Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 4 March 2019
Meeting time: 13.00

For further information contact:
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1 Introduction, apologies, substitutions and declarations of interest

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

3 Senedd and Elections (Wales) Bill: Technical Briefing from officials

13.00

4 Senedd and Elections (Wales) Bill: Proposals for outreach work

13.50 (Pages 1 – 4)

CLA(5)-08-19 – Briefing outreach work

Public (14.00)

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

14.00 (Pages 5 – 10)

CLA(5)-08-19 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

5.1 **SL(5)319 – The Arrangements for Assistance for Persons Making Representations (Wales) Regulations 2019**

5.2 **SL(5)321 – The Regulated Services (Annual Returns and Registration) (Wales) (Amendment) Regulations 2019**

5.3 **SL(5)323 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2019**

Affirmative Resolution Instruments

5.4 **SL(5)331 – The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2019**

6 Instruments previously considered for sifting and now subject to scrutiny under Standing Orders 21.2 and 21.3

(Pages 11 – 14)

CLA(5)-08-19 – Paper 2– Clear reports except for single merits point under Standing Order 21.3 (has been subject to sifting)

6.1 **SL(5)325 – The Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019**

6.2 **SL(5)328 – The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

6.3 **SL(5)329 – The Environmental Noise (Wales) (Amendment) (EU Exit) Regulations 2019**

6.4 **SL(5)330 – The Equine Identification (Wales) (Amendment) (EU Exit) Regulations 2019**

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

7.1 **SL(5)320 – The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019**

(Pages 15 – 27)

CLA(5)-08-19 – Paper 3 – Report

CLA(5)-08-19 – Paper 4 – Regulations

CLA(5)-08-19 – Paper 5 – Explanatory Memorandum

7.2 **SL(5)322 – The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019**

(Pages 28 – 44)

CLA(5)-08-19 – Paper 6 – Report

CLA(5)-08-19 – Paper 7 – Regulations

CLA(5)-08-19 – Paper 8 – Explanatory Memorandum

7.3 **SL(5)326 – The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2019**

(Pages 45 – 72)

CLA(5)-08-19 – Paper 9 – Report

CLA(5)-08-19 – Paper 10 – Regulations

CLA(5)-08-19 – Paper 11 – Explanatory Memorandum

7.4 **SL(5)327 – The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2019**

(Pages 73 – 87)

CLA(5)-08-19 – Paper 76 – Report

CLA(5)-08-19 – Paper 77 – Regulations

CLA(5)-08-19 – Paper 78 – Explanatory Memorandum

8 Instruments that raise issues to be reported to the Assembly under Standing Order 21.7

8.1 **SL(5)324 - Code of Practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014**

(Pages 88 - 173)

CLA(5)-08-19 - Paper 12 - Report

CLA(5)-08-19 - Paper 13 - Code of Practice

CLA(5)-08-19 - Paper 14 - Explanatory Memorandum

9 Statutory Instruments requiring Consent: Brexit

9.1 **SICM(5)20 - National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019**

(Pages 174 - 211)

CLA(5)-08-19 - Paper 15 - Letter from the Minister for Health and Social Services

CLA(5)-08-19 - Paper 16 - Welsh Government Written Statement: Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)- 08-19 - Paper 17 - Statutory Instrument Consent Memorandum

CLA(5)- 08-19 - Paper 18 - Regulations

CLA(5)- 08-19 - Paper 19 - Explanatory Memorandum

CLA(5)- 08-19 - Paper 20 - Commentary

9.2 **SICM(5)21 - Social Security Coordination (Benefits in Kind etc) (Amendment etc) (EU Exit) Regulations 2019**

(Pages 212 - 255)

CLA(5)-08-19 - Paper 21 - Letter from the Minister for Health and Social Services

CLA(5)-08-19 - Paper 22 - Welsh Government Written Statement: Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)- 08-19 - Paper 23 – Statutory Instrument Consent Memorandum

CLA(5)- 08-19 - Paper 24 – Regulations

CLA(5)- 08-19 - Paper 25 – Explanatory Memorandum

CLA(5)- 08-19 - Paper 26 – Commentary

10 Written statements under Standing Order 30C

10.1 **WS-30C(5)101 - The Public Procurement (Amendment etc.) (EU Exit) (No.2) Regulations 2019**

(Pages 256 - 259)

CLA(5)-08-19 - Paper 27 – Statement

CLA(5)-08-19 - Paper 28 – Commentary

10.2 **WS-30C(5)104 - The Market Measures (Marketing Standards) (Amendment of Retained Direct EU Legislation) (EU Exit) Regulations 2019**

(Pages 260 - 264)

CLA(5)-08-19 - Paper 29 – Statement

CLA(5)-08-19 - Paper 30 – Commentary

10.3 **WS-30C(5)105 - The Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019**

(Pages 265 - 268)

CLA(5)-08-19 - Paper 31 – Statement

CLA(5)-08-19 - Paper 32 – Commentary

10.4 **WS-30C(5)106 - Market Measures Payment Schemes (Amendments) (EU Exit) Regulations 2019**

(Pages 269 - 273)

CLA(5)-08-19 - Paper 33 – Statement

CLA(5)-08-19 - Paper 34 – Commentary

10.5 **WS-30C(5)107 - The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019**

(Pages 274 - 281)

CLA(5)-08-19 - Paper 35 – Statement

CLA(5)-08-19 - Paper 36 – Commentary

10.6 **WS-30C(5)108 - Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019**

(Pages 282 - 285)

CLA(5)-08-19 - Paper 37 - Statement

CLA(5)-08-19 - Paper 38 - Commentary

10.7 **WS-30C(5)109 - The State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019**

(Pages 286 - 293)

CLA(5)-08-19 - Paper 39 - Statement

CLA(5)-08-19 - Paper 40 - Commentary

CLA(5)-08-19 - Paper 41 - Letter from the Counsel General

10.8 **WS-30C(5)110 - The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019**

(Pages 294 - 301)

CLA(5)-08-19 - Paper 42 - Statement

CLA(5)-08-19 - Paper 43 - Commentary

10.9 **WS-30C(5)111 - The Food, Drink, Veterinary Medicines And Residues (Amendments Etc.) (Eu Exit) Regulations 2019**

(Pages 302 - 311)

CLA(5)-08-19 - Paper 44 - Statement

CLA(5)-08-19 - Paper 45 - Commentary

10.10 **WS-30C(5)112 - The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019**

(Pages 312 - 315)

CLA(5)-08-19 - Paper 46 - Statement

CLA(5)-08-19 - Paper 47 - Commentary

10.11 **WS-30C(5)113 - The Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019**

(Pages 316 - 319)

CLA(5)-08-19 – Paper 48 – Statement

CLA(5)-08-19 – Paper 49 – Commentary

10.12 **WS-30C(5)114 – The Organic Production and Control (Amendment) (EU Exit) Regulations 2019**

(Pages 320 – 323)

CLA(5)-08-19 – Paper 50 – Statement

CLA(5)-08-19 – Paper 51 – Commentary

10.13 **WS-30C(5)115 – The Agriculture (Legislative Functions) (EU Exit) (No 2) Regulations 2019**

(Pages 324 – 329)

CLA(5)-08-19 – Paper 52 – Statement

CLA(5)-08-19 – Paper 53 – Commentary

10.14 **WS-30C-116 – The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019**

(Pages 330 – 333)

CLA(5)-08-19 – Paper 54 – Statement

CLA(5)-08-19 – Paper 55 – Commentary

10.15 **WS-30C(5)117 – The Agriculture (Legislative Functions) (EU Exit) Regulations 2019**

(Pages 334 – 340)

CLA(5)-08-19 – Paper 56 – Statement

CLA(5)-08-19 – Paper 57 – Commentary

10.16 **WS-30C-119 – The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019**

(Pages 341 – 346)

CLA(5)-08-19 – Paper 58 – Statement

CLA(5)-08-19 – Paper 59 – Commentary

10.17 **WS-30C-120 – The Food and Farming (Amendment) (EU Exit) Regulations 2019**

(Pages 347 – 352)

CLA(5)-08-19 – Paper 60 – Statement

CLA(5)-08-19 – Paper 61 – Commentary

10.18 **WS-30C-121 – The Common Organisation of the Markets in Agricultural Products (Council Regulations) (Miscellaneous Amendments etc.) (EU Exit) Regulations 2019**

(Pages 353 – 359)

CLA(5)-08-19 – Paper 62 – Statement

CLA(5)-08-19 – Paper 63 – Commentary

CLA(5)-08-19 – Paper 79 – Letter from the Counsel General, 28 February 2019

10.19 **WS-30C-122 – The Zoonotic Disease Eradication Control (Amendment) (EU Exit) Regulations 2019**

(Pages 360 – 366)

CLA(5)-08-19 – Paper 64 – Statement

CLA(5)-08-19 – Paper 65 – Commentary

11 Papers to Note

11.1 **Letter from the Rt.Hon Lord Trefgarne Chair of the Secondary Legislation Committee relating to WS-30C(5)81 – The State Aid (EU Exit) Regulations 2019**

