 to the Welsh Ministers in relation to Wales. This will enable the Welsh Ministers to make regulations, subject to annulment by resolution of the National Assembly, to make regulations to deal with non-compliance with maximum permitted levels of radioactive contamination, to change the list of products that need control measures and to exempt certain products or businesses from maximum permitted levels. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union in the retained direct EU legislation which lays down the special conditions for the import of food and feed that have been affected by nuclear accidents at Chernobyl, Ukraine and Fukushima, Japan.

The retained EU legislation prohibits the import of food and feed from countries affected by those accidents that exceeds the maximum permitted levels of radioactive contamination specified. The retained legislation also imposes special conditions on certain food and feed products listed including pre-export testing and declarations which must accompany the consignment.

The Regulations will make technical corrections such as removing references to EU institutions and other Member States and will define ‘third countries’ as any country outside of the UK.

The main substantive corrections proposed by these Regulations involve transferring the Commission’s functions, including regulation-making functions, under the directly applicable EU law to the Welsh Ministers in relation to Wales. In particular, Regulation 733/2008 will confer powers on the Welsh Ministers to deal with repeated non-compliance with maximum permitted levels of radioactive contamination, to make amendments to Annex 1 in order to change the list of products that need control measures and to exempt certain products or businesses from maximum permitted levels.

The retained EU legislation relating to food and feed from countries affected by the Chernobyl and Fukushima nuclear accidents will expire on 31 March 2020 in relation to Wales, unless further legislation is passed following a review by the Welsh Ministers that determines these controls should be retained.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/Qziplxyl>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

91 - The Food and Feed (Chernobyl and Fukushima Restrictions) (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 4 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 13
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations amend retained EU law in relation the import of food and feed from countries affected by the Chernobyl and Fukushima accidents to substitute domestic references for those to EU institutions. In relation to Wales, that means substituting references to the Welsh Government (as the appropriate authority) and the Food Standards Agency for references to the European Commission and European Food Safety Authority respectively.

Legal Advisers agree with the statement laid by the Welsh Government dated 5 February 2019 regarding the effect of these Regulations.]

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Novel Food (Amendment) (EU Exit) Regulations 2019**
DATE **5 February 2019**
BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

The Novel Food (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001;
- Commission Implementing Regulation (EU) 2017/2468 laying down administrative and scientific requirements concerning traditional foods from third countries in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods;
- Commission Implementing Regulation (EU) 2017/2469 laying down administrative and scientific requirements for applications referred to in Article 10 of Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods;
- Commission Implementing Regulation (EU) 2017/2470 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods;
- Commission Implementing Regulation (EU) 2018/456 on the procedural steps of the consultation process for determination of novel food status in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods.

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current powers, including regulation-making functions, under the Regulations on novel foods to the Welsh Ministers in relation to Wales. This will enable the Welsh Ministers to make regulations, subject to annulment by the National Assembly, to add authorised novel foods to the UK list of novel foods and to change specifications and conditions of use for the novel foods. The Welsh Ministers will also be able to make regulations to amend non-essential elements of the retained EU law to, for example,

change the definition of nanomaterials. The SI will not have any impact on the Assembly's legislative competence.

Purpose of the amendments

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union in the retained direct EU legislation on novel foods, providing an operational framework in the UK after EU Exit for pre-market scientific assessment and authorisation of novel food/feed.

The amendments to the retained EU legislation will implement no policy changes or changes in approach to regulating Novel food/feed.

- (a) transferring functions currently conferred on the European Food Safety Authority (EFSA) to the "Food Safety Authority" (the FSA in England, Wales and Northern Ireland, and Food Standards Scotland). Current EFSA functions in relation to novel foods include undertaking risk assessments and scientific opinions on applications for novel food authorisations.
- (b) transferring European Commission functions in relation to Wales to the Welsh Ministers. The powers will enable/require the Welsh Ministers to:
 - Determine whether food or feed falls within the definition of a novel food.
 - Within seven months from the date of publication of a FSA opinion of a novel food application for authorisation, determine the application on the placing on the market within Wales of a novel food.
 - Add, remove or change the specifications, conditions of use, additional specific labelling requirements or post-market monitoring requirements associated with the inclusion of a novel food in the list.
 - Make regulations to amend non-essential elements of the retained EU law, for example, to change the definition of nanomaterials.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/e6qZuX4U>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

92 - The Novel Food (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 4 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 15
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government under section 8(1) of the European Union (Withdrawal) Act 2018.

The purpose of these Regulations is to ensure that there will continue to be a functioning statute book on exit day which maintains continuity in relation to novel food policy and legislation. Novel food is any food or food ingredient which was not commonly available in the EU before 15 May 1997.

Legal Advisers agree with the statement laid by the Welsh Government dated 5 February 2019 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect. Legal advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the

European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019**

DATE **5 February 2019**

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

The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed
- Regulation (EC) No 641/2004 on detailed rules for the implementation of Regulation (EC) No 1829/2003 of the European Parliament and of the Council as regards the application for the authorisation of new genetically modified food and feed, the notification of existing products and adventitious or technically unavoidable presence of genetically modified material which has benefited from a favourable risk evaluation;
- Implementing Regulation (EU) No 503/2013 on applications for authorisation of genetically modified food and feed in accordance with Regulation (EC) No 1829/2003 of the European Parliament and of the Council and amending Commission Regulations (EC) No 641/2004 and (EC) No 1981/2006;
- Commission Decision 2006/197/EC;
- Commission Decision 2007/305/EC;
- Commission Decision 2007/306/EC;
- Commission Decision 2007/307/EC;
- Commission Decision 2007/692/EC;
- Commission Decision 2007/701/EC;
- Commission Decision 2007/703/EC;
- Commission Decision 2008/280/EC;
- Commission Decision 2008/730/EC;
- Commission Decision 2008/837/EC;
- Commission Decision 2008/933/EC;
- Commission Decision 2009/184/EC;
- Commission Decision 2009/813/EC;
- Commission Decision 2009/814/EC;
- Commission Decision 2009/866/EC;

- Commission Decision 2010/429/EU;
- Commission Decision 2011/354/EU;
- Commission Decision 2011/366/EU;
- Commission Decision 2011/891/EU;
- Commission Implementing Decision 2012/81/EU;
- Commission Implementing Decision 2012/82/EU;
- Commission Implementing Decision 2012/83/EU;
- Commission Implementing Decision 2012/84/EU;
- Commission Implementing Decision 2012/347/EU;
- Commission Implementing Decision 2012/651/EU;
- Commission Implementing Decision 2013/327/EU;
- Commission Implementing Decision 2013/648/EU;
- Commission Implementing Decision 2013/649/EU;
- Commission Implementing Decision 2013/650/EU;
- Commission Implementing Decision (EU) 2015/683;
- Commission Implementing Decision (EU) 2015/684;
- Commission Implementing Decision (EU) 2015/685;
- Commission Implementing Decision (EU) 2015/686;
- Commission Implementing Decision (EU) 2015/687;
- Commission Implementing Decision (EU) 2015/688;
- Commission Implementing Decision (EU) 2015/689;
- Commission Implementing Decision (EU) 2015/690;
- Commission Implementing Decision (EU) 2015/691;
- Commission Implementing Decision (EU) 2015/693;
- Commission Implementing Decision (EU) 2015/695;
- Commission Implementing Decision (EU) 2015/696;
- Commission Implementing Decision (EU) 2015/697;
- Commission Implementing Decision (EU) 2015/698;
- Commission Implementing Decision (EU) 2015/699;
- Commission Implementing Decision (EU) 2015/700;
- Commission Implementing Decision (EU) 2015/701;
- Commission Implementing Decision (EU) 2015/2279;
- Commission Implementing Decision (EU) 2015/2281;
- Commission Implementing Decision (EU) 2016/1215;
- Commission Implementing Decision (EU) 2016/1216;
- Commission Implementing Decision (EU) 2016/1217;
- Commission Implementing Decision (EU) 2017/1208;
- Commission Implementing Decision (EU) 2017/1209;
- Commission Implementing Decision (EU) 2017/1211;
- Commission Implementing Decision (EU) 2017/1212;
- Commission Implementing Decision (EU) 2017/2448;
- Commission Implementing Decision (EU) 2017/2449;
- Commission Implementing Decision (EU) 2017/2450;
- Commission Implementing Decision (EU) 2017/2451;

- Commission Implementing Decision (EU) 2017/2452;
- Commission Implementing Decision (EU) 2017/2453;
- Commission Implementing Decision (EU) 2018/1109;
- Commission Implementing Decision (EU) 2018/1110;
- Commission Implementing Decision (EU) 2018/1111;
- Commission Implementing Decision (EU) 2018/1112.

The retained EU law which is being revoked:

- Regulation (EC) No 1981/2006 on detailed rules for the implementation of Article 32 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council as regards the Community reference laboratory for genetically modified organisms (EU) No. 931/2011 of 19 September 2011 on the traceability requirements set by Regulation (EC) No 178/2002 of the European Parliament and of the Council for food of animal origin.

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current powers, including regulation-making functions, to Welsh Ministers in relation to Wales. This will enable Welsh Ministers to decide whether or not to approve applications for new GMOs to be placed on the market in Wales. The Welsh Ministers will also have regulation-making powers, subject to annulment by resolution of the National Assembly, to amend non-essential parts of Regulation 1829/2003 and to set rules on the preparation and presentation of applications for GM authorisations. The Welsh Ministers will also have powers to appoint a reference laboratory for the purposes of undertaking particular tasks related to analysing GM food and feed, and to make regulations to set rules related to the work to be carried out by the reference laboratory. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union in the retained direct EU legislation which lays down rules for pre-market scientific assessment and authorisation of GM food/feed.

The Regulations will make technical fixes such as removing references to EU institutions and other Member States. It will also change the reference to the EU register of authorised GM food/feed to be a reference to an administrative register in the UK and will define 'third countries' as any country outside of the UK. It will also provide for the revocation of Regulation (EC) No 1981/2006 which provided for the use of Community Reference Laboratories.

The more substantive amendments will:

- transfer responsibilities currently conferred on the European Food Safety Authority (EFSA) to the "Food Safety Authority" (the FSA in England, Wales and Northern Ireland, and Food Standards Scotland). For GM food and feed this will include undertaking risk

assessments and producing scientific opinions on applications for GM food/feed authorisations.

- amend references to EU GM laboratories and laboratory networks to refer to the UK Reference Laboratory.
- transfer the European Commission's functions to the Welsh Ministers in relation to Wales to enable or require them to:
 - Determine whether food or feed falls within scope of the relevant retained EU law.
 - Decide whether to approve applications for new GMOs to be placed on the market.
 - Modify, suspend or revoke authorisations in exceptional circumstances.
 - Make regulations to amend non-essential elements of the retained EU law, for example to take account of new advances in science, and to make regulations to prescribe detailed rules relating to applications for, and applications for renewal of, authorisations of GM food/feed.

These Regulations will also correct individual retained EU GM food/feed authorisations to ensure that they remain valid in the UK context, and can continue to be placed on the UK market after EU exit.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/I01jC6l6>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

93 - The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 4 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 17
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations amend the following retained EU law to correct deficiencies that arise as a consequence of the UK's exit from the EU: Regulation (EC) No. 1829/2003 (framework regulation on genetically modified food and feed); Commission Regulation (EC) No 641/2004 (detailed rules on applications for authorisation of new GM food and feed and adventitious or technically unavoidable presence of authorised GM material, and 68 Commission Decisions authorising GM food and/or feed events for placing on the market, or withdrawing such authorisations and providing transitional arrangements which will be extant when the UK exits the EU. The instrument also revokes Commission Regulation (EC) No 1981/2006 (detailed rules regarding the Community reference laboratory for GM organisms) which will become redundant when the UK exits the EU.

These Regulations will make technical fixes such as removing references to EU institutions and other Member States. It will also change the reference to the EU register of authorised GM food/feed to be a reference to an administrative register in the UK and will define 'third countries' as any country outside of the UK.

The more substantive amendments will:

- transfer responsibilities currently conferred on the European Food Safety Authority (EFSA) to the "Food Safety Authority" (the FSA in England, Wales and Northern Ireland, and Food Standards Scotland). For GM food and feed this will include undertaking risk assessments and producing scientific opinions on applications for GM food/feed authorisations;
- amend references to EU GM laboratories and laboratory networks to refer to the UK Reference Laboratory;
- transfer the European Commission's functions to the Welsh Ministers in relation to Wales to enable or require them to:
 - determine whether food or feed falls within scope of the relevant retained EU law;
 - decide whether to approve applications for new GMOs to be placed on the market;
 - modify, suspend or revoke authorisations in exceptional circumstances;
 - make regulations to amend non-essential elements of the retained EU law, for example to take account of new advances in science, and to make regulations to prescribe detailed rules relating to applications for, and applications for renewal of, authorisations of GM food/feed.

These Regulations will also correct individual retained EU GM food/feed authorisations to ensure that they remain valid in the UK context, and can continue to be placed on the UK market after EU exit.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 5 February 2019 regarding the effect of these Regulations:

- the statement fails to reference the following as being amended by the Regulations:
 - Commission Decision 2007/702/EC;
 - Commission Decision 2010/419/EU;
 - Commission Implementing Decision (EU) 2016/1685.

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

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019**

DATE **5 February 2019**

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

The Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No 882/2004 of the European Parliament and the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules
- Commission Decision 2006/677 setting out the guidelines laying down criteria for the conduct of audits under Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls to verify compliance with feed and food law, animal health and animal welfare rules
- Commission Decision 2008/654 on guidelines to assist Member States in preparing the annual report on the single integrated multiannual national control plan provided for in Regulation (EC) No 882/2004
- Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

The retained EU law which is being revoked

- Regulation (EU) No 415/2013 of 6 May 2013 laying down additional responsibilities and tasks for the EU reference laboratories for rabies, bovine tuberculosis and bee health, amending Regulation (EC) No 737/2008 and repealing Regulation (EU) No 87/201.

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's powers, including regulation-making functions, under Regulation 882/2004 to the Welsh Ministers in relation to Wales. This will enable them to make regulations, subject to annulment by resolution of the National Assembly, on matters including setting types of feed and food that must be subject to increased import controls, the checks that must be carried out on feed and food for export, prescribing a form for export certificates from third

countries and prescribing specific import conditions. Non-legislative functions will include establishing guidelines for official controls, preparing and reviewing a national control plan and reporting on audits on official controls. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union in the retained direct EU legislation which lays down the official controls performed to ensure the verification of compliance with feed and food law, and animal health and animal welfare rules. The retained EU legislation sets out the controls that must be undertaken (in the main by designated competent authorities) to ensure compliance with feed and food law and animal health and welfare rules. These may include inspection, sampling, monitoring, auditing of food businesses or other specialised controls.

The Regulations will make technical corrections such as removing references to EU institutions and other Member States and will define 'third countries' as any country outside of the UK.

The main substantive corrections to be made by these Regulations involve transferring the Commission's functions, including regulation-making functions, under the directly applicable EU law to the Welsh Ministers in relation to Wales. These will be powers to make regulations for carrying out official controls on food and feed including:

- setting types of feed and food that must be subject to increased import controls,
- the checks that must be carried out on feed and food for export,
- prescribing a form for export certificates from third countries, and
- prescribing specific import conditions.

The SI will make minimal amendments to the retained direct EU law to ensure the legislation remains operable without any material change in the level of protection given to human or animal health or to the high standard of food and feed that consumers expect from both domestically produced and imported products.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/ShVLCeCF>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

94 - The Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 4 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 19
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations amend retained EU law relating to official controls on food and feed to ensure its operability following the UK's departure from the EU. The Regulations are intended to protect public health, animal health and animal welfare whilst providing continuity for business operators and trade. Official controls legislation sets rules and operational standards for the verification of food and feed law by competent authorities in the United Kingdom such as the Food Standards Agency (FSA) and the Animal and Plant Health Agency (APHA). This instrument amends references to EU institutions and systems in order that the legislation is operable in the United Kingdom following departure from the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 5th February 2019 regarding the effect of these Regulations.

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

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Food and Feed (Maximum Permitted Levels of Radioactive Contamination) (Amendment) (EU Exit) Regulations 2019**

DATE **5 February 2019**

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

The Food and Feed (Maximum Permitted Levels of Radioactive Contamination) (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Council Regulation (Euratom) 2016/52 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency.

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

This SI will enhance the Welsh Ministers' executive powers. It will confer a power on the Welsh Ministers, which must be exercised in the event of a nuclear accident or other radiological emergency, to make regulations to set maximum permitted levels of radioactive contamination in food and/or feed from the area concerned. The regulations will be subject to annulment by resolution of the National Assembly. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union in the retained direct EU legislation Regulation (EU) No. 2016/52 laying down the maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency.

Regulation 2016/52 gives power to the Commission to adopt Implementing Regulations. The Implementing Regulations would prohibit food and feed from an area where there has been a nuclear accident or radiological emergency from being placed on the market in the EU if it does not comply with the maximum permitted levels of radiation set out in those Implementing Regulations. This could be for a particular category of food or feed.

These correcting Regulations will amend Regulation 2016/52. The effect will be that, in the event of a nuclear accident, instead of requiring the Commission to make Implementing

Regulations, a duty will be placed on the Welsh Ministers, in relation to Wales, to make regulations to set maximum permitted levels of radiation in food and feed from the affected area.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/qpRnR5nO>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

95 - The Food and Feed (Maximum Permitted Levels of Radioactive Contamination) (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 4 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 21
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations correct deficiencies in Council Regulation (Euratom) 2016/52 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, as a result of the UK's exit from the European Union. The Regulations apply to the whole of the United Kingdom.

At present, in the event of a nuclear accident or radiological emergency the European Commission is responsible for making regulations to set maximum permitted levels of radiation in food and feed originating from the affected area. A group of experts, established under Article 31 of the Euratom Treaty, is currently consulted for the assessment of risk to health when reviewing the maximum permitted levels of radioactive contamination and their implementation.

Following EU Exit, the effect of these Regulations will be that the Welsh Ministers are responsible for these functions in relation to Wales.

Legal Advisers agree with the statement laid by the Welsh Government dated 5 February 2019 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Food and Feed Imports (Amendment) (EU Exit) Regulations 2019**

DATE **6 February 2019**

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

The Food and Feed Imports (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No. 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC.
- Regulation (EU) No. 284/2011 laying down specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China.
- Regulation (EU) No. 884/2014 imposing special conditions governing the import of certain feed and food from certain third countries due to contamination risk by aflatoxins and repealing Regulation (EC) No 1152/2009.
- Regulation (EU) 2018/1660 imposing special conditions governing the import of certain food of non-animal origin from certain third countries due to the risks of contamination with pesticides residues, amending Regulation (EC) No 669/2009 and repealing Implementing Regulation (EU) No 885/2014;
- Regulation (EU) 2015/175 laying down special conditions applicable to the import of guar gum originating in or consigned from India due to contamination risks by pentachlorophenol and dioxins.
- Regulation (EU) 2015/943 on emergency measures suspending imports of dried beans from Nigeria and amending Annex I to Regulation (EC) No. 669/2009.
- Regulation (EU) 2015/949 approving the pre-export checks carried out on certain food by certain third countries as regards the presence of certain mycotoxins;
- Regulation (EU) 2017/186 laying down specific conditions applicable to the introduction into the Union of consignments from certain third countries due to microbiological contamination and amending Regulation (EC) No. 669/2009.

- Decision 2011/884/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China and repealing Decision 2008/289/EC.
- Decision 2014/88/EU suspending temporarily imports from Bangladesh of foodstuffs containing or consisting of betel leaves ('Piper betle').

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the powers and duties currently conferred and imposed on the European Commission to the Welsh Ministers in relation to Wales. These functions will, among other things, require the Welsh Ministers to be notified of reports concerning checks of particular consignments entering Wales through a Designated Point of Entry (DPE), Designated Points of Import (DPIs) and First Points of Introduction (FPIs). The SI will also provide that the Welsh Ministers has various powers and duties that were previously conferred and imposed by EU legislation on the generic 'Member State'. This will, among other things, enable the Welsh Ministers to designate FPIs and maintain publicly available lists of FPIs and require them to collect fees in relation to any increase in official controls required under Regulation (EC) No. 669/2009. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

This body of retained EU legislation, as to be amended by these Regulations, sets out the legal basis for domestic import controls in the UK for the majority of Food Not of Animal Origin (FNAO) and ensures that all the correct powers are in place to maintain a control system responsive to emerging threats.

These Regulations will make various technical amendments including:

- Omitting references to the EU institutions and other Member States and amending the definition of 'first point of introduction', 'designated points of import' and 'third country'.
- Amending the requirement that entry documents, declarations and health certificates must be drawn up in 'the official language of the Member State or in one of the official languages of the Member State' so that they must now be submitted in English or in English and Welsh.
- Requiring the Food Safety Authority (in relation to Wales, the FSA) to maintain and make publicly available lists of Designated Points of Entry (DPEs) and Designated Points of Import (DPIs).

The more substantive amendments relate to the functions that were previously conferred on, respectively, the 'Member States' and the European Commission. The proposed amendments are summarised as follows in relation to Wales:

Transfer of Member State Functions;

The EU legislation concerning the import of FNAO currently confers powers on 'Member States' in respect of particular functions, which the UK has previously delegated to the Food

Standards Agency. Following the UK's exit from the EU, the retained EU law will be amended to provide the Welsh Ministers with the following functions:

- the collecting of fees resulting from an increase in official control as provided for in Regulation (EU) No.669/2009.
- designating first points of introduction (FPIs) in respect of plastic kitchenware from Hong Kong and China.
- publishing an up to date list of FPIs and Designated Points of Import (DPIs).

Transfer of Commission Functions;

The EU legislation currently confers functions on the European Commission. Following the UK's exit from the EU, the retained EU law will be amended to provide Welsh Ministers with these functions, including;

- stipulating that competent authorities (local authorities or port health authorities) must send reports on specified consignments to the Welsh Ministers and the FSA.
- Requiring competent authorities to notify the Welsh Ministers in Wales and the FSA with respect to non-compliances identified as a result of laboratory analysis undertaken pursuant to Regulation (EU) No. 284/2011.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/9Zv0Fn2Y>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

96 - The Food and Feed Imports (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 5 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 23
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8 of the European Union (Withdrawal) Act 2018.