(Page 367)

CLA(5)-08-19 – Paper 66 – Letter from the Rt.Hon Lord Trefgarne Chair of the Secondary Legislation Committee

11.2 **Correspondence relating to pNeg(5)08 - The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019**

(Pages 368 - 370)

CLA(5)-08-19 - Paper 67 - Letter to the Minister for Environment, Energy and Rural Affairs

CLA(5)-08-19 - Paper 68 - Letter from the Minister for Environment, Energy and Rural Affairs

11.3 **Letter from the Minister for Environment, Energy and Rural Affairs relating to SICM(5)18 - The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019**

(Page 371)

CLA(5)-08-19 - Paper 69 - Letter from the Minister for Environment, Energy and Rural Affairs

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

13 Supplementary Legislative Consent Memorandum: Trade Bill

(Pages 372 - 384)

CLA(5)-08-19 - Paper 73 - Supplementary Legislative Consent Memorandum

CLA(5)-08-19 - Paper 74 - Draft Report

14 Scrutiny of regulations made under the EU (Withdrawal) Act 2018: Update

(Pages 385 - 386)

CLA(5)-08-19 - Paper 76 - Update

Agenda Item 4

Document is Restricted

Statutory Instruments with Clear Reports

04 March 2019

SL(5)319 – The Arrangements for Assistance for Persons Making Representations (Wales) Regulations 2019

Procedure: Negative

Under section 178(4) and (5) of the Social Services and Well-being (Wales) Act 2014, the Welsh Ministers are required to make regulations to make further provision about a local authority's duty to make arrangements to help children and young persons who want to make representations. This applies to representations by children and young persons about a range of the local authority's social services functions which affect children and young persons.

These Regulations make provision about the categories of persons who, under the local authority's arrangements, may not provide assistance to the child or young person.

When a local authority becomes aware that a child or young person wants to make representations, regulation 3 requires the local authority to provide information about advocacy services and help in obtaining the assistance of an advocate.

Regulation 4 requires a local authority to monitor its compliance with these requirements.

Parent Act: Social Services and Well-being (Wales) Act 2014

Date Made: 06 February 2019

Date Laid: 08 February 2019

Coming into force date: 01 April 2019

SL(5)321 – The Regulated Services (Annual Returns and Registration) (Wales) (Amendment) Regulations 2019

Procedure: Negative

These Regulations amend the Regulated Services (Annual Returns) (Wales) Regulations 2017 ("the Annual Returns Regulations") and the Regulated Services (Registration) (Wales) Regulations 2017 ("the Registration Regulations").

Regulation 6 (other information) of the Annual Returns Regulations is amended to incorporate those service providers who are registered to provide an adoption service, a fostering service, an adult placement service or an advocacy service, to submit additional information, as specified within the Schedule, as part of their annual return.

Regulation 9A (time for submission of first annual returns) is inserted to specify the year the first set of annual returns is to be submitted by respective service providers.

The Schedule (information about staffing), paragraph 5 is amended to distinguish the categories of filled and vacant posts that are required to be contained in the annual return by respective service providers.

Schedule 1 (information required about the service to be provided) of the Registration Regulations is amended to incorporate those service providers who are registered to provide an adoption service, a fostering service, an adult placement service or an advocacy service.

Schedule 2 (information required to be contained in a statement of purpose) is amended to incorporate those service providers who are registered to provide an adoption service, a fostering service, an adult placement service or an advocacy service.

Parent Act: Regulation and Inspection of Social Care (Wales) Act 2016

Date Made: 12 February 2019

Date Laid: 13 February 2019

Coming into force date: 29 April 2019

SL(5)323 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2019

Procedure: Negative

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

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

These Regulations make a number of technical amendments and introduce a number of changes to student support related matters and apply to academic years beginning on or after 1 September 2019. Briefly, the amendments made by the 2019 Regulations concern:

An increase to the amount of Disabled Student's Grant;

An increase to the amount of maintenance support available to 2019 cohort students;

An increase to the amount of maintenance support made available to eligible

students who began their courses on or after 1 September 2012 but before 1 August 2019 ("2012 Cohort Students") is increased each year in order to reflect cost of living increases;

An adjustment to 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;

Student support for unaccompanied children – a new eligibility category in respect of individuals granted leave to remain under section 67 of the Immigration Act 2016;

Revise the conditions of designation concerning courses in England for the purpose of student support;

Consequential amendments as a result of the change from Joint Academic Coding System (JACS) which is being replaced by the Higher Education Classification of Subjects (HECoS).

Parent Act: Education (Fees and Awards) Act 1983; Teaching and Higher Education Act 1998; Higher Education (Wales) Act 2015

Date Made: 12 February 2019

Date Laid: 13 February 2019

Coming into force date: 08 March 2019

SL(5)331 – The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2019

Procedure: Affirmative

These Regulations are made under section 186 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the Act").

The Act introduces a new system of registration for care and support services in Wales, replacing that established by the Care Standards Act 2000 ("the 2000 Act").

Part 1 of the Act replaces the system of registration for providers of social care services set out in Parts 1 and 2 of the 2000 Act, which registers

establishments and agencies. The 2000 Act requires a separate registration for each location at which a social care service is provided.

The Act takes a different approach which is service based. A provider must register with the Welsh Ministers in order to provide any care and support service which is a regulated service under the Act and that registration will contain the details of all the locations at which the provider provides a regulated service.

These Regulations make consequential amendments to primary legislation which refer for various purposes to one of the categories of establishment or agency which were regulated under the 2000 Act in order to replace such references with references to the appropriate "regulated service" under the Act.

Part 1 of the Act was commenced on 2 April 2018 in relation to the following regulated services—

(a) care home services;

(b) secure accommodation services;

(c) residential family centre services;

(d) domiciliary support services.

On 29 April 2019 Part 1 of the Act is commenced in relation to the remaining regulated services—

(a) adoption services;

(b) fostering services;

(c) adult placement services;

(d) advocacy services (advocacy services are not currently registered under the 2000 Act).

Parent Act: Regulation and Inspection of Social Care (Wales) Act 2016

Date Made:

Date Laid: 15 February 2019

Coming into force date:

Statutory Instruments with clear reports, that were previously considered for sifting and are now subject to scrutiny under Standing Orders 21.2 and 21.3

4 March 2019

The following instruments were previously considered for sifting in accordance with Standing Order 21.3B. In the sift process, the Committee agreed that in all cases the appropriate procedure for the Regulations was the negative resolution procedure. Now the instruments are subject to usual scrutiny in accordance with Standing Orders 21.2 and 21.3. Although all the instruments have clear reports they also contain a merits point to highlight the sift process:

> **Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly**
>
> **A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations**

SL(5)325 – The Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations substitute "requirement of retained direct EU legislation" for "directly applicable requirement of European Union law" in section 14A(5) of the Learner Travel (Wales) Measure 2008.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 4 February 2019

Date Made: 12 February 2019

Date Laid: 13 February 2019

Coming into force date:

SL(5)328 – The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (the 'European Communities Act') and by the powers conferred by paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7 to, the European (Withdrawal) Act 2018 (the 'Withdrawal Act').

These Regulations amend 5 other instruments as follows:

- The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (S.I. 2004/1656);
- The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009 (S.I. 2009/3342);
- The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 (S.I. 2016/58);
- Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 (S.I. 2017/565); and
- The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (S.I. 2017/567).

The provisions made under section 2(2) of the European Communities Act make minor amendments or are to update out-of-date references.

The provisions made under the powers in the Withdrawal Act are intended 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.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 28 January 2019

Date Made: 13 February 2019

Date Laid: 13 February 2019

Coming into force date:

SL(5)329 – The Environmental Noise (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations are made under section 11 of, and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018. The Regulations amend the Environmental Noise (Wales) Regulations 2006 ("the **2006 Regulations**") in order to address failures of retained EU to operate effectively and other deficiencies arising from the UK's departure from the European Union.

The 2006 Regulations implemented Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise. These Regulations maintain the requirements imposed by the 2006 Regulations but amend references to Directive 2002/49/EC and make other minor and technical amendments.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 7 January 2019

Date Made: 11 February 2019

Date Laid: 13 February 2019

Coming into force date:

SL(5)330 – The Equine Identification (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations make amendments to the Equine Identification (Wales) Regulations 2019 (the "2019 Regulations") which supplement and make provision for the enforcement of Commission Implementing Regulation (EU) 2015/262 laying down rules pursuant to Council Directives 90/427/EEC and

2009/156/EC as regards the methods for the identification of equidae in Wales.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 4 February 2019

Date Made: 11 February 2019

Date Laid: 13 February 2019

Coming into force date:

SL(5)320 – The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019

Background and Purpose

These Regulations amend the Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613) ("the 1992 Regulations").

Regulation 2 makes amendments to the 1992 Regulations to remove the power of billing authorities in Wales to apply to a magistrates' court for the issue of a warrant committing a council tax debtor to prison. Regulation 3 makes transitional provision.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3(ii) in respect of this instrument - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Regulations remove the power of local authorities to apply for a warrant committing a council tax debtor to prison. Although the Explanatory Memorandum does not indicate the number imprisoned annually as a result of such a warrant, the Regulations will result in a reduction in the numbers imprisoned for short periods.