The Food and Feed Imports (Amendment) (EU Exit) Regulations 2019 amends European legislation relating to import controls on food and feed, from outside of the United Kingdom, to ensure its operability following the UK's departure from the European Union. Imports legislation sets rules for the verification of food and feed law by competent authorities in the UK such as the Food Standards Agency (FSA). This instrument amends references to European institutions and systems in order that the legislation is operable in the UK following our departure from the EU. It is intended to provide continuity for operators and trade whilst protecting public health.

The Regulations have no effect on the legislative competence of the Assembly but will enhance the Welsh Ministers' executive powers by

transferring powers and duties currently conferred and imposed on the European Commission to the Welsh Ministers in relation to Wales.

Legal Advisers agree with the statement laid by the Welsh Government dated 6 February 2019 regarding the effect of these Regulations. We particularly welcome the clarity of this statement, and the clear explanations provided as to the impact upon the Welsh Ministers' executive powers.

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

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

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Materials and Articles in Contact with Food (Amendment)
(EU Exit) Regulations 2019**

DATE **6 February 2019**

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

The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No 1935/2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC
- Regulation (EC) No 1895/2005 on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food
- Regulation (EC) No 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food
- Regulation (EC) No 450/2009 on active and intelligent materials and articles intended to come into contact with food
- Regulation (EC) No 10/2011 on plastic materials and articles intended to come into contact with food
- Regulation (EC) No 282/2008 on recycled plastic materials and articles intended to come into contact with foods and amending Regulation (EC) No 2023/2006
- Regulation (EU) 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food and amending Regulation (EU) No 10/2011 as regards the use of that substance in plastic food contact materials

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current powers, including regulation-making functions, to the Welsh Ministers in relation to Wales. Among other things, this will enable Welsh Ministers to:

- decide whether or not to approve applications for new food contact materials and articles to be placed on the market in Wales.
- authorise recycling processes.
- introduce specific measures for the temporary suspension or restricted application of authorised substances.

The Welsh Ministers' regulation-making powers will be subject to annulment by resolution of the National Assembly. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The SI relates to retained direct EU law on 'food contact materials'. These are the materials and articles that are either:

- intended to be brought into contact with food;
- are already in contact with food;
- can reasonably be brought into contact with food or transfer their constituents to food under normal or foreseeable use.

This covers both direct or indirect contact, and examples include containers for transporting food, machinery to process food, packaging materials, kitchenware and tableware.

The correcting Regulations will make various technical fixes, which include omitting references to EU institutions, "Community", "Member States" and "the Commission". All existing food contact materials used within the UK prior to exit day will continue to be permitted after exit day, and all conditions attached to their use will be preserved.

As a more substantive change, the correcting Regulations will, in relation to Wales, transfer the functions exercised by European Food Safety Authority (EFSA) to the FSA. The functions include adopting and publishing scientific opinions, and providing scientific advice to the Welsh Ministers in their role as risk managers (see below) on the safety of food contact materials and related processes (e.g. recycling of plastics).

The correcting Regulations will also transfer the Commission's functions, including regulation-making functions under the directly applicable EU law, to the Welsh Ministers. The powers and duties in question with the appropriate Regulation and Articles are:

Regulation 1935/2004

The power to prescribe specific rules for groups of materials and articles (for example, authorising a list of substances for use in the manufacturing of materials and articles) (Article 5), the power to authorise new substances (Article 11), amend the authorisation of listed items (Article 12), or introduce specific measures for the temporary suspension or restricted application of the provisions (Article 18).

Regulation 10/2011

The power to prescribe updates to the list of authorised plastic substances (Article 5), updating the provisional list of additives (Article 7), and the prescribing of specific provisions for Multi-material multi-layer materials and articles (Article 14).

Regulation 282/2008

The power to prescribe the authorisation of the recycling processes (Article 6) and the prescribing of amendments to the authorisation of a recycling process (Article 8).

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/wzl0ix8B>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

97 - The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 5 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 25
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8 of the European Union (Withdrawal) Act 2018.

EU legislation regulates the safety of all materials and articles intended to come into contact with food, collectively known as food contact materials. This includes plastic bottles and containers, kitchen appliances, cutlery and crockery.

The objective of these Regulations is to maintain existing laws and fix the inoperabilities in retained direct EU legislation related to materials and articles in contact with food. This instrument removes from retained EU legislation the tasks and roles assigned to the European Commission, its committees and the European Food Safety Authority as these will no longer be relevant after the UK leaves the European Union.

Legal Advisers agree with the statement laid by the Welsh Government dated 6 February 2019 regarding the effect of these Regulations.

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Animal Feed (Amendment) (EU Exit) Regulations 2019**

DATE **6 February 2019**

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

The Animal Feed (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No 1831/2003 on additives for use in animal nutrition
- Regulation (EC) No 1831/2005 laying down requirements for feed hygiene
- Regulation (EC) No 378/2005 on detailed rules for the implementation of Regulation (EC) No 1831/2003 as regards the duties and tasks of the Community Reference Laboratory concerning applications for authorisations of feed additives
- Regulation (EC) No 429/2008 on detailed rules for the implementation of Regulation (EC) No 1831/2003 as regards the preparation and the presentation of applications and the assessment and the authorisation of feed additives
- Regulation (EC) No 152/2009 laying down the methods of sampling and analysis for the official control of feed
- Regulation (EC) No 767/2009 on the placing on the market and use of feed, amending EC) No 1831/2003;
- Regulation (EU) No. 892/2010 on the status of certain products with regard to feed additives within the scope of Regulation (EC) No 1831/2003
- Regulation (EU) No 619/2011 laying down the methods of sampling and analysis for the official control of feed as regards presence of genetically modified material for which an authorisation procedure is pending or the authorisation of which has expired;
- Regulation (EU) No 68/2013 on the Catalogue of feed materials
- Regulation (EU) 2015/786 defining acceptability criteria for detoxification processes applied to products intended for animal feed as provided for in Directive 2002/32/EC

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current powers, including regulation-making functions, to Welsh Ministers in relation to Wales. This will enable Welsh Ministers to, among other things:

- authorise new feed additives;

- restrict or prohibit the use of certain materials in feed;
- amend labelling requirements for feed and feed additives;
- amend non-essential elements of the retained EU law (e.g. in response to new scientific developments).

The Welsh Ministers' regulations will be subject to annulment by resolution of the National Assembly. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The Regulations will make technical corrections such as removing references to EU institutions and other Member States and will define 'third countries' as 'any country outside of the UK'. It will also amend the provision for labelling feed containers so that food additives must be labelled in English, or English and Welsh.

As a more substantive change, the Regulations will, in relation to Wales, transfer the risk assessment responsibilities carried out by European Food Safety Authority (EFSA) to the FSA. The FSA will therefore be responsible for, among other things, undertaking risk assessments for any applications for a product's authorisation as a feed additive and will advise the Welsh Ministers on the basis of those risk assessments.

It will also transfer the Commission's functions, including regulation-making functions under the directly applicable EU law, to the Welsh Ministers in Wales.

The Regulations will confer specific powers on the Welsh Ministers to:

- Authorise the use of feed additives in Wales, and their reauthorisation, modification or suspension
- Prescribe microbiological criteria and targets for feed hygiene, as well as implementation of food safety management systems and feed hygiene requirements for feed businesses
- Work with reference laboratories to re-evaluate applications if needed
- Restrict or prohibit the use of certain materials in feed
- Amend labelling requirements for feed and feed additives
- Maintain a Catalogue of Feed Materials
- Lay down the methods of sampling and analysis for the official control of feed for genetically modified material for which an authorisation procedure is pending or the authorisation has expired; and set any emergency measures
- Make regulations to amend non-essential elements of the retained EU law, for example to take account of new advances in science

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/rZAuhSTC>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication and unnecessary complication of the statute

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

UK MINISTERS ACTING IN DEVOLVED AREAS

98 - The Animal Feed (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 5 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 27
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government under section 8(1) of the European Union (Withdrawal) Act 2018.

The purpose of these Regulations is to ensure that there will continue to be a functioning statute book on exit day which maintains continuity in relation to food and feed (animal feed) policy and legislation.

Legal Advisers agree with the statement laid by the Welsh Government dated 6 February 2019 regarding the effect of these Regulations.

It is also worth noting how clear and helpful the Welsh Government statement is, and how helpful that is to the Committee.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers draw the Committee's attention to the following issues in relation to paragraph 8 of the Memorandum on the European Union

(Withdrawal) Bill and the Establishment of Common Frameworks.
Paragraph 8 states (emphasis added):

“The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement of the devolved administrations. **In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency.**”

The Welsh Government statement notes that the Regulations make some technical changes but that they also make “a more substantive change” (i.e. they transfer important food safety functions from the European Food Safety Authority (EFSA) to the Food Safety Authority (FSA)).

This appears to be a breach of the Intergovernmental Agreement in that the UK Government is using its powers under the European Union (Withdrawal) Act 2018 to make enact new policy. Transferring important functions from the EFSA to the FSA, no matter how uncontroversial, certainly seems to amount to more than securing “administrative efficiency”.]



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Food Additives, Flavourings, Enzymes and Extraction Solvents
(Amendment etc.) (EU Exit) Regulations 2019

DATE 6 February 2019

BY Rebecca Evans AM, Minister for Finance and Trefnydd

Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No. 2065/2003 on smoke flavourings used or intended for use in or on foods
- Regulation (EC) No. 627/2006 implementing Regulation (EC) No. 2065/2003 as regards quality criteria for validated analytical methods for sampling, identification and characterisation of primary smoke products
- Regulation (EU) No. 1321/2013 establishing the Union list of authorised smoke flavouring primary products for use as such in or on foods and/or for the production of derived smoke flavourings
- Regulation (EC) No. 1331/2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings
- Regulation (EU) No. 234/2011 implementing Regulation (EC) No. 1331/2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings
- Regulation (EC) No. 1332/2008 of the European Parliament and of the Council on food enzymes
- Regulation (EC) No. 1333/2008 on food additives
- Regulation (EU) No. 231/2012 laying down specifications for food additives listed in Annexes 2 and 3 to Regulation (EC) No. 1333/2008
- Regulation (EU) No. 257/2010 setting up a programme for the re-evaluation of approved food additives in accordance with Regulation (EC) No. 1333/2008
- Regulation (EC) No. 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods
- Regulation (EU) No. 872/2012 adopting the list of flavouring substances provided for by Regulation (EC) No. 2232/96 introducing it in Annex 1 to Regulation (EC) No. 1334/2008

- Regulation (EU) No. 873/2012 on transitional measures concerning the Union list of flavourings and source materials set out in Annex 1 to Regulation (EC) No. 1334/2008

The retained EU law which is being revoked

- Regulation (EU) No. 257/2010 setting up a programme for the re-evaluation of approved food additives in accordance with Regulation (EC) No. 1333/2008

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current powers, including regulation-making functions, to the Welsh Ministers in relation to Wales. This will enable Welsh Ministers to, among other things:

- authorise food additives, flavourings and enzymes;
- amend labelling requirements for these substances;
- amend non-essential elements of the retained EU law (e.g. in response to new scientific developments).

The Welsh Ministers' regulations will be subject to annulment by resolution of the National Assembly. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The Regulations will make technical fixes such as removing references to EU institutions and other Member States, and will replace 'Union lists' with 'domestic lists' to ensure the law remains operable after EU Exit. It will also amend the provision which currently requires containers for additives, flavourings etc. to be labelled in 'an official language of a Member State' so that, post-exit, the label must be in English, or English and Welsh.

As a more substantive change, the correcting Regulations will, in relation to Wales, transfer the risk assessment responsibilities carried out by European Food Safety Authority (EFSA) to the FSA. The FSA will therefore be responsible for, among other things, undertaking risk assessments for any applications for products' authorisation as food additives, flavourings etc. and will advise the Welsh Ministers on the basis of those risk assessments.

The Regulations will also transfer the Commission's functions, including regulation-making functions under the directly applicable EU law, to the Welsh Ministers in Wales.

In particular, the Regulations will confer powers on the Welsh Ministers to:

- Decide whether to approve applications for food additives, food enzymes, food flavourings (including smoke flavourings) to be placed on the market (including reauthorisations and modifications) in relation to Wales, as well as to prescribe implementing measures for their authorisations.
- Amend labelling requirements for these substances.
- Make regulations to amend non-essential elements of the retained EU law, for example to take account of new advances in science.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/rUYmWnoG>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

99 - The Food Additives, Flavourings, Enzymes and Extractions Solvents (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 5 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 29
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations make technical amendments in retained EU legislation (as set out and listed in the Welsh Government Statement) that provide detailed rules on food additives, flavourings, enzymes, extraction solvents and processing aids, which are collectively referred to as food improvement agents. This is to enable the regulatory requirements applicable to these substances to operate effectively as domestic legislation after the UK has left the EU.

In addition, these Regulations revoke the following retained EU Law – Regulation (EU) No 257/2010 which provides for the establishment of an on-going programme of re-evaluation of food additives that were approved prior to 2009.

Further, these Regulations enhance Welsh Ministers executive powers by transferring the European Commission's functions, including regulation-making powers under the retained EU legislation to the Welsh Ministers to:

- decide whether to approve applications for food additives, food enzymes, food flavourings (including smoke flavourings) to be placed on the market (including reauthorisations and modifications) in relation to Wales, as well as to prescribe implementing measures for their authorisations.
- amend labelling requirements for these substances.
- amend non-essential elements of the retained EU law, for example to take account of new advances in science.

Legal Advisers agree with the statement laid by the Welsh Government dated 6 February 2019 regarding the effect of these Regulations.

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

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Food and Feed (Chernobyl and Fukushima Restrictions) (Amendment) (EU Exit) Regulations 2019**

DATE **5 February 2019**

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

The Food and Feed (Chernobyl and Fukushima Restrictions) (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No 1635/2006 laying down detailed rules for the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station;
- Regulation (EC) No 733/2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station;
- Regulation (EU) 2016/6 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing Implementing Regulation (EU) No 322/2014.

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current legislative powers under Regulation 733/2008 to the Welsh Ministers in relation to Wales. This will enable the Welsh Ministers to make regulations, subject to annulment by resolution of the National Assembly, to make regulations to deal with non-compliance with maximum permitted levels of radioactive contamination, to change the list of products that need control measures and to exempt certain products or businesses from maximum permitted levels. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union in the retained direct EU legislation which lays down the special conditions for the import of food and feed that have been affected by nuclear accidents at Chernobyl, Ukraine and Fukushima, Japan.

The retained EU legislation prohibits the import of food and feed from countries affected by those accidents that exceeds the maximum permitted levels of radioactive contamination specified. The retained legislation also imposes special conditions on certain food and feed products listed including pre-export testing and declarations which must accompany the consignment.

The Regulations will make technical corrections such as removing references to EU institutions and other Member States and will define ‘third countries’ as any country outside of the UK.

The main substantive corrections proposed by these Regulations involve transferring the Commission’s functions, including regulation-making functions, under the directly applicable EU law to the Welsh Ministers in relation to Wales. In particular, Regulation 733/2008 will confer powers on the Welsh Ministers to deal with repeated non-compliance with maximum permitted levels of radioactive contamination, to make amendments to Annex 1 in order to change the list of products that need control measures and to exempt certain products or businesses from maximum permitted levels.

The retained EU legislation relating to food and feed from countries affected by the Chernobyl and Fukushima nuclear accidents will expire on 31 March 2020 in relation to Wales, unless further legislation is passed following a review by the Welsh Ministers that determines these controls should be retained.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/Qziplxyl>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

100 - The Sprouts and Seeds (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 5 February 2019

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	12 February 2019
Written statement under SO 30C:	Paper 31
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018. These Regulations make minor and technical amendments to a number of European Union Regulations that will become retained EU law following EU Exit, relating to the rules on the importation, production and handling of seeds for sprouting for human consumption. The Regulations apply to the whole of the United Kingdom.

The effect of the Regulations is limited to addressing deficiencies in the retained EU law arising from EU Exit, in order to ensure the continued safety of sprouts and seeds intended for sprouting supplied on the UK market.

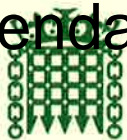
Legal Advisers agree with the statement laid by the Welsh Government dated 6 February 2019 regarding the effect of these Regulations.

Legal Advisers note that the UK Government's explanatory memorandum, at paragraph 7.3 makes reference to a legislation review function being transferred from the European Commission to the Welsh Ministers (as

appropriate authority in relation to Wales), however, these particular Regulations do not appear to transfer such a function. The above summary of these Regulations confirm their effect. Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Agenda Item 9.1

PACAC (Public Administration and Constitutional Affairs Committee)



House of Commons · London SW1A 0AA

Tel 020 7219 3268 Email pacac@parliament.uk Website www.parliament.uk/pacac

Rt Hon Greg Clark
Secretary of State for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

11 January 2019

Dear Greg

I am writing regarding the State Aid (EU Exit) Regulations 2019 Statutory Instrument laid by the Department for Business, Energy and Industrial Strategy on 21 January 2019. I have received a letter from Mick Antoniw, Chair of the National Assembly for Wales Constitutional and Legislative Affairs, informing me of the concern of his Committee and the Welsh Government that the UK Government has not sought the Consent of Welsh Ministers for these regulations, in line with the Intergovernmental Agreement on the European Union (Withdrawal) Bill (a copy of this letter is attached).

As I understand the situation, there is acknowledged disagreement between the UK and Welsh Government as to whether the area of State Aid is a reserved or devolved matter. I also understand that the Welsh Government has requested that the UK Government provide an explanation for the position that State Aid is a reserved matter, but have not received such an explanation. PACAC does not have a position on whether State Aid is a reserved matter, however, the Committee has been clear on the importance of developing and maintaining good intergovernmental relations.¹ The Intergovernmental Agreement on the European Union (Withdrawal) Bill was reached after great efforts on the part of the UK and devolved Governments, and so it important to make every effort to maintain good intergovernmental relations.

While I understand that the Government's position is that State Aid is reserved, this is clearly an area of disagreement. Given this dispute, to help maintain good intergovernmental relations I would encourage the UK Government to publish the explanation for why it regards State Aid as a reserved matter and to make efforts to consult with devolved Governments over regulations in such areas in dispute.

Sir Bernard Jenkin MP

Chair, Public Administration and Constitutional Affairs Committee

Copied to: Rt Hon David Lidington MP, Chancellor of the Duchy of Lancaster;
Mick Antoniw AM, Chair of the National Assembly for Wales Constitutional and Legislative Affairs

¹ Public Administration and Constitutional Affairs Committee, Eighth Report of the 2017-19 Session, Devolution and Exiting the EU: reconciling differences and building strong relationships, HC 1485

Sir Bernard Jenkin
Chair
Public Administration and Constitutional Affairs
Committee
House of Commons

6 February 2019

Dear Sir Bernard

The State Aid (EU Exit) Regulations 2019

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statement (issued under Standing Order 30C of the National Assembly for Wales) for the above named regulations at its meeting on 4 February 2019.

These Regulations transfer functions to non-devolved public authorities, namely the Competition and Markets Authority and the Secretary of State; and giving functions to non-devolved public authorities restricts the legislative competence of the National Assembly for Wales.

As noted in a recent letter to Lord Trefgarne, Chair of the House of Lords Secondary Legislation Scrutiny Committee, regarding the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018, functions transferred to a public authority other than a devolved Welsh authority engage paragraph 10 (and in this case paragraph 11) of Schedule 7B to the Government of Wales Act 2006. In brief, this means that if the National Assembly for Wales wishes to pass primary legislation to remove or modify such functions in future, it will need the consent of the UK Government.

As with the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018, this is being done without any prior notice being given to the National Assembly for Wales and, of course, without the Regulations being laid before the National Assembly for Wales.

However, in this case, there is the added problem that the Welsh Government and the UK Government disagree as to whether State Aid is devolved.



At our meeting we considered correspondence from the Welsh Government's Counsel General. In his letter to us, the Counsel General states:

"The Welsh Government's position is that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006. However, the UK Government do not consider it as such (as was noted in the Intergovernmental Agreement) and therefore they have not requested Welsh Ministerial consent. The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response."

The approach being adopted by the UK Government therefore appears to be a breach of paragraph 8 of the Intergovernmental Agreement on the European Union (Withdrawal) Bill, which states:

"The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement of the devolved administrations. In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency."

In reaching, this view we also note that the UK Government has not responded to the Welsh Government's request for an explanation of their position that State Aid is a reserved matter.

In his letter to us, the Counsel General has confirmed that the Welsh Ministers do not intend on granting to the UK Government unilateral consent for these Regulations.

It is our understanding that discussions between the Welsh Government and the Secretary of State for Business, Energy and Industrial Strategy are ongoing.

Given the significant effect of these Regulations, we wish to draw these matters to your attention not least because it highlights a concern that, where a dispute exists about whether a matter is within the National Assembly's legislative competence, the UK Government, which is also the Government of England, appears to have the final say.

The Counsel General's letter and Welsh Government written statement are enclosed.

I am also drawing these matters to the attention of Lord Trefgarne, Chair of the House of Lords Secondary Legislation Scrutiny Committee, and Baroness Taylor of Bolton, Chair of the House of Lords Constitution Committee.



Yours sincerely

Mick Antoniw

Mick Antoniw
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Lord Trefgarne
Chairman
Secondary Legislation Scrutiny Committee
House of Lords
London

14 January 2019

Dear Lord Trefgarne

The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018

As part of its preparations for exiting the European Union, the Welsh Government has consented to the UK Government making many (around 150) correcting statutory instruments under the *European Union (Withdrawal) Act 2018* (the Withdrawal Act) on behalf of the Welsh Government. These are correcting statutory instruments that the Welsh Government could make under the Withdrawal Act, but has chosen to consent to the UK Government making on its behalf instead (in accordance with Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks).

For each such statutory instrument, the Welsh Government notifies the National Assembly, giving brief details of the statutory instrument in question. The Welsh Government's notification in relation to the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018 (the PBR Regulations) has raised a particular issue. The issue was summarised by the Welsh Government in its notification as follows:

"These regulations confer functions on the Controller of Plant Variety Rights, an officer established by the Plant Varieties Act 1997 as the head of the Plant Variety Rights Office. The Controller acts under the direction of and is



appointed by the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department acting jointly.