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

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
15 February 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 220 (W. 50)

COUNCIL TAX, WALES

The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613) ("the 1992 Regulations").

Regulation 2 makes amendments to the 1992 Regulations to remove the power of billing authorities in Wales to apply to a magistrates' court for the issue of a warrant committing a council tax debtor to prison.

Regulation 3 makes transitional provision. Any cases where a billing authority in Wales has made an application for a warrant of commitment before 1 April 2019 continue to be dealt with under the scheme which applied before these Regulations came into force. However, billing authorities in Wales may not use the power in regulation 48(3) of the 1992 Regulations to renew an application on or after 1 April 2019.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2019 No. 220 (W. 50)

COUNCIL TAX, WALES

The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019

Made *11 February 2019*

Laid before the National Assembly for Wales *12 February 2019*

Coming into force *1 April 2019*

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon the Secretary of State by section 113(2) of, and paragraphs 1(1), 2 and 8 of Schedule 4 to, the Local Government Finance Act 1992(**1**), and now vested in them(**2**).

Title, commencement and application

1.—(1) The title of these Regulations is the Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019.

(2) These Regulations come into force on 1 April 2019.

(3) These Regulations apply in relation to Wales.

(**1**) 1992 c. 14. Section 113 was amended by paragraphs 40, 52(1) and (2) of Schedule 7 to the Local Government Act 2003 (c. 26) and section 80(1), (4) and (5) of the Localism Act 2011 (c. 20). Paragraphs 1 and 8 of Schedule 4 were amended by paragraph 107 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**2**) Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

Amendments to the Council Tax (Administration and Enforcement) Regulations 1992

2.—(1) The Council Tax (Administration and Enforcement) Regulations 1992(**1**) ("the 1992 Regulations") are amended as follows.

(2) In regulation 47(1) (commitment to prison), after "a billing authority" insert "in England".

(3) In regulation 54 (joint and several liability: enforcement), for paragraph (7) substitute—

> "(7) Where the Schedule 12 procedure has been used against two or more joint taxpayers in respect of an amount, a billing authority in England may, subject to paragraph (8), apply for a warrant of commitment at any time against one of them or different warrants may be applied for against more than one of them: but no such application may be made in respect of any of them who has not attained the age of 18 years."

Transitional provision

3.—(1) The amendments made by regulation 2 do not apply in a case where, before 1 April 2019, a billing authority in Wales has applied to a magistrates' court under regulation 47 of the 1992 Regulations for the issue of a warrant committing the debtor to prison.

(2) But in such a case, a billing authority in Wales may not renew an application under regulation 48(3) of the 1992 Regulations on or after 1 April 2019.

Rebecca Evans
Minister for Finance and Trefnydd, one of the Welsh Ministers
11 February 2019

(**1**) S.I. 1992/613, relevant amending instruments are S.I. 1992/3008, 1993/773, 1994/505, 2013/630 and 2014/600.

Explanatory Memorandum to the Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Rebecca Evans AM
Minister for Finance and Trefnydd
12 February 2019

PART 1

Description

1. Regulations 47 and 48 of the Council Tax (Administration and Enforcement) Regulations 1992 (the 1992 regulations) currently make provision for council tax debtors to be committed to prison.

2. This purpose of the amendment is to revoke regulations 47 and 48 from the 1992 Regulations to remove the power of enforcement by committal to prison from 1 April 2019.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. None.

Legislative background

4. Currently, a council tax debtor may be committed to prison for up to three months. A court may only do this if it is of the view that the debtor's failure to pay council tax is due to wilful refusal or culpable neglect and is required to conduct a means assessment to determine whether the individual has the means to pay.

5. The legislation which provides for this sanction and its limitations is paragraph 8 of Schedule 4 to the Local Government Finance Act 1992 (the 1992 Act) and the Regulations made under it. Those Regulations are the Council Tax (Administration and Enforcement) Regulations 1992 (the 1992 Regulations) and they originally applied to England and Wales. They were made by the Secretary of State for the Environment in relation to England and by the Secretary of State for Wales, as respects Wales. Since functions under the 1992 Act were devolved to Wales in 1999, the 1992 Regulations have been amended several times by Welsh Ministers, but the provisions which deal with imprisonment for wilful or culpably neglectful non-payment of council tax remain unchanged.

6. However, the 1992 Act does not require the Welsh Ministers to make provision for council tax debtors to be committed to prison. It sets out the scheme which is to apply, if regulations do make provision enabling imprisonment for non-payment of council tax. Therefore, the Welsh Ministers may remove the power of enforcement by committal to prison by way of subordinate legislation revoking the relevant provisions of the 1992 Regulations in relation to Wales.

7. The enabling provision in the 1992 Act would remain. This means that, should there be a desire in the future, to reinstate the sanction of imprisonment for non-payment of council tax, this could also be done through subordinate legislation.

Purpose and intended effect of the legislation

8. The purpose of the amendment is to ensure that, from 1 April 2019, it will no longer be possible for a local authority to start proceedings to commit an individual to prison for council tax debt.

9. This amendment will complement the wider work being undertaken by the Welsh Government to 'work with local government to review council tax to make it fairer", as outlined in *Taking Wales Forward*. The Welsh Government takes the view that imprisonment for non-payment of council tax is an outdated and disproportionate response to a civil debt issue and that the financial costs and the impact on households outweigh any benefits. There is a growing body of evidence that the key to the effective management of council tax debt is early engagement with households in arrears or at risk of getting into arrears.

10. While the provisions to commit people to prison for council tax debt are intended only to be used in instances of wilful refusal or culpable neglect, there is evidence that this is not always the case. In addition, the original powers were introduced as a tool to assist local authorities in enforcing payment: they are not intended to be used as a mechanism to punish people for non-payment. The amendment will only affect the powers relating to committal. The other powers available to local authorities to enforce the payment of council tax will remain in place.

Consultation

11. A 12-week consultation ran from 11 June 2018 to 3 September 2018 on the proposal to remove the sanction of imprisonment for non-payment of council tax. The consultation was published on the Welsh Government's website, social media, and emailed to key contacts. It was drawn to the attention of a wide audience of key stakeholders including local authorities, debt advice organisations and citizens.

12. During the 12 weeks that the consultation was open, 188 substantive responses were received.

13. Two questions were posed: 'Do you agree that the sanction of imprisonment for non payment of council tax should be removed?' and 'Do you have any other comments regarding this consultation?'

14. A large majority (84%) of respondents indicated their support for the removal of the sanction, with a significant proportion commenting that it was an inappropriate punishment for a civil debt; or that imprisonment should be reserved for violent or serious crimes; or that it disproportionately and unfairly affected those who earned less.

15. Some respondents suggested that the removal of the sanction should be supported by alternative methods of recovery, the most common suggestion being community service. On the whole, those local

authorities who responded were opposed to the removal of the sanction without other measures being implemented to prevent an increase in wilful refusal to pay council tax. However, the responses did not offer substantive evidence to support this view.

16. Those who disagreed with the proposal expressed a view that it would encourage others not to pay council tax; that it was unfair to those who do pay to subsidise those who wilfully refuse to pay; or that the alternate methods of enforcement were insufficient.

17. A summary of the consultation responses is available at: https://beta.gov.wales/removal-sanction-imprisonment-non-payment-council-tax

Regulatory Impact Assessment

18. The Welsh Ministers' Code of Practice on carrying out Regulatory Impact Assessments was considered in relation to these Regulations.

19. A Regulatory Impact Assessment has been conducted and is included in Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

20. This Regulatory Impact Assessment summarises three options in relation to the use of the sanction of imprisonment for the non-payment of council tax from 1 April 2019. All costs and benefits quantified within this Regulatory Impact Assessment are based on information and data available to the Welsh Government leading up to publication.

21. Three options have been considered in the development of the amendment to the regulations. The options considered were:

    Option 1: Do nothing, continue with the current arrangements for committing council tax debtors to prison;

    Option 2: Explore alternative methods of recovery for council tax debt prior to removing the sanction of imprisonment from 1 April 2020 or later;

    Option 3: Introduce legislation for 1 April 2019 to remove the sanction, monitor any potential impact on collection rates and introduce any necessary measures subsequently.

Option 1: Do nothing, continue with the current arrangements for committing council tax debtors to prison

22. Option 1 would involve no changes to the 1992 Regulations and would enable council tax debtors to be committed to prison for up to three months where they have been deemed to be guilty of ‘wilful refusal to pay’ or ‘culpable neglect to pay’ by a Magistrates Court.

Costs

23. Option 1 would result in a continuation of the current regulations and therefore there would be no additional costs to the Welsh Government.

24. There would be no additional costs to local authorities. However, the costs of the committal process to local authorities and the courts and the costs of detaining individuals in prison would continue, as would the costs associated with addressing the longer term effects of imprisonment on individuals and their families.