Functions transferred to a public authority other than a devolved Welsh authority would engage paragraph 10 of Schedule 7B to the Government of Wales Act 2006 (the 2006 Act). This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas."

Under paragraph 10 of Schedule 7B to the 2006 Act, the National Assembly cannot remove or modify any functions of a public authority (other than the functions of a devolved Welsh authority and the functions captured by the exceptions in paragraph 10, none of which are relevant in this case) unless the appropriate UK Government Minister consents. Therefore, by conferring functions on the Controller of Plant Variety Rights (a non-devolved Welsh authority), the PBR Regulations restrict the Assembly's legislative competence to pass primary legislation, albeit in a narrow field. For example, if the National Assembly wished to pass a Bill that removed or modified the functions that are conferred on the Controller of Plant Variety Rights by the PBR Regulations, then the Assembly could not do so without UK Government consent.

We accept that subordinate legislation is, in general, a matter for governments. However, given the effect the PBR Regulations have on this legislature, we wanted to bring the issue to your attention. The issue becomes particularly stark when summarised like this: the Welsh Government has consented to the UK Government making a negative resolution statutory instrument that restricts the legislative competence of the National Assembly for Wales.

We are also writing to the Welsh Government, voicing our concern about the effect of the PBR Regulations and dismay that the National Assembly was not even given



advance warning of them.

Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw'. The signature is fluid and cursive, with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.





HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

House of Lords
London
SW1A 0PW

Tel: 020-7219 8821
hlseclegscrutiny@parliament.uk
www.parliament.uk/lords

21 January 2019

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Dear Mr Antoniw,

Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018

Thank you for your letter of 14 January and for bringing your concerns about the effect of the above Regulations on the legislative competency of the National Assembly for Wales to the attention of the Secondary Legislation Scrutiny Committee.

The Committee considered the draft Regulations at its meeting on 17 December 2018. At that time, the Regulations had been laid before the UK Parliament as a proposed negative instrument under the European Union (Withdrawal) Act 2018. The Committee cleared the instrument from scrutiny and agreed that it should be subject to the negative procedure.

We will consider the Regulations a second time, when they are laid before Parliament as a regular statutory instrument under the negative procedure. Your letter will inform the Committee's second consideration of the instrument, and we will seek a response from the Department for Environment, Food and Rural Affairs to your concerns about the restrictions on the legislative competency of the National Assembly that are an effect of the Regulations. I will write to you again and share the Department's response once the Committee has had the opportunity to consider the instrument.

Yours sincerely

David Trefgarne

Rt Hon. Lord Trefgarne PC

Chairman of the Secondary Legislation Scrutiny Committee

It was good to meet you last week!

Pack Page 151



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/VG/0167/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

12 February 2019

Dear Mick,

The Welsh Government's Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill

I am writing to thank you for the Committee's consideration and recent report on the *Legislative Consent Memorandum: Healthcare (International Arrangements) Bill* and update you on recent developments.

I am grateful to the Committee for its report and have carefully considered the recommendations of the Committee. I have included a response to the recommendations individually in the annex to this letter.

As I stated in my evidence session, officials from UK Government and the Devolved Administrations have been working towards a Memorandum of Understanding which would set out how the Devolved Administrations will be involved in the development of future healthcare agreements.

The Minister of State for Health wrote to me on 7 February to formally offer to amend the Bill to place a statutory duty on the UK Government to consult the DAs where regulations under clause 2 of the Bill would be within the DAs legislative competence. This would be underpinned by an accompanying Memorandum of Understanding. The MoU delivers a number of assurances that I have been clear from the outset would be required. Welsh Government would be involved in the policy development of future arrangements from the outset, with the MoU stating that all parties will seek to proceed on the basis of consensus. Draft agreements would be discussed with DAs before they are shared with third countries and Welsh Ministers would be consulted on the content and drafting of regulations made under clause 2 of the Bill where they relate to devolved matters.

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

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

This agreement goes a long way to creating a positive framework where the future of reciprocal healthcare arrangements can be discussed on a collaborative basis. As I said during my evidence session, it was always more important to be meaningfully involved in the development of healthcare agreements than to hold a veto on the final regulations which give effect to those agreements. However, I have set out to UK Government that I would like to see further assurance on the role of Welsh Ministers in agreeing regulations to be made under Clause 2 of the Bill. I have asked that these regulations would not normally be made without the agreement of Devolved Administrations, and that in cases where agreement cannot be reached that an exchange of Ministerial letters would be made available to both Houses of Parliament.

I have been clear in correspondence with UK Government that any statutory instrument which amends Welsh primary legislation would of course be subject to a Statutory Instrument Consent Memorandum in the Assembly, and it would be for the National Assembly for Wales to decide whether to recommend that consent be given in that circumstance.

I have indicated to the Minister of State to Health that I would be willing to recommend consent to the Bill on the basis that my proposed changes to the MoU are agreed. I am sharing the draft MoU with you now, and will lay a supplementary Legislative Consent Memorandum when agreement with UK Government has been reached. Unfortunately there is now very little time before the bill completes its progress in Parliament and receives Royal Assent before Exit Day. As negotiations with the UK Government are ongoing we will need to move swiftly to hold a plenary debate on the LCM. I am sending this letter in advance of the full supplementary consent memorandum being laid, to provide you with the earliest notice of the progress made.

I hope you find this update useful and I would be happy to provide any further information if it would be helpful.

I am grateful to the Committee for its work on this matter.

Yours sincerely,

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

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

**Welsh Government Response to the Constitutional and Legislative Affairs Committee
Report of January 2019 on *The Welsh Government's Legislative Consent
Memorandum on the Healthcare (International Arrangements) Bill***

CLAC Recommendation	Welsh Government Response
<p>Recommendation 1. The Minister should pursue, with the UK Government, an amendment to the Bill that requires the UK Ministers to seek the consent of the Welsh Ministers before exercising the functions of the Welsh Ministers in devolved areas.</p>	<p>REJECT.</p> <p>I have carefully considered the views of this Committee, and also those in the report from Health, Social Care and Sport Committee. I still consider that the most productive path forward, which will give Welsh Government the greatest influence over healthcare arrangements, is to be involved at an early stage of policy development when UK policy can be meaningfully impacted. This would be achieved by an amendment to place a statutory duty on the UK Government to consult the DAs where regulations under clause 2 of the Bill would be within the DAs legislative competence, underpinned by an accompanying Memorandum of Understanding.</p> <p>Welsh Government does not wish to act as a blocker to reciprocal healthcare arrangements. There has been broad agreement that these healthcare agreements are a positive thing that we would wish to see continue. A requirement to seek consent would only give Welsh Government a veto over final regulations; it would not necessarily lead to meaningful engagement.</p> <p>My officials have been engaged with those from UK Government and the other devolved administrations to draft a memorandum of understanding which provides the necessary assurances and builds a positive platform for future discussions. I consider that there has been considerable progress in the development of this memorandum and remain confident that a document agreeable to all parties will be agreed.</p>
<p>Recommendation 2. The Minister should keep the Committee updated with progress on the amendments he is seeking in respect of clause 2 of the Bill</p>	<p>AGREE.</p>

and notify the Committee when agreement has been reached.	
<p>Recommendation 3.</p> <p>If a UK Minister is seeking to exercise the functions of the Welsh Ministers in devolved areas, the Welsh Ministers must:</p> <ul style="list-style-type: none"> ▪ having made a decision on consent, lay a written statement notifying the National Assembly that it has either provided consent, or, refused to do so; ▪ include in that written statement, the reasons for the decision taken and if consent is given, information about the nature and terms of that consent. 	<p>REJECT.</p> <p>As I have set out in my response to recommendation 1, I am content that the Bill be amended to include a statutory duty to consult Welsh Government, should this be accompanied by an appropriate Memorandum of Understanding.</p>
<p>Recommendation 4.</p> <p>The Minister should pursue, with the UK Government, an amendment to the Bill that requires that all regulations made under clause 2 are subject to the affirmative procedure.</p>	<p>AGREE.</p> <p>My officials have continued to make representation to UK Government that regulations made under clause 2 should be subject to the affirmative procedure. I am aware that this issue has been raised throughout Parliamentary scrutiny of the legislation and would expect to see some amendment in this respect.</p>
<p>Recommendation 5.</p> <p>The Minister should write to the Committee providing a guarantee that the Welsh Government will:</p> <ul style="list-style-type: none"> ▪ table a statutory instrument consent motion under Standing Order 30A.10, in circumstances where a statutory instrument consent memorandum is laid in accordance with Standing Order 30A.2 (in respect of a statutory instrument laid before the UK Parliament under the provisions of the Bill, if enacted). ▪ notify the National Assembly by written statement in circumstances where the UK Government engages paragraph 109 of its <i>Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales</i> in relation to statutory instruments amending primary legislation for which the National Assembly has legislative competence. 	<p>ACCEPT IN PART</p> <p>The Welsh Government agrees that it will notify the Assembly in circumstances where it is made aware that, on the basis of paragraph 109 of the DGN, the UK Government has not sought or will not seek the Assembly's consent in relation to SIs amending primary legislation for which the Assembly has legislative competence.</p> <p>The Welsh Government is fully committed to meeting its obligations under Standing Orders, which in relation to Statutory Instrument Consent Memorandums (SICMs) requires us to table a SICM where a statutory instrument or draft statutory instrument laid before the UK Parliament makes relevant provision.</p> <p>Standing Order 30A.10 provides that any Member may table a motion for debate, and the Welsh Government remains committed to doing so where appropriate, but we do not believe it is appropriate to make a binding commitment to do so in every case.</p>
Recommendation 6.	AGREE.

<p>The Minister should write to the Committee:</p> <ul style="list-style-type: none"> ▪ setting out its view on whether the Bill permits statutory instruments laid by the UK Government to amend regulations made by the Welsh Ministers; ▪ explaining whether it provides consent in such circumstances; ▪ committing the Welsh Government to notify the National Assembly of statutory instruments laid by the UK Government that amend regulations made by the Welsh Ministers, should the Bill permit such action. 	
<p>Recommendation 7.</p> <p>It would be helpful if the Minister writes to the Committee explaining what discussions he has had with the UK Government regarding the UK Government's view that clause 5 does not require the National Assembly's consent and his view of the reasons why the UK Government has arrived at that conclusion.</p>	<p>AGREE.</p> <p>There is no difference of opinion on whether consent is required. Clause 5 of the Bill specifies the detail of regulations that can be made under Clause 2 of the Bill. UK Government agrees that consent is required for the regulations made under Clause 2 which relate to the definitions provided in Clause 5.</p>

Vaughan Gething AM
Minister for Health and Social Services
Welsh Government

14 February 2019

Dear Vaughan

The Welsh Government's Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill

Thank you for your letter of 12 February 2019 providing a response to our report on the above Legislative Consent Memorandum.

We will be considering your letter at our meeting on 18 February 2019. It says that you are sharing with us a draft Memorandum of Understanding, which sets out how the Devolved Administrations will be involved in the development of future healthcare agreements. The draft Memorandum is integral to your responses to the recommendations we made in our report.

However, we have been asked not to publish this document. This makes it difficult for the Committee to formally respond on important constitutional matters in an open and transparent way, until such time as a final Memorandum is published. Given the time constraints regarding a debate on a legislative consent motion, this is extremely frustrating.

I would be grateful therefore if you could provide a detailed response as to why it is not possible for the Committee to publish the draft Memorandum. It would be helpful to receive your response in advance of our Committee meeting on 18 February 2019.



I am copying this letter to the Chair of the Health, Social Care and Sport Committee.

Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw'. The signature is fluid and cursive, with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.





Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref CG/05030/19

Prof. Sally Holland
Children's Commissioner for Wales
commissioner@childcomwales.org.uk

Heléna Herklots CBE
Older People Commissioner for Wales
Commissioner@olderpeoplewales.com

12 February 2019

Dear Sally and Heléna,

Thank you for your letter of 24 January, on the Draft Taxonomy for Codes of Welsh Law.

I am grateful for your interest and engagement with these early proposals, and for considering some of the options for locating legislation within the potential Codes.

I published the Draft Taxonomy alongside the introduction of the Legislation (Wales) Bill for illustrative purposes only; it is not intended to be read as a definitive statement of the final structures for the Codes of Welsh Law. Subject to the Assembly passing the Bill later this year, I intend to undertake a formal consultation on the proposed Taxonomy and our approaches to how our legislation should be organised. Ahead of that account will be taken of the helpful comments such as yours received at this time.

This letter is copied to the Chair of the Constitutional and Legislative Affairs Committee, the Future Generations Commissioner and the Welsh Language Commissioner.

Yours Sincerely,

Jeremy Miles AM
Y Cwnsler Cyffredinol a'r Gweinidog Brexit
Counsel General and Brexit Minister

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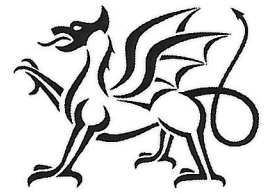
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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 9.5

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



Llywodraeth Cymru
Welsh Government

Our Ref: MA-L/LG/0092/19

Mr Mike Hedges AM
Chair of Climate Change, Environment and Rural Affairs Committee
National Assembly for Wales
Pierhead Street
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13

February 2019

Dear Mike

At the committee meeting of 24 January I offered to provide an update, following Fisheries and Marine Senior Steering Group meetings, in relation to concerns regarding clause 18 of the draft UK Fisheries Bill.

The Fisheries and Marine Senior Steering Group (FMSSG) comprises of senior officials from the four administrations. The FMSSG meets regularly to discuss a range of issues associated with the UK's exit from the European Union, providing both a forum for open official level discussion between the Administrations, and joint governance arrangements.

Officials have discussed clause 18 of the draft Bill on a number of occasions. I am advised officials have registered my concerns on this matter and have asked DEFRA to consider and respond, taking into account the existing intergovernmental principles and practices on co-operative working.

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

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

The UK Government understands my concerns with the way the Bill is drafted, and how the powers could be exercised. They have assured me it is not their intention to exercise the functions in this way, and are keen to work with us to provide the reassurance I require. I expect this will be forthcoming soon, however discussion are ongoing.

I will provide a further update to Committee, following the conclusion of these discussions.

During the session a question was raised regarding 'ghost fishing'. I would like to clarify for the committee, provisions are made in relation to ghost fishing within the legislation which is being saved under the Withdrawal Act process. The appropriateness of these provisions will be considered as we develop a new post EU fisheries policy for Wales with stakeholders.



Lesley Griffiths AC/AM

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

Cc: Mr Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee

Mick Antoniwm AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: EJ/TJ

12 February 2019

Dear Mick

Senedd and Elections (Wales) Bill

As you will be aware, earlier today I introduced the Senedd and Elections (Wales) Bill at the Assembly.

At annex 1 to this correspondence is my statement of policy intent and at annex 2 is correspondence recently received from the Secretary of State, and my response to such. I anticipate these may be of interest to your committee in its scrutiny of the general principles of the Bill.

Finally, I believe it may be helpful to provide some additional context for your committee in its consideration of section 27 of the Bill: 'Duty to consider reform of oversight of the work of the Electoral Commission.'

The view of the Electoral Commission is that it should be financed by and be accountable to the Assembly for its work in relation to devolved elections, rather than the UK Parliament.

The Assembly Commission considers that as the Assembly takes responsibility for devolved elections, the Assembly should also consider changing the financial and oversight arrangements for devolved elections. The legislative competence for this was devolved in Wales Act 2017, which took effect in April 2018.

However, a number of key issues require further consideration, including:

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Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

- the cost to the Electoral Commission of regulating Welsh devolved elections and referendums;
- the funding of such costs by the Assembly;
- how the funds required to cover such costs would be transferred from Westminster to the Assembly;
- the arrangements by which the Assembly would hold the Electoral Commission to account for its work on devolved Welsh elections; and
- how such scrutiny arrangements would work alongside scrutiny of the Electoral Commission by the UK Parliament.

The Bill therefore places a duty on the Senedd to consider whether the Electoral Commission should be financed by the Assembly for its work in relation to devolved Welsh elections, and become accountable to the Assembly for such work.

This provision is intended primarily to signal a policy intention (during Stage 1 of the Bill) to address the financing and accountability of the Electoral Commission through amendments to the Bill.

If the Assembly recommends support for such a move, I anticipate that amendments would be introduced at Stage 2 to establish arrangements for the Electoral Commission to be financed by, and to be accountable to, the Assembly.

In taking this approach, I have considered possible concerns that Members may have limited opportunity to scrutinise such arrangements. However, I believe that this approach (of using this Bill as a legislative vehicle to introduce such provision) would be a more appropriate use of the Assembly's time than the alternative approach of including it in a standalone Bill.

I look forward to further engagement with the Committee during the course of Stage 1.

Yours sincerely

Elin Jones AM
Llywydd

PART III: Electoral Franchise

REGULATIONS RELATING TO	Invitation to Register: further provision about persons under the age of 16
BILL PART	III
SECTION	14
METHOD OF BRINGING INTO FORCE	Negative unless the instrument contains provisions modifying primary legislation then affirmative must apply
DESCRIPTION OF THE REGULATIONS	
<p>Section 14 provides the Welsh Ministers with the power to make regulations about invitations to apply to be registered as a local government elector in Wales. These regulations may need to be made as a consequence of lowering the voting age at Senedd elections.</p>	
WHAT CAN THE REGULATIONS ACHIEVE?	
<p>This power enables Welsh Ministers to among other things agree regulations about the form and timing of invitations to register on the electoral register and how invitations to register must be given. The regulations may also set out the requirement for invitation to register being accompanied by application forms or other documents. Regulations may also confer functions on the Electoral Commission. The Electoral Commission has responsibilities around the design and testing of certain forms. Welsh Ministers must also consult before making such regulations.</p>	
WHY THE REGULATIONS ARE REQUIRED	
<p>Regular amendments are required to the forms which invite individuals to register and the Electoral Commission has previously advised that secondary legislation is preferable. There are no immediate proposals to use this power and section 4 of the Bill sets out adjustments to the existing system for giving invitations to register to voters, where the person being given the invitation is under the age of 16. The intention is that these adjustments will allow a single invitation to be used for all persons, of whatever age. However, as this is an untested system, it is possible that experience of operating it will suggest that it would be better to have a specific form of invitation for persons under 16, and that there should be procedural changes to take account of their special circumstances. This power is therefore sought to enable that change without the need for further primary legislation.</p>	
POLICY INTENTION OF THE REGULATIONS	

The nature of electoral law is that it is technical and complex. In addition, there is the potential added complexity of a Local Government and Elections Bill dealing with the same or similar subject matter, being considered to similar timescales. It is therefore considered prudent to take powers to respond to any unexpected difficulties encountered in practice as a result of wider changes made to the franchise.

The regulation making power would provide a safeguard to make further provision in light of any practical experiences that arise from the extension of the franchise to this age group.

REGULATIONS RELATING TO	Power to add certain categories to the definition of secure accommodation
BILL PART	III
SECTION	18
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
Section 18 of the Bill empowers Welsh Ministers to make regulations to add certain categories to the definition of secure accommodation and so enabling young people residing in those categories of accommodation and in specified circumstances to make a declaration of local connection.	
WHAT CAN THE REGULATIONS ACHIEVE?	
<p>Section 18 amends section 7B of the 1983 Act in relation to the registration of local government electors in Wales. Section 7B sets out the circumstances under which a person is permitted to make a declaration of local connection. The effect of a declaration of a local connection is that the declarant can be registered by reference to an address which may not be the one at which they normally reside.</p> <p>Amendments made by section 18(2) of the Bill allow persons under the age of 18 to make a declaration of local connection where they are being looked after by a local authority or are residing in secure accommodation.</p> <p>The regulation making power in section 18 enables Welsh Ministers to add certain categories and specified circumstances to the definition of secure accommodation. This will enable young people residing in secure accommodation for welfare reasons to make a declaration of local connection.</p>	
WHY THE REGULATIONS ARE REQUIRED	

The regulation making power will provide flexibility and enable changes to be made to the specified types of secure accommodation and specified circumstances which are relevant under this section.

Such regulations would need to be developed in liaison with the electoral and justice communities and may need regular amendment. The Electoral Commission has previously advised that secondary legislation is preferable under these circumstances.

POLICY INTENTION OF THE REGULATIONS

Young people from Wales, who are looked after by a Welsh local authority – including those who are placed in secure accommodation - should be able to make a declaration of local connection. Young people from Wales - who are not looked after but who are placed in secure accommodation for welfare reasons - should also have access to a declaration of local connections. The regulation will provide flexibility to ensure that all those young people who entitled to vote should have the mechanism to do so. The nature of electoral law is that it is technical and complex. It is therefore considered prudent to take powers to respond to any unexpected difficulties encountered in practice and a result of wider changes made to the franchise.

The regulation making power would provide a safeguard to make further provision in light of any practical experiences that arise from the extension of the franchise to this category of voter.

REGULATIONS RELATING TO	Power to make regulations about the disclosure of a young person's information in connection with election to the Senedd.
BILL PART	III
SECTION	25
METHOD OF BRINGING INTO FORCE	Affirmative
DESCRIPTION OF THE REGULATIONS	
Section 16 of the Bill empowers Welsh Ministers to make regulations to make provision for or about the disclosure of a young person's information in connection with elections to the Senedd. Section 25(2) sets out a non- exhaustive list of the kind of provision that may be made in the regulations regarding the disclosure of a young person's information. "Young person's information" is defined in section 23(2) as any entry in the register of local government electors, or an absent voters record or list relating to persons under the age of 16.	

WHAT CAN THE REGULATIONS ACHIEVE?

There are strict limitations on the processing of information about young people (see section 23) and it may only be disclosed in accordance with section 24 or under regulations made under section 25.

The regulation making power in section 25 enables Welsh Ministers to set out the arrangements for how the information of electors under the age of 16 may be supplied and protected.

In particular, this includes provision about:

- the persons to whom the information may be supplied;
- the purposes for which the supply of the information may be made;
- the restrictions that apply to the recipients of the information, and
- the restrictions that apply to the persons who prepare the full register.