Benefits

25. The provision to commit a council tax debtor to prison already exists, meaning that all the necessary functionality is in place.

26. There are no additional financial benefits associated with Option 1.

Disadvantages

27. In *Taking Wales Forward* and *Prosperity for All*, the Welsh Government committed to reviewing council tax to make it fairer. Doing nothing, Option 1, would not contribute towards the policy objective.

Option 1 Summary

28. Doing nothing would retain existing arrangements and would not result in any additional costs to the Welsh Government, local authorities or other public services. Neither would it deliver any additional benefits or contribute to the Welsh Government's policy objective to make council tax fairer. This is therefore not the preferred option.

Option 2: Explore alternative methods of recovery for council tax debt prior to removing the sanction of imprisonment from 1 April 2020 or later

29. Option 2 would involve deferring this amendment to the 1992 Regulations until 1 April 2020 or later to coincide with the introduction of additional methods for recovering council tax debt.

Costs

30. Option 2 would result in a continuation of the current regulations for a period and therefore there would be no additional costs to the Welsh Government in the short term.

31. There would be no additional costs to local authorities. However, as with Option 1, the costs of the committal process and imprisonment would continue.

Benefits

32. Option 2 is supported by local authorities. Deferring the amendment until new methods of recovery have been introduced could mitigate any potential loss in revenue by local authorities if collection rates were to be negatively affected. However, there is no substantive evidence to indicate that the removal of the sanction of imprisonment will have an impact on council tax collection rates.

Disadvantages

33. With the exception of local authorities, Option 2 was not supported by other respondents to the consultation. It would enable council tax debtors to continue to be committed to prison until additional measures have been researched, designed and implemented. A recent judicial review highlighted the margin of error in cases of individuals committed to prison for non-payment of council tax.

34. This option would delay achieving the policy objective for an indefinite period.

Option 2 Summary

35. Deferring the amendment until other methods of recovery were introduced would maintain the current system and would not result in additional costs to the Welsh Government or local authorities. However, the current costs of the committal process and imprisonment would continue. While local authorities expressed their support for this option, it would enable council tax debtors to continue to be committed to prison. This position was not supported by other responses to the consultation. This option would delay achieving the Welsh Government's policy objective to make council tax fairer without there being substantive evidence for doing so.

Option 3: Introduce legislation for 1 April 2019 to remove the sanction, monitor any potential impact on council tax collection rates and introduce any necessary measures subsequently

36. This option would involve amending the 1992 Regulations so that from 1 April 2019, it will no longer be possible to start proceedings to commit an individual to prison for council tax debt. Any impact would be monitored and new measures of recovery would be introduced if and when necessary.

Costs

37. There is no additional cost to the Welsh Government associated with this option.

38. There would be no direct costs to local authorities. However, local authorities take the view that this option will affect their collection rates.

Benefits

39. This option would achieve the policy objective of ensuring that individuals cannot be committed to prison for council tax debt from 1 April 2019. It would remove the financial costs associated with committal and imprisonment and end the negative impact this has on individuals and their families.

40. A period of monitoring would enable the Welsh Government to liaise with local government to consider whether additional measures of recovery are required.

Disadvantages

41. Some local authorities have expressed concern that the removal of the sanction of imprisonment might have an impact on council tax collection rates.

Option 3 Summary

42. This option would involve amending the 1992 Regulations so that from 1 April 2019, it will no longer be possible to start proceedings to commit an individual to prison for council tax debt. There are no direct costs to the Welsh Government or local authorities. Any impact, including on local collection rates, would be monitored and new measures of recovery would be introduced if and when necessary. This option contributes to the Welsh Government's policy objective and is the preferred option.

Analysis of other effects and impacts

Promoting Economic Opportunity for All (Tackling Poverty)

43. Council tax arrears disproportionately affect households on lower incomes. The amendment would ensure no individual is committed to prison for council tax arrears.

UNCRC

44. No negative impact on the rights of children has been identified. There is no evidence to indicate that this amendment will result in any reduction in funds available for local authorities. Therefore, there should be no impact on the provision of children's services by a local authority. Removing the sanction will end the negative impact on children arising from the imprisonment of a parent or guardian.

Welsh language

45. No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified in connection with this amendment.

Equalities

46. No negative impact on groups with a protected characteristic as a result of the amendment has been identified. The current use of the committal process and imprisonment disproportionately affects low-income households and its removal will end this inequality.

Well-being of Future Generations (Wales) Act 2015

47. Removing the sanction of imprisonment for non payment of council tax will help to contribute towards the wellbeing objective of a more equal Wales.

Impact on voluntary sector

48. No negative impact on voluntary sector organisations has been identified. Parts of the voluntary sector provide advice to people on council tax debt issues and the amendment will remove the need to advise on the committal process.

Competition Assessment

49. This amendment affects the administration of council tax and has no impact on businesses or competition. Therefore no competition assessment has been carried out.

Post implementation review

50. The Welsh Government will monitor the impact of the removal of the sanction of imprisonment for the non-payment of council tax through engagement with local authorities and other stakeholders and will consider introducing new measures for debt recovery if necessary.

Justice Impact Assessment

51. Policy officials have fully considered the impact of the Council Tax (Administration and Enforcement) Regulations 1992 on the Ministry of Justice.

52. The Regulations do not introduce any new sanctions for non-payment of Council Tax in lieu of imprisonment. It is not envisaged that the Regulations will have a negative impact on any other area of the justice system.

53. In 2016/17, the average cost per prisoner in England and Wales was £22,293 (Direct Resource Expenditure) and £35,371 (Overall Resource Expenditure).[1] Currently, a council tax debtor may be committed to prison for up to three months. Not all cases recorded as resulting in committal by HMCTS result in a Custodial sentence being served. Consequently, it is difficult to estimate the cost saving with accuracy. However, there is evidently a direct saving to the Ministry of Justice.

54. Further, the Regulations will have the effect of reducing the administrative burden on the Ministry of Justice, namely as a result of a decrease in the volume of applications for Committal and the successful Suspended Committals for non-payment of Council Tax in Wales.

55. In accordance with Welsh Government policy, officials have engaged with the office of the Lord Chief Justice.

[1] Ministry of Justice. (2017). *Costs per place and costs per prisoner by individual prison.*

Agenda Item 7.2

SL(5)322 – The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019

Background and Purpose

These Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 ("the Charging Regulations") and the Care and Support (Financial Assessment) (Wales) Regulations 2015 ("the Financial Assessment Regulations").

These Regulations amend Part 2 of the Charging Regulations (charging under Part 5 of the Act) as follows:

- the amount of the maximum weekly charge for non-residential care and support is increased from £80 to £90;
- the relevant capital limit for residential care is increased from £40,000 to £50,000;
- the net weekly minimum income amount where a person is provided with accommodation in a care home is increased from £28.50 to £29.50.

These Regulations amend Part 4 of the Charging Regulations (contributions and reimbursements for direct payments) as follows:

- the amount of the maximum weekly contribution or reimbursement for non-residential care and support is increased from £80 to £90;
- the net weekly minimum income amount where a person is provided with accommodation in a care home and receives direct payments under the Act is increased from £28.50 to £29.50.

These Regulations amend Schedule 2 to the Financial Assessment Regulations as follows:

- payments made under or by a trust established for the purpose of giving relief and assistance to disabled people whose disabilities were caused by the fact that during pregnancy their mother had taken the drug known as Thalidomide, are to be ignored in the calculation of an adult's capital for the purposes of an assessment of that adult's financial resources.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

We note, in particular, two changes made by these Regulations, as described in the Explanatory Memorandum to the Regulations:

- uplift from £80 to £90 the maximum weekly charge applicable to non-residential care and support, and the maximum weekly contribution or reimbursement for receiving direct payments to secure this…This provision ensures that, where a local authority applies its discretion to charge a person for the non-residential care and support they receive, or the non-residential support a carer receives, there is a consistent maximum amount the local authority can charge. Equally, where a local authority applies its discretion to set a contribution or reimbursement for the receipt of direct payments to secure non-residential care and support, there is a consistent maximum amount the local authority can make for these;

- uplift from £40,000 to £50,000 the relevant capital limit as it applies to charging for residential care…This is to implement the third and final stage in delivering a key commitment in the Welsh Government's 'Taking Wales Forward' programme to put in place a £50,000 capital limit in charging for residential care by the end of its current term.

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

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
15 February 2019

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 ("the Charging Regulations") and the Care and Support (Financial Assessment) (Wales) Regulations 2015 ("the Financial Assessment Regulations").

The Charging Regulations set out the requirements which local authorities must follow when making a determination of the amount of the charges which apply in relation to care and support which they are providing or arranging or propose to provide or arrange in the course of carrying out their functions under Part 4 of the Social Services and Well-being (Wales) Act 2014 ("the Act"). The Charging Regulations also contain parallel provision setting out requirements which apply when a local authority makes direct payments to meet a person's needs for care and support.

The Financial Assessment Regulations make provision under the Act about the way in which a local authority must carry out a financial assessment of a person's ("A") financial resources in the following cases—

(a) where the authority thinks that if it were to meet A's needs for care and support (or a carer's needs for support) it would impose a charge under section 59 of the Act, or

(b) where the authority thinks that if it were to make payments towards meeting the cost of A's needs for care and support (or a carer's need for support) by making direct payments by virtue of section 50 or 52 of the Act, it

would require A to pay, by way of reimbursement (in the case of gross payments) or contribution (in the case of net payments), towards the cost of securing the provision of that care and support.

These Regulations amend Part 2 of the Charging Regulations (charging under Part 5 of the Act) as follows:

—the amount of the maximum weekly charge for non-residential care and support is increased from £80 to £90;

—the relevant capital limit for residential care is increased from £40,000 to £50,000;

—the net weekly minimum income amount where a person is provided with accommodation in a care home is increased from £28.50 to £29.50.

These Regulations amend Part 4 of the Charging Regulations (contributions and reimbursements for direct payments) as follows:

—the amount of the maximum weekly contribution or reimbursement for non-residential care and support is increased from £80 to £90;

—the net weekly minimum income amount where a person is provided with accommodation in a care home and receives direct payments under the Act is increased from £28.50 to £29.50.

These Regulations amend Schedule 2 to the Financial Assessment Regulations as follows:

—payments made under or by a trust established for the purpose of giving relief and assistance to disabled people whose disabilities were caused by the fact that during pregnancy their mother had taken the drug known as Thalidomide, are to be ignored in the calculation of an adult's capital for the purposes of an assessment of that adult's financial resources.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Health and Social Services Group, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019

Made *12 February 2019*

Laid before the National Assembly for Wales *13 February 2019*

Coming into force 8 April 2019

The Welsh Ministers, in exercise of the powers conferred by sections 50, 52, 53(3), 61, 64(1), 64(2)(b), 66, 69 and 196(2) of the Social Services and Well-being (Wales) Act 2014(**1**), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

(2) These Regulations come into force on 8 April 2019.

Amendment of the Care and Support (Charging) (Wales) Regulations 2015

2. The Care and Support (Charging) (Wales) Regulations 2015(**2**) are amended as follows—

(a) in regulation 7 (maximum weekly charge for non-residential care and support), in paragraph (1), for "£80" substitute "£90";

(**1**) 2014 anaw 4.
(**2**) S.I. 2015/1843 (W. 271).

(b) in regulation 11 (relevant capital limit), in paragraph 2(a), for "£40,000" substitute "£50,000";

(c) in regulation 13 (minimum income amount where a person is provided with accommodation in a care home) for "£28.50" substitute "£29.50";

(d) in regulation 22 (maximum weekly contribution or reimbursement for non-residential care and support), in paragraph (1), for "£80" substitute "£90"; and

(e) in regulation 28 (minimum income amount where a person is provided with accommodation in a care home) for "£28.50" substitute "£29.50".

Amendment of the Care and Support (Financial Assessment) (Wales) Regulations 2015

3. In Schedule 2 (capital to be disregarded) to the Care and Support (Financial Assessment) (Wales) Regulations 2015(**1**), after paragraph 34 insert—

"**35.** Any payment which would be disregarded under paragraph 73 of Schedule 10 to the Income Support Regulations(**2**) (payments relating to disability caused by Thalidomide)."

Julie Morgan
Deputy Minister for Health and Social Services, under the authority of the Minister for Health and Social Services, one of the Welsh Ministers
12 February 2019

(**1**) S.I. 2015/1844 (W. 272).
(**2**) S.I. 1987/1967. The Income Support Regulations are defined by regulation 2(1) of The Care and Support (Financial Assessment) (Wales) Regulations 2015. Paragraph 73 of Schedule 10 was inserted by S.I. 2017/870.

Explanatory Memorandum to the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 in relation to charging and financial assessment under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits justify the likely costs.

Julie Morgan AM
Deputy Minister for Health and Social Services
13 February 2019

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (the "Act") brings together local authorities' duties and functions in relation to improving the wellbeing of people who need care and support, and carers who need support. The Act provides the foundation, along with regulations and codes of practice made under it, to a statutory framework for the delivery of social care in Wales to support people of all ages as part of their families and communities.

Under the Act local authorities have discretion to charge for the care and support they provide or arrange for a person, or the support they provide or arrange for a carer. They also have discretion to set a contribution or reimbursement for direct payments they provide to a person to enable them to arrange their care and support themselves. This applies to care and support in a person's own home, within the community, or in residential care. Where an authority wishes to apply this discretion to set a charge, contribution or reimbursement, regulations made under the Act govern the arrangements applicable to this.

The Care and Support (Charging) (Wales) Regulations 2015 ("the Charging Regulations") govern local authorities in discharging their discretion to set a charge, contribution or reimbursement under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016.

In determining a charge, contribution or reimbursement the Care and Support (Financial Assessment) (Wales) Regulations 2015 ("the Financial Assessment Regulations") govern local authorities' financial assessment of a person's financial means to meet these when exercising their discretion to set them. These also came into force on 6 April 2016.

Since then a number of policy changes have been agreed which required amendments to the Charging and Financial Assessment Regulations. Amending regulations to effect those changes (the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017, and the Care and Support (Charging) (Wales) (Amendment) Regulations 2018) came into force on 10 April 2017 and 9 April 2018 respectively.

The regulations subject to this Explanatory Memorandum are required to introduce further updates to the Charging Regulations, and the Financial Assessment Regulations, to reflect uplifted sums of money that apply to specific areas of charging for social care and support and to introduce a full disregard of certain forms of capital in a financial assessment.

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

There are no specific matters of special interest.

3. Legislative background

The powers enabling the making of regulations in relation to setting a contribution or reimbursement for direct payments, and the financial assessment to determine these, are contained in Part 4 (sections 50, 52 and 53(3)) of the Act. Powers enabling charging for care and support, and support to a carer, are contained in Part 5 (sections 61, 62, 66, 67 and 69) of the Act. Powers enabling the making of regulations in respect of financial assessments in relation to charging are contained in Part 5 (sections 64(1) and 65) of the Act.

These amending regulations are subject to the negative procedure. They will come into force on 8 April 2019.

4. Purpose & intended effect of the legislation

The overall purpose of the amending regulations is to effect a number of changes to the existing regulations as a result of certain policy decisions. These existing regulations govern local authorities' determination of a charge for providing or arranging care and support, or support to a carer, where they use their discretion to charge. They also govern authorities' determination of a contribution or reimbursement for a person receiving direct payments to secure their own care and support, or a carer securing their own support, where authorities use their discretion to set these. In addition they govern, in both cases of setting a charge, the assessment of a person's financial means to meet these where they are set.

The changes the amending regulations make are:

The Care and Support (Charging) (Wales) Regulations 2015

Regulation 2(a) to 2(e) of the amending regulations amend the Charging Regulations as follows:

- uplift from £80 to £90 the maximum weekly charge applicable to non-residential care and support, and the maximum weekly contribution or reimbursement for receiving direct payments to secure this, by amending regulations 7(1) and 22(1) of the Charging Regulations. This provision ensures that, where a local authority applies its discretion to charge a person for the non-residential care and support they receive, or the non-residential support a carer receives, there is a consistent maximum amount the local authority can charge. Equally, where a local authority applies its discretion to set a contribution or reimbursement for the receipt of direct payments to secure non-residential care and support, there is a consistent maximum amount the local authority can make for these;

- uplift from £40,000 to £50,000 the relevant capital limit as it applies to charging for residential care by amending regulation 11 in paragraph 2(a) of the Charging Regulations. This is to implement the third and final stage in delivering a key commitment in the Welsh Government's *'Taking Wales Forward'* programme to put in place a £50,000 capital limit in charging for residential care by the end of its current term;

- uplift from £28.50 a week to £29.50 a week the level of the minimum income amount applied in charging for residential care, or in setting a contribution or reimbursement for direct payments to secure residential care, by amending regulations 13 and 28 of

the Charging Regulations. The minimum income amount is the sum of money a person in residential care, and who is supported financially by their local authority, is able to retain from their weekly income to spend on personal items as they choose. The sum is reviewed annually in the light of the weekly uplifts applied to UK state pension and welfare benefits.

The Care and Support (Financial Assessment) (Wales) Regulations 2015
Regulation 3 of the amending regulations amends the Financial Assessment Regulations as follows:

- in Schedule 2 (capital to be disregarded) after paragraph 34 make an insert, is to be applied as paragraph 35, which requires any payment made to a person in relation to their disabilities which have been caused by their mother taking during pregnancy a preparation containing the drug "Thalidomide" to be disregarded in full in a financial assessment. Such payments are already disregarded under paragraph 73 of Schedule 10 to the Income Support Regulations 1987.

5. Consultation

A five week consultation on the principle of the changes being made by the amending regulations was originally held between 21 December 2016 and 25 January 2017. In total 24 responses were received from a range of stakeholders covering individuals, representative groups, local authorities and professional organisations. Overall respondents were supportive of the policy behind these changes, seeing them as rebalancing the impact of charging upon those who are required to pay for their care and support. They did, however, raise a number of questions, such as the level of the eventual increase planned for the maximum weekly charge and how the changes would be communicated to care recipients. These are being addressed in the implementation of the amendments being made.

A summary report of the consultation responses is available on the Welsh Government website at: https://beta.gov.wales/charging-social-care

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

The four changes being introduced by the amending regulations are considered in this Regulatory Impact Assessment. Introducing these changes will ensure the Charging Regulations and the Financial Assessment Regulations operate in accordance with the policy intention.

Options and Benefits

This Regulatory Impact Assessment considers two options in relation to the four changes identified above:

- Option 1 – "do nothing" and not make the amending regulations;
- Option 2 – "make the amending regulations" to introduce a number of changes to the Charging Regulations and the Financial Assessment Regulations relating to charging for care and support, and financial assessment for charging for care and support, under the Act. In each case, this is the preferred option.

Maximum Weekly Charge

Under the Charging Regulations a person assessed as in need of care and support in their own home, or within the community, can be charged by their local authority where the authority provides or arranges this. Those receiving direct payments to secure such care and support for themselves can also have a contribution or reimbursement set by their local authority for receipt of these. Where authorities apply a charge, a contribution or a reimbursement in these circumstances, the Charging Regulations limit these to a maximum amount. This is currently set at £80 per week. This provision was introduced in 2011 to address the wide variation which existed then in the charges, contributions and reimbursements authorities applied for non-residential care and support of a similar nature.

Ministers have committed to increase the maximum charge to £100 per week by the end of this Assembly. In order to achieve this at a steady pace, and in view of the increases to be received by care and support recipients through uplifted UK state pensions and welfare benefits, Ministers propose to uplift the level of the maximum by £10 a week to £90 a week from 8 April 2019. The additional income this will secure for local authorities will help meet increasing cost pressures associated with maintaining the level and quality of the care and support they provide or arrange.

<u>Option 1 – do nothing</u>

This option retains the maximum charge at its current level and halts progression towards Ministers' intentions to apply a £100 a week maximum change by the end of the term of this Assembly. In addition, local authorities would have no ability to apply a higher charge, contribution or reimbursement for non-residential care and support or for direct payments, where a person had the financial means to pay a higher amount.

- Costs

There would be no new cost implication for care recipients or local government from this option. It would, however, limit local authorities' ability to collect increased income from charging for care and support to meet the increased costs of maintaining the level and quality of this. This is at a time when recipients' income would have increased due to uplifts in state pension and welfare benefits.

- Benefits

This option benefits care and support recipients who, despite their higher level of personal income, would continue to pay no more than £80 a week for the non-residential care and support they receive. It does, however, increase the financial pressures for local authorities in terms of being able to afford to maintain the level and quality of care provided.

<u>Option 2 – make the amending regulations</u>

This option would increase the level of the maximum charge by £10, from £80 per week to £90 per week. This would take account of increases applied from April 2019 to state pensions and welfare benefits and help fund increasing costs local authorities face in maintaining the level and quality of care provided.

- Costs

Under this option there would be an additional cost to some of the 8,655 care recipients local authorities reported as at October 2018 as paying the current maximum charge of £80 a week. This option could generate up to an estimated £4.5 million per annum for local authorities in increased income from charging for care and support through the higher maximum. This increased income would only come from care recipients whose care and support costs over the current maximum of £80 per week and who have been financially assessed as being able to afford a charge above this up to the higher maximum. Those not in this position would see no change in their charge, contribution or reimbursement as a direct result of this change.

- Benefits

Based on data from local authorities on the number who currently pay the maximum, this option could raise up to £4.5million per annum in increased income to help address the financial pressure in maintaining the level and quality of care provided. The financial protections in place under the Charging Regulations ensure a person is not required to pay an amount that is unaffordable to them in meeting their daily living costs. The increase in the maximum under this option would not impact on these financial protections so that only those financially assessed as being able to afford the higher maximum would pay this.

Minimum Income Amount (MIA)

Where a person is in residential care, and is in receipt of financial support from their local authority towards the cost of their care, they are required to contribute towards this cost from the majority of their weekly income. However, under the Charging Regulations a person must be able to retain an amount of their income to spend on personal items as they wish. This is known as the MIA. The level of the MIA is reviewed annually to take account of annual uplifts to UK state pensions and welfare benefit payments, which form the basis of care home residents' weekly income. Taking these uplifts into account, Ministers propose to increase the MIA from 8 April 2019 from its current level of £28.50 per week to £29.50 a week. This will allow residents to retain a slightly higher amount of their income to spend as they wish on personal items.

<u>Option 1 – do nothing</u>

This option maintains the level of the MIA at £28.50 per week. As a result all of the increase in a resident's weekly income from April 2019 as a result of uplifted state pension and welfare benefit payments would go to their local authority to pay for their care.

- Costs

There are no new cost implications for local government from this option. Instead authorities would receive up to an estimated £2.6 million per annum in increased contributions from the 15,371 care home residents recorded in data published by Welsh Government on October 2018. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents in this position would not retain any of the uplifts made.

- Benefits

Care home residents supported by their local authority would be unable to retain any of the increase applied to their state pensions and benefits. Instead these funds would

increase their contributions to local authorities for the cost of their care, so as to increase the income stream authorities receive from supported care home residents.

Option 2 – make the amending regulations

This option would make the amending regulations so as to increase the MIA from its current level of £28.50 per week to £29.50. This would allow local authority supported residents to retain a proportion of the uplifts to their state pensions and welfare benefits to spend on personal items as they wish.

- Costs

This option results in local authorities receiving a smaller increase of up to an estimated £1.8 million per annum in charge income through contributions from the 15,371 residents referred to in option 1. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents would retain a proportion of these uplifts to spend on personal items as they wish.

- Benefits

This option splits the increased income which local authority supported residents would have from April 2019 as a result of uplifts to their state pensions and welfare benefits. Residents in this position would be able to retain a £1 a week of these uplifts to spend on personal items as they wish, while authorities would receive the balance in increased contributions from residents towards the cost of their resident care.

Capital Limit

The capital limit used in relation to charging for residential care, determines whether a resident pays the full cost of their care and accommodation or whether their local authority is required to provide financial support towards this cost. Under the Charging Regulations the capital limit is set at £40,000. This current level applied the second stage of implementation of a key '*Taking Wales Forward'* commitment to uplift the capital limit applicable in charging for residential care to £50,000 within the term of this Assembly. This is to enable residents to retain more of their savings and other capital without this having to be used to pay for their care and accommodation.

Ministers plan to increase the capital limit in relation to charging for residential care from its currently level of £40,000 to £50,000 as the third and final stage of implementation of the commitment to put in place a capital limit of £50,000.

Option 1 – do nothing

This option involves the amending regulations not being made so that the capital limit applicable in charging for residential care remains at its current level of £40,000. This would also halt progress in delivering on a key Government commitment.

- Costs

There would be no new cost implications for local government from this option, neither would there be any change in the charging arrangements by which residents pay for their residential care and accommodation.

- Benefits

This option provides no new benefits to people in care homes. Individuals would be unable to retain any additional amount of their capital than at present.

Option 2 – make the amending regulations

This option would make the amending regulations so that the capital limit applicable in charging for residential care increase from £40,000 to £50,000 from 8 April 2019. People in residential care would from this date be eligible for local authority support towards the cost of their residential care earlier than at present.

- Cost

Based on independent research commissioned by the Welsh Government, it is estimated that this increase would cost local authorities an additional £7 million per annum from 2019-20. This would be to fund at an earlier point the residential placements of those benefiting from an increase to the limit. This amount is consistent with the additional spend local authorities have reported in the data collected to support implementation of this policy. Consequently, an additional £7 million has been included recurrently in the Revenue Support Grant for local authorities from 2019-20 to support implementation.

- Benefits

This option enables people requiring residential care to retain a higher level of their capital to spend as they wish and completes the delivery of the Welsh Government's commitment to increase the capital limit in charging for residential care to £50,000. Residents affected by this change would be able to retain up to an additional £10,000 of their capital without this having to be used to pay for their care.

Disregard capital payments made under or by a trust to people affected by the drug "Thalidomide"

Where a local authority uses its discretion and charges a person for some form of care and support they are to provide or arrange, or levies a reimbursement or contribution for the provision of direct payments to secure that care and support, the authority must undertake an assessment of the person's financial ability to pay these. In undertaking such an assessment the Financial Assessment Regulations specify how particular forms of income and capital a person may have are to be treated for the purposes of that assessment. These regulations set out a number of disregards of forms of income and capital that must be applied (either in part or in full). This includes capital payments made in the form of compensation awarded to individuals for loss or harm they have suffered in a particular situation.

Ministers propose to apply a new addition to the forms of capital to be disregarded in full in a financial assessment. This is to ensure capital compensation payments made to a person from a trust, established for the purpose of giving relief or assistance to people whose disabilities are the result of their mother taking during pregnancy a preparation containing the drug "Thalidomide", are not required to use any of this money towards a charge for care and support, or a reimbursement or contribution for receiving direct payments to secure that care and support. It is not known how many people in Wales receive payments from such trusts or if they, how many if any are charged for social care and support.

Option 1 - do nothing

This option would mean that not change is applied to the forms of capital that must be disregarded in full in a person's financial assessment. Any capital compensation

payment a person receives from such a trust would form part of their eligible capital and would be taken into account in full in assessing a person's ability to meet a charge, reimbursement or contribution.

- Costs

There would be no new cost implications for local government from this option. Instead they would be able to take the full amount of these compensation payments into account in financial assessments with a resultant increased charge income.

- Benefits

This option provides no benefit to individuals in receipt of such payments and could instead deny them the ability to benefit from these payments made to compensation for the harm they have suffered. Instead it is possible that a person could be required to pay a charge, reimbursement or contribution for the care and support they require which would not have otherwise been the case.

Option 2 – make the amending regulations

This option would make amending regulations so that any amount of capital compensation received by a person from a trust established to assist people affected by the drug "Thalidomide" can be retained in full and not used towards the cost of their care and support

- Costs

There would be no new costs implications for local government from this option.

- Benefits

This option would disregard in full capital compensation payments received by a person from trusts to assist them in connection with a disability caused by their mother taking a preparation containing the drug "Thalidomide" during pregnancy. It would therefore enable them to benefit in full from this payment given the harm they have suffered.

Conclusion

Due to the financial benefit for local authorities in increasing the maximum weekly charge, the financial benefit for care home residents in increasing the minimum income amount and the capital limit and, the financial benefit for all care and support recipients of introducing a full disregard for capital compensation payments made by a trust in connection with the drug "Thalidomide", "Option 2 – make the amending regulations" is recommended in each case. A summary table showing the annual financial impact of the amending regulations is below:

	Welsh Government £m p.a.	**Local Authorities £m p.a.**	**Care Recipients £m p.a.**
Maximum Weekly Charge	0	4.5	(-4.5)
Minimum Income Amount	0	1.8	0.4
Capital Limit	(-7.0)	0	7.0
Capital	0	0	Full level of

Compensation Payments			payments made
Total	**(-7.0)**	**6.3**	**2.9**

Consultation

A five week public consultation on the principle of the changes planned was held between 21 December 2016 and 25 January 2017. The documents can be found at: https://beta.gov.wales/charging-social-care

Competition Assessment

Competition Filter Test	
Question	Answer: yes/no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Post Implementation Review

The Act contains provisions to allow Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these amending regulations.

The Welsh Government will continue to monitor the impact of the amending regulations on areas such as the Welsh language, the UN Convention on the Rights of the Child, Older People and Equality.

SL(5)326 – The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2019

Background and Purpose

The Regulation and Inspection of Social Care (Wales) Act 2016 reforms the regulation and inspection regime for social care in Wales, replacing that established under the Care Standards Act 2000.

These Regulations make amendments to secondary legislation consequential upon the commencement of provisions within Part 1 of the 2016 Act, through the Regulation and Inspection of Social Care (Wales) Act 2016 (Commencement No. 6, Savings, Transitory and Transitional Provisions) Order 2019 which is due to be made in April 2019.

Procedure

Negative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2(vi) in respect of this instrument – that its drafting appears to be defective:

- Paragraph 10 of Schedule 1 to these Regulations makes amendments to the "Special Guardianship Support Services Regulations 2005" when there is no such statutory instrument. The the correct reference should be to the Special Guardianship Regulations 2005.
- Paragraph 15(2)(c) of Schedule 1 to these Regulations makes a substitution to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) Wales Regulations 2006 providing that:

  > "individual placement plan has the meaning given in regulation 1(2) of the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019"

  However, the term "individual placement plan" does not appear in those Regulations. The reference in paragraph 15(2)(c) should be to "individual placement agreement" which does appear (and is defined) in those Regulations.
- Paragraph 17(3)(b)(ii) of Schedule 1 to these Regulations makes a substitution in regulation 4 of the Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010. Review of the 2010 Regulations provides that the substitution should actually read "9(7)" rather than "9(7)(a)" to properly encompass the function of the provision.

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

Government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
19 February 2019

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, ENGLAND AND WALES

The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 186 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the Act").

The Act introduces a new system of regulation for care and support services in Wales, replacing that established by the Care Standards Act 2000 ("the 2000 Act").

Part 1 of the Act replaces the system of registration for providers of social care services, set out in Parts 1 and 2 of the 2000 Act, which require the registration of establishments and agencies and necessitates a separate registration for each location where a service was provided.

The Act takes a different approach which is service based. A provider must register with the Welsh Ministers in order to provide any care and support service which is regulated under the Act and that registration will contain the details of all the locations at which the provider provides the regulated service.

These Regulations make consequential amendments to secondary legislation in England and Wales which refer for various purposes to one of the categories of establishment or agency which were regulated under the 2000 Act in order to replace such references with services regulated under the Act.

Part 1 of the Act was commenced on 2 April 2018 in relation to the following regulated services—

(a) care home services;

(b) secure accommodation services;

(c) residential family centre services;

(d) domiciliary support services.

On 29 April 2019 Part 1 of the Act is commenced in relation to the remaining regulated services—

(a) adoption services;

(b) fostering services;

(c) adult placement services;

(d) advocacy services.

Advocacy services are not currently regulated under the 2000 Act.

Regulation 2 and Schedule 1 make consequential amendments to secondary legislation.

Regulation 3 and Schedule 2 specify the secondary legislation revoked by these Regulations.

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

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

2019 No. (W.)

SOCIAL CARE, ENGLAND AND WALES

The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2019

Made	*12 February 2019*
Laid before the National Assembly for Wales	*13 February 2019*
Coming into force	*29 April 2019*

The Welsh Ministers, in exercise of the power conferred by section 186 of the Regulation and Inspection of Social Care (Wales) Act 2016(**1**), make the following Regulations:

Title and commencement

1.—(1) The title of these Regulations is the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2019.

(2) These Regulations come into force on 29 April 2019.

Amendments

2. Schedule 1 (amendments consequential upon the commencement of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016) has effect.

(**1**) 2016 anaw 2.

Revocations

3. Schedule 2 (revocations) has effect.

Julie Morgan
Deputy Minister for Health and Social Services, under authority of the Minister for Health and Social Services, one of the Welsh Ministers
12 February 2019

SCHEDULE 1 Regulation 2

Amendments consequential upon the commencement of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

1.—(1) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**1**) is amended as follows.

(2) In article 2(1)—

(a) in the appropriate place insert—

""the 2016 Act" means the Regulation and Inspection of Social Care (Wales) Act 2016; ";

(b) for the definition of "adoption service" substitute—

""adoption service"—

(a) in relation to England, means the discharge by a local authority in England of relevant adoption functions within the meaning of section 43(3)(a) of the Care Standards Act 2000(**2**), and

(b) in relation to Wales, means the discharge by a local authority in Wales of functions under the Adoption and Children Act 2002(**3**) of making or participating in arrangements for the adoption of children or the provision of adoption support services as defined in section 2(6) of that Act;";

(c) in the definition of "children's home", for paragraph (b) substitute—

"(b) in relation to Wales, means premises at which—

(i) a care home service is provided wholly or mainly to persons under the age of 18, or

(ii) a secure accommodation service is provided,

and in this paragraph "care home service" and "secure accommodation service" have the meaning given in Part 1 of the 2016 Act ;";

(**1**) S.I. 1975/1023, amended by S.I. 2014/1707 and 2018/48; there are other amending instruments but none are relevant.
(**2**) 2000 c. 14.
(**3**) 2002 c. 38.

(d) for the definition of "fostering agency" substitute—

""fostering agency"—

(a) in relation to England, has the meaning given by section 4(4) of the Care Standards Act 2000, and

(b) in relation to Wales, means a provider of a fostering service within the meaning of paragraph 5 of Schedule 1 to the 2016 Act;" ;

(e) for the definition of "fostering service" substitute—

""fostering service" means—

(a) in relation to England, the discharge by a local authority in England of relevant fostering functions within the meaning of section 43(3)(b)(i) of the Care Standards Act 2000, and

(b) in relation to Wales, the discharge by a local authority in Wales of functions under section 81 of the Social Services and Well-being (Wales) Act 2014(**1**) (in connection with placements with local authority foster parents) or regulations made under or by virtue of any of sections 87, 92(1)(a), (b), (d) or 93 of that Act;";

(f) for the definition of "voluntary adoption agency" substitute—

""voluntary adoption agency"—

(a) in relation to England, has the meaning given by section 4(7) of the Care Standards Act 2000, and

(b) in relation to Wales, means a provider of an adoption service within the meaning of paragraph 4(a) of Schedule 1 to the 2016 Act;".

(3) In article 4(1), after sub-paragraph (ja) insert—

"(jb) any decision by the Welsh Ministers—

(i) to refuse an application for registration under section 7 of the 2016 Act,

(ii) to refuse (under section 12 of the 2016 Act) an application made by a person under section 11(1)(a)(i) or (ii) of the 2016 Act to vary their registration,

(**1**) 2014 anaw 4.

(iii) to cancel a person's registration under section 15(1)(b) to (f) or 23(1) of the 2016 Act,

(iv) to vary a person's registration under section 13(3)(b) or (4)(b) or 23(1) of the 2016 Act;".

Adoption Agencies Regulations 1983

2.—(1) The Adoption Agencies Regulations 1983(**1**) are amended as follows.

(2) In regulation 1(3) (citation, commencement, extent and interpretation), for the definition of "registration authority" substitute—

""registration authority"—

(a) in relation to England, has the same meaning as in section 5 of the 2000 Act, and

(b) in relation to Wales, means the Welsh Ministers;".

Disqualification from Caring for Children (England) Regulations 2002

3.—(1) The Disqualification from Caring for Children (England) Regulations 2002(**2**) are amended as follows.

(2) In regulation 2(7A) (grounds for disqualification)—

(a) for the opening words substitute—

"In relation to the registration of a care home service, which is provided wholly or mainly for children, or a secure accommodation service (each have the meaning given in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act"))—";

(b) in paragraph (d), after "children" insert ", or a secure accommodation service,".

(3) In the Schedule (specified offences), in paragraph 1(3), after "children" insert "or a secure accommodation service".

(**1**) S.I. 1983/1964. Sections 3 and 9(1) of the Adoption Act 1976 (c. 36) ("the 1976 Act") were repealed in part by the Care Standards Act 2000 (c. 14) (section 117(2), Schedule 5, paragraph 2). Section 9 of the 1976 Act was repealed in full by the Adoption and Children Act 2002 (c. 38) (section 139(3) and Schedule 5). Notwithstanding the repeal of the enabling power these Regulations continue in force in so far as they relate to the retention, storage, transfer and disclosure of information in relation to the adoption of a person who was adopted before 30 December 2005. *See* S.I. 2005/2897, article 13.

(**2**) S.I. 2002/635; paragraph (7A) was inserted into regulation 2 and sub-paragraph (3) inserted into paragraph 1 of the Schedule by S.I. 2018/48 (W. 15). There are other amending instruments but none are relevant to these Regulations.

Registration of Social Care and Independent Health Care (Wales) Regulations 2002

4.—(1) The Registration of Social Care and Independent Health Care (Wales) Regulations 2002(**1**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of "the Act", omit the words from "or" to the end;

(ii) in the definition of "appropriate office of the National Assembly", omit paragraphs (e), (f), (i) and (j);

(iii) in the definition of "statement of purpose", omit paragraphs (e), (f), (g), (j) and (k);

(iv) omit the following definitions—

(aa) "the 1976 Act";

(bb) "adoption service";

(cc) "Adoption Support Agency";

(dd) "adult placement scheme";

(ee) "fostering service";

(ff) "local authority fostering service";

(gg) "voluntary adoption service";

(b) in paragraph (3), omit sub-paragraph (d).

(3) In regulation 9 (contents of certificate), in paragraph (e), for the words from "section 4(8)(a)(iii)" to the end substitute "section 4(8)(a)(iii), (iv) and (v) or 9(a)(i) of the Act".

(4) In Schedule 1 (information to be supplied on an application for registration as a person who carries on an establishment or agency), in Part 2 (information about the establishment)—

(a) for paragraph 5 substitute—

"**5.** The description of the establishment or agency specified in section 4(8)(a)(iii), (iv) or (v) or (9)(a)(i) of the Act.";

(b) in paragraph 13, for the words from "section 4(8)(a)(iii)" to "the Act" substitute "section 4(8)(a)(iii), (iv) and (v) or (9)(a)(i) of the Act".

(**1**) S.I. 2002/919 (W. 107); relevant amending instruments are S.I. 2003/237 (W. 35), 2003/710 (W. 86), 2003/2527 (W. 242), 2004/219 (W. 23), 2004/1756 (W. 188), 2010/2574 (W. 214) and 2018/48 (W. 15).

Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003

5.—(1) The Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003(**1**) are amended as follows.

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

(a) in the definition of "adoption support services", for the words from "of that Act" to the end substitute "of that Act by the Secretary of State;";

(b) for the definition of "registration authority" substitute—

""registration authority" means the Chief Inspector;".

(3) In regulation 3(2) (statement of purpose), omit the words from "and" in the second place it occurs to the end.

(4) In regulation 4 (review of statement of purpose), for paragraph (b) substitute—

"(b) notify the registration authority,".

(5) For regulation 24G(3) (records with respect to services) substitute—

"(3) In this regulation "adoptive child" has the same meaning as in the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005."

Disqualification from Caring for Children (Wales) Regulations 2004

6.—(1) The Disqualification from Caring for Children (Wales) Regulations 2004(**2**) are amended as follows.

(2) In the Schedule—

(a) in paragraph 4A, after "age of 18" insert "or a secure accommodation service";

(b) in paragraph 25A—

(i) for the opening words substitute—

"In relation to the registration of a care home service, which is provided wholly or mainly to persons under the age of 18, or a secure accommodation service (each have the meaning given

(**1**) S.I. 2003/367; relevant amending instruments are S.I. 2005/3341 and 2007/603.

(**2**) S.I. 2004/2695 (W. 235), amended by S.I. 2018/48 (W. 15), there are other amendments not relevant to these Regulations.

in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act"))—";

(ii) in sub-paragraph (d), after "age of 18" insert ", or a secure accommodation service,".

Adoption Support Services Regulations 2005

7.—(1) The Adoption Support Services Regulations 2005(**1**) are amended as follows.

(2) In regulation 5 (arrangements for securing the provision of services), for paragraph (2) substitute—

"(2) In paragraph (1) "registered adoption support agency" means an adoption support agency which is—

(a) in relation to England, an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000, or

(b) registered as a provider in Wales of an adoption service under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016."

Disclosure of Adoption Information (Post-commencement Adoptions) Regulations 2005

8.—(1) The Disclosure of Adoption Information (Post-commencement Adoptions) Regulations 2005(**2**) are amended as follows.

(2) In regulation 2 (interpretation), for the definition of "registered adoption support agency" substitute—

""registered adoption support agency" means an adoption support agency which is—

(a) in relation to England, an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000, or

(b) registered as a provider in Wales of an adoption service under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016;".

(**1**) S.I. 2005/691, to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2005/888, to which there are amendments not relevant to these Regulations.

Adoption Information and Intermediary Services (Pre-commencement Adoptions) Regulations 2005

9.—(1) The Adoption Information and Intermediary Services (Pre-commencement Adoptions) Regulations 2005(**1**) are amended as follows.

(2) In regulation 10 (counselling), after paragraph (5) insert—

"(6) In this regulation "registered adoption support agency" means—

(a) in relation to England, an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000, or

(b) in relation to Wales, an adoption support agency registered as an adoption service under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016."

Special Guardianship Support Services Regulations 2005

10.—(1) The Special Guardianship Support Services Regulations 2005(**2**) are amended as follows.

(2) In regulation 4(2) (arrangements for securing provision of services), for paragraph (b) substitute—

"(b) "adoption support agency" has the same meaning as in the Adoption and Children Act 2002;

(c) "fostering agency"—

(a) in relation to England, means a fostering agency within the meaning of section 4(4) of the Care Standards Act 2000, and

(b) in relation to Wales, means a fostering service within the meaning of paragraph 5 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016;

(d) "registered" in relation to any such agency means that a person is registered in respect of it under Part 2 of the Care Standards Act 2000 or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016."

(**1**) S.I. 2005/890, to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2005/1109, to which there are amendments not relevant to these Regulations.

Adoption Support Services (Local Authorities) (Wales) Regulations 2005

11.—(1) The Adoption Support Services (Local Authorities) (Wales) Regulations 2005(**1**) are amended as follows.

(2) In regulation 2(1) (interpretation), for the definition of "foster parent" substitute—

> ""foster parent" ("*rhiant maeth*") means—
>
> (a) a person who is approved as a foster parent under the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018(**2**), and
>
> (b) includes a person with whom a child is placed under regulation 26 of the Care Planning, Placement and Case Review (Wales) Regulations 2015(**3**) (temporary approval of a relative, friend or other person connected with the child) or regulation 28 of those Regulations (temporary approval of a particular prospective adopter);".

(3) In regulation 5 (provision of services), for paragraph (2) substitute—

> "(2) In paragraph (1) "registered adoption support agency" means an adoption support agency which is—
>
> (a) in relation to England, an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000, or
>
> (b) registered as a provider in Wales of an adoption service under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016,
>
> but in relation to the provision of any adoption support service, does not include an adoption support agency which is not registered in respect of that particular service."

Special Guardianship (Wales) Regulations 2005

12.—(1) The Special Guardianship (Wales) Regulations 2005(**4**) are amended as follows.

(2) In regulation 1(3) (title, commencement, application and interpretation)—

(**1**) S.I. 2005/1512 (W. 116), to which there are amendments not relevant to these Regulations.
(**2**) S