Section 25 allows regulations to create summary criminal offences about the disclosure of a young person's information in connection with elections to the Senedd. The Bill sets out that Welsh Ministers must consult such persons considered appropriate before making the regulations. This will ensure that the regulations are only introduced where the Welsh Ministers are satisfied that it is necessary and appropriate in protecting young people's information.

WHY THE REGULATIONS ARE REQUIRED

The regulation making power will provide flexibility and enable changes to be made to the list of supply enactments in section 25 of the bill or to make separate provision. These may need regular amendment and the Electoral Commission has previously advised that secondary legislation is preferable. It was decided not to set out the regulations on the face of the Bill due to the need to liaise with the electoral community on the development of the detail of the regulations.

The regulation making power includes the power to create a criminal offences to ensure that the offence and sanction at section 25 can be applied to other provision created using the power. The offence relates to the impermissible disclosure of information that the Bill required to be protected.

POLICY INTENTION OF THE REGULATIONS

The handling of information of young people under the age of 16 is sensitive and provision is required placing strict limitations on the processing of information relating to young people by an Electoral Registration Officer. Section 24 sets out how young people information should be protected in general.

A range of interests have access to the full local government register under current legislation. These include the Electoral Commission for donation controls, and local authorities in relation to their statutory functions relating to security, law enforcement and crime prevention. A number of these may have a legitimate

interest in having access to information on 14 and 15 year old attainers, as well as those aged 16 and over, particularly since this is intended to be a permanent reduction in the voting age.

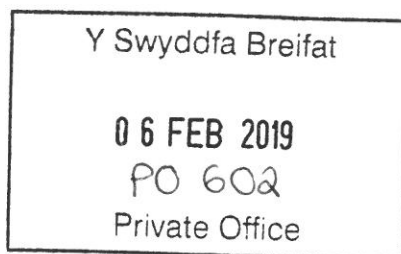
However, this requires careful consideration and engagement with relevant stakeholder. The regulatory power at section 16 will accompany the arrangements set out in section 15 which will enable the Welsh Ministers to specify in regulations additional purposes for which information about young people can be disclosed. The regulation making power is intended to be broad to allow consideration of the persons who may receive the information and the allowable purposes for disclosure.

PART V: Miscellaneous

ORDER IN COUNCIL RELATING TO	Power of the Welsh Ministers to make provision about elections
BILL PART	V
SECTION	36
METHOD OF BRINGING INTO FORCE	Affirmative
DESCRIPTION OF THE ORDER	
Section 36 makes it clear that the Welsh Ministers may use their existing powers under section 13 of the Government of Wales Act 2006 to make provision giving effect to changes to electoral law that are recommended by the Law Commission for England and Wales as they relate to devolved elections. These regulations may need to be made as a result of changes to electoral law recommended by the Law Commission for England and Wales.	
WHAT CAN THE ORDER ACHIEVE?	
This power enables Welsh Ministers to give effect to recommendations of the Law Commission in relation to the rationalisation of electoral law concerning devolved elections.	
WHY THE ORDER IS REQUIRED	
The clarification of the existing Order making power will enable Welsh Ministers to rationalise electoral law following any recommendations made by the Law Commission, and will in particular enable Welsh Ministers to make changes to electoral law concerning local government elections as well as Senedd elections.	
POLICY INTENTION OF THE ORDER	

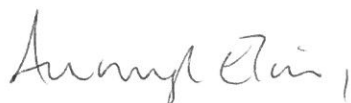
The Law Commission is the statutory independent body created by the Law Commissions Act 1965 to keep the law of England and Wales under review and to recommend reform where it is needed. The aim of the Commission is to ensure that the law is fair, modern, simple and cost effective. The Law Commission will not normally consider matters that are more appropriate for government (UK or Welsh) to consider directly. These include highly controversial or political issues or issues of established government policy.

In December 2014 the Law Commission launched a consultation on proposals for electoral law reform. An interim report was published in February 2016 outlining its proposals for reform. The recommendations set out in the interim report are aimed at simplifying the administrative arrangements relating to elections and standardising those arrangements across the four parts of the UK. The UK Government has not, to date, formally responded to the report. Specific areas covered by the detailed recommendations proposed by the Law Commission include the powers of acting returning officers, the manner of voting, absent voting, counts and various other important issues. The Assembly may wish to consider in due course whether the recommendations on electoral law reform proposed by the Law Commission should be implemented in relation to devolved elections in Wales. The Bill therefore clarifies Welsh Minister's existing regulation making powers under section 13 of the Government of Wales Act 2006 and would enable electoral law as it relates to devolved elections to be rationalised as a result of the Law Commission's interim or future recommendations.



Elin Jones AM
Llywydd
National Assembly for Wales
Cardiff Bay
CF99 1NA

 **February 2019**



I am writing with regard to the Senedd and Elections (Wales) Bill which you intend to introduce into the Assembly shortly. I note in particular the amendments proposed to section 1(1) of the Government of Wales Act 2006 to change the name of the Assembly to Senedd Cymru. It was of course the Government's clear intention when devolving powers through the Wales Act 2017 that the Assembly should be able to decide for itself what it is to be called and I welcome the approach you have taken to engaging on this matter.

I note your intention to change the term "Assembly" to "Parliament", which is something I support. I am advised the Assembly does not have legislative competence under paragraph 7(2) of Schedule 7B to the Government of Wales Act 2006 to make this change. However, the Assembly plans to use its powers to make consequential or incidental provision set out in paragraph 7(4) of this Schedule.

In this case, I support the change on the basis it can be argued that it is incidental to the Assembly's change of name rather than consequential and would be grateful if you could confirm whether you share this view.

I trust that careful consideration will continue to be given to the use of such powers in future and their use on this occasion does not set a precedent in this regard.

I am copying this letter to the First Minister and to party leaders in the Assembly.

In daiffrwyd,
Alun

Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

The Rt Hon Alun Cairns MP
Secretary of State for Wales
Wales Office
Gwydyr House
Whitehall
London
SW1A 2NP

Your ref: 83Sub19
Our ref: PO602/EJ/TJ

12 February 2019

Dear Secretary of State

Senedd and Elections (Wales) Bill

Thank you for your recent correspondence regarding the Senedd and Elections (Wales) Bill.

I have noted with interest your comments, outlining that:

- you would support changing the term “Assembly” to “Parliament” in Section 1(1) of the Government of Wales Act 2006 (GOWA); and that
- you consider it could be argued that such a change would be incidental to the Assembly’s change of name.

I am very grateful for your positive engagement on this issue. It may be helpful if I clarify two points in your correspondence.

You refer to a proposal to change the name of the Assembly to “Senedd Cymru.” The Senedd and Elections (Wales) Bill, as introduced, would amend the name National Assembly for Wales to “Senedd” not “Senedd Cymru”.

Also, the Bill (as introduced) will not change the term ‘Assembly’ (where it first appears in Section 1(1) of GOWA) to ‘Parliament’. Rather the Bill will provide that

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Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

the Assembly for Wales (as GOWA describes the institution) is to be known as the Senedd, and that the Senedd may also be known as the Welsh Parliament. The rationale for this drafting approach will be set out in the Explanatory Memorandum to the Bill.

I anticipate that the question of how Section 1(1) of GOWA should be amended will be considered during scrutiny of the general principles of this Bill. Your contribution will help inform that debate.

I have noted that you have copied your correspondence to the First Minister and party leaders. I share likewise my response with them and also the Chair of the Constitutional and Legislative Affairs Committee as the Bill will be referred to that Committee.

Yours sincerely

Elin Jones AM
Llywydd



Ein cyf/Our ref: MA - L/CG/0176/19

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales

13 February 2019

Dear Mick,

I am writing to set out the Welsh Government's initial views on the Senedd and Elections (Wales) Bill to inform the Committee's scrutiny at Stage 1, which in turn will inform the Government's consideration of potential amendments we may table at Stage 2.

I am pleased that the Welsh Government has been able to provide assistance to the Llywydd in developing the franchise provisions in the Bill, given the links with our own forthcoming legislation about local government elections, and I am grateful to have had the opportunity to discuss some of the other provisions in the Bill with the Llywydd during their development.

As I said in Plenary in response to the Llywydd's statement, the Welsh Government is very supportive of the main aims of the Bill as we see them: to rename the institution to reflect its status, to extend the franchise, and to clarify the rules about disqualification. Our specific observations on the Bill's provisions are set out below.

Part 2 – Name of the National Assembly for Wales

The Bill provides that the Assembly be renamed via two different provisions in similar terms, one of which is an amendment to s1(1) of the Government of Wales Act 2006 (GoWA) so that it would read:

“(1) There is to be an Assembly for Wales to be known as the Senedd.
(1A) The Senedd may also be known as the Welsh Parliament”.

The Welsh Government is concerned that this change could add to, rather than reduce, the confusion which already exists about the names of our institutions, which is extremely important given that the proposed amendments are to our key constitutional statute. We are also concerned that the use of “Senedd” alone without any other indication of its territorial connection to Wales may give rise to accessibility issues.

Our preference would be to amend s1(1) of GoWA to avoid the risk of confusion, so that it would read:

“(1) There is to be a parliament for Wales to be known as [x].”

Although we recognise that the name of our parliament is a matter for the Assembly as a whole to decide, we consider that “Senedd Cymru” and “Welsh Parliament” would have the advantage over “Senedd” that they would address our second concern about territorial connection as the Scottish Parliament and the Dáil Éireann do.

Part 3 – Elections

The Welsh Government fully supports the proposed extension of the franchise to 16 and 17 year olds. Our policy position is that the franchise for Assembly elections should be consistent with that we intend to extend for local government elections. To that end, we would wish to see this Bill include within the franchise foreign nationals who are legally resident in Wales.

We are working with the Assembly Commission to consider what arrangements will be necessary to ensure extension of the franchise for devolved elections is successful. These will include research, communication and educational material. We anticipate the need to establish a Welsh Government External Board of advisors to help with this work, and the Commission will be key partners in helping us to shape this work.

Careful handling of the messaging in the communication and education campaigns will be necessary to minimise confusion for the electorate if Assembly and local government franchises do diverge.

In addition, we support the principle of prisoner voting and look forward to receiving the report of the Equality, Local Government and Communities Committee to further inform our thinking on this.

Now that the Assembly has legislative competence in relation to devolved elections and referendums, its financing and accountability relationship with the Electoral Commission needs to be placed on a formal footing. We stand ready to work with the Llywydd, as Member in Charge, the Electoral Commission and HM Treasury, in the light of Stage 1 scrutiny, to explore whether amendments could be brought forward to achieve this, which would supersede and replace the current proposed duty in the Bill to consider reform of oversight of the work of the Electoral Commission in relation to devolved Welsh elections and referendums.

Part 4 – Disqualification

The Welsh Government fully supports the policy intention of clarifying which persons/offices are disqualified from membership, and which are disqualified from candidacy. We are undertaking detailed analysis of these provisions to satisfy ourselves that they eliminate complexity as far as possible, and that we are comfortable with the policy rationale for any changes to eligibility from existing law. I would welcome the Committee’s views on these matters, particularly given its and its predecessor’s previous work in this area.

Part 5 – Miscellaneous

We note that most of the provisions in this Part of the Bill are internal matters for the Assembly Commission and the Assembly rather than the Government.

However, the Bill does in this Part make provision for the Welsh Ministers to implement recommendations for reform of electoral law made by the Law Commission.

We do not believe it is appropriate to take forward Law Commission recommendations, or to create an expectation about them, in this way, and we have concerns about the drafting of the current provisions in respect of their interaction with existing powers and with powers relating to local government elections.

Instead, we consider that Law Commission recommendations for reform of electoral law or any law should, if these are supported by the Welsh Government, generally be introduced using primary legislation under expedited procedures. Work is well advanced on the development of a fast-track, flexible procedure for consolidation Bills and in due course we would like to explore a similarly expedited process for law reform bills which go beyond consolidation, as recommended by the Law Commission themselves in their report on the form and accessibility of law.

I hope that these reflections are helpful. I am copying this letter to the Llywydd, as Member in Charge, and to the Chair of the Finance Committee. I look forward to working with you all on this Bill during its passage through the Assembly.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy Miles', with a stylized, cursive script.

Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
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14 February 2019

Dear Mick,

Thank you for your letter of 6 February regarding The Public Procurement (Amendment Etc.) (EU Exit) Regulations 2019.

There were errors in the written statement under SO30C, for which I apologise. It was an administrative error where only the text relating to equalities was included. The revised written statement was laid within a few days of the error being noticed. I can confirm that the version laid on 25 January is the complete version of the SO30C written statement.

You requested clarification about which functions are affected by this SI, how they will be exercised and whether they are new functions. The Welsh Ministers have no extant functions under existing procurement legislation and therefore the executive powers of the Welsh Ministers are not affected by this instrument. In terms of the nature of functions being created by this instrument, I thought it best to answer this by specifying each of the functions below. References to "regulations" are to regulations in the SI.

The following functions have been transferred to the Minister for the Cabinet Office ("MCO") where the prior consent of the Welsh Ministers is required in relation to devolved Welsh authorities as defined in section 157A GoWA 2006 ("DWAs") - see regulations 5(56), 7(31) and 9 (63) for the full provisions in relation to consent:-

- (i) Amendment of electronic means of communication in the submission process - regulations 5(19) Public Contracts Regulations 2015 (PCR 2015) and 9 (27) Utilities Contracts Regulations 2016 (UCR 2016).
- (ii) Amend the list of technical details and characteristics that tools and devices for the electronic receipt of documents must possess – regulations 5(19) (PCR 2015) and 9 (27) (UCR 2016).

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

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

- (iii) Update the list of international treaties ratified by the UKG - regulations 5(37) (PCR 2015), 7(21) (CCR 2016 and) and 9 (45) (UCR 2016.)

The following functions have been transferred to the MCO and the Welsh Ministers to be exercised concurrently:

- (i) To request reports under regulation 31(16) Concession Contracts Regulations 2016 (CCR 2016) – to be exercised concurrently with the Welsh Ministers in relation to DWAs - regulation 7(17).
- (ii) To request reports under regulation 99 Utilities Contracts Regulations 2006 (UCR 2016) – to be exercised concurrently with the Welsh Ministers in relation to DWAs - regulation 9(58).

The following functions have been transferred to the Cabinet Office, some of which are exercised concurrently with the Welsh Ministers (as indicated)

- (i) The UK e-notification system which will replace the Official Journal of the European Union in terms of the notices required to be submitted. Applies to the PCR 2015, UCR 2016 and UCR 2016.
- (ii) To request reports under regulation 32 PCR 2015 – to be exercised concurrently with the Welsh Ministers in relation to DWAs - regulation 5(27).
- (iii) To request reports under regulation 84 PCR 2015 – to be exercised concurrently with the Welsh Ministers in relation to DWAs - regulation 5(55).

The following functions have been transferred to the MCO

- (i) Review thresholds limited to ensure compliance with the Agreement on Government Procurement (“GPA”) - the UK is applying for membership of it. This applies to the PCR 2015, UCR 2016 and UCR 2016.
- (ii) To review the Common Procurement Vocabulary codes - regulation 16.
- (iii) To request reports under regulation 8(3) Utilities Contracts Regulations 2006 - regulation 12(f).
- (iv) To amend the list of arms, munitions and war material adopted by the Council of the EEC in its decision 255/58 of 15th April 1958 – regulations 5(3) (PCR 2015), 7(4) (CCR 2016) and 9(3) (UCR 2016).
- (v) To request certain information in relation to contracts awarded by utilities in relation to Northern Ireland – regulation 9(21).

With respect to Statutory Instrument Consent Memoranda, the new arrangements put in place via this Statutory Instrument are largely made in relation to UK subordinate legislation. SO30A requires a SICM to be laid in relation to any Statutory Instrument that is laid before the UK Parliament by UK Ministers which makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly. The only changes made to UK primary legislation are in relation to The Equality Act 2010, The Public Services (Social Value) Act 2012 and The Greater London Authority Act 1999. A SICM has been laid in respect of the changes made to The Equality Act 2010 as this is UK primary legislation

that is within the legislative competence of the Assembly. The amendments to the other two Acts do not require a SICM as these Acts are not within the devolved competence of the Assembly.

For the sake of completeness, and as per our previous letters, Welsh Government officials are in contact with the Wales Office about the unintended restrictions on the Assembly's competence created by powers conferred in EU Exit SIs and other legislation, which engages paragraphs 8, 10 and 11 of Schedule 7B of the Government of Wales Act. Officials are examining the issue in detail and considering how it can best be resolved. The Welsh Government will keep the National Assembly, including the Constitutional and Legislative Affairs Committee, informed about the progress of these discussions.

I hope this information is helpful to the committee.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid.

Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Rebecca Evans AM
Minister for Finance and Trefnydd
Welsh Government

6 February 2019

Dear Rebecca

The Public Procurement (Amendment Etc.) (EU Exit) Regulations 2019

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statement issued under Standing Order 30C for the above named regulations at its meeting on 4 February 2019.

I would like to draw your attention to concerns we have with the written statement(s).

The Welsh Government laid a written statement under Standing Order 30C in respect of these Regulations on 18 December 2018. A Statutory Instrument Consent Memorandum, under Standing Order 30A, was also laid. The Committee considered the Statutory Instrument Consent Memorandum and written statement at its meeting on 14 January 2019.

We now note that the Welsh Government has laid this further written statement in respect of the same Regulations. We would be grateful to receive clarification as to when and why the original statement was withdrawn, and why a second statement was not then laid until 25 January 2019.

I would also like to draw your attention to a number of concerns we have with the Regulations.

The written statement lists the legislation being amended by the Regulations, but it does not identify which legislative powers of the National Assembly or executive powers of the Welsh Ministers are affected by this instrument. The written statement says that the Regulations enable functions to be exercised by the Cabinet Office in relation to Devolved Welsh Authorities, either with the



consent of the Welsh Ministers or exercised concurrently with the Welsh Ministers. However, the written statement does not say whether this relates to all functions, whether the Regulations restate existing arrangements, or whether these represent new arrangements in terms of how functions are exercised in relation to devolved Welsh Authorities. We would be grateful for clarification on this matter.

In addition, the written statement correctly identifies implications for the National Assembly's competence in the future, at which point Minister of the Crown consent will be needed under Schedule 7B of the Government of Wales Act 2006 to make any changes in these areas. However, if these are new arrangements it is unclear why the Welsh Government did not lay a Statutory Instrument Consent Memorandum as it did, in December 2018, in relation to changes that these Regulations make to the Equality Act 2010.

I would be grateful for a response and clarification on the matters raised above by 14 February 2019.

Yours sincerely



Mick Antoniw
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.





Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Tŷ Hywel
Cardiff Bay
Cardiff
CF99 1NA

14 February 2019

Dear Mick,

Thank you for your letter of 6 February regarding The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019 ("the 2019 Regulations").

The 2019 Regulations contain provisions which enable the Welsh Ministers, in place of the European Commission, to exercise administrative functions in relation to Wales on a concurrent basis so that the Welsh Ministers may exercise their powers in relation to Wales. These administrative functions broadly include drawing up lists of third countries for the purposes of trade between the European Union and third countries in live animals and animal products and the importation and movement of such animals and products into and through the European Union, processes relating to the import and export of live animals into and out of the EU facilitated through border inspection posts and processes relating to emergency and animal disease control situations.

In addition, there are two EU instruments (relating to the non-commercial movement of pet animals and the import of aquaculture animals and products), in respect of which legislative functions are conferred on the Welsh Ministers on a concurrent basis with consent required from the Welsh Ministers for the Secretary of State to exercise the powers in relation to Wales.

Impact on executive competence

The 2019 Regulations will extend the Welsh Ministers' executive powers. It will transfer the European Commission's current powers, including regulation-making functions relating to the non-commercial movement of pet animals and the import of aquaculture animals and products, to Welsh Ministers in relation to Wales.

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

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

Impact on the Assembly's legislative competence

In terms of the impact on the Assembly's legislative competence, administrative and legislative functions transferred to the Secretary of State to be exercised concurrently with the consent of the Welsh Ministers may constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

Welsh Government officials are in contact with the Wales Office about the unintended restrictions on the Assembly's competence created by powers conferred in EU Exit SIs and other legislation, which engages paragraphs 8, 10 and 11 of Schedule 7B of the Government of Wales Act. Officials are examining the issue in detail and considering how it can best be resolved. The Welsh Government will keep the National Assembly, including the Constitutional and Legislative Affairs Committee, informed about the progress of these discussions.

I hope this information is helpful to the Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid.

Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Rebecca Evans AM
Minister for Finance and Trefnydd
Welsh Government

6 February 2019

Dear Rebecca

**The Import of and Trade in Animals and Animal Products (Amendment etc.)
(EU Exit) Regulations 2019**

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statement issued under Standing Order 30C for the above named regulations at its meeting on 4 February 2019.

I would like to draw your attention to concerns we have with these Regulations.

The written statement confirms that the amendments contained in the Regulations are “to be made by the Secretary of State in relation to UK or GB wide legislation in relation to which the Welsh Ministers have executive functions and the subject matter of the legislation, namely the movement of animals and preventive health measures that apply to the movement of animals in relation to Wales is within the legislative competence of the National Assembly.”

However, the statement does not identify the impact these Regulations may have, either on the executive competence of the Welsh Ministers or the legislative competence of the Assembly, as required under Standing Order 30C.3(ii).

We ask that you provide clarification on which devolved powers are affected by the Regulations.

I would also like to draw your attention to other minor issues with the written statement.

The Regulations, at Schedule 2, revoke “Commission Decision 2006/65/EC on certain protection measures in relation to intra-Community trade in poultry



intended for restocking of wild game supplies". The stated Commission Decision reference appears to contain an error, and should read "2006/605/EC".

In addition, the written statement refers to the incorrect reference in its list of retained direct EU legislation being revoked, and also contains a duplicate reference to this Commission Decision (correctly referenced) in the section titled "European Directly Applicable Instruments".

I would be grateful for a response and clarification on which devolved powers are affected by the Regulations by 14 February 2019.

I am copying this letter to Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs.

Yours sincerely

A handwritten signature in black ink, reading "Mick Antoniw". The signature is fluid and cursive, with a horizontal line underneath the name.

Mick Antoniw
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Agenda Item 12

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

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Agenda Item 13

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

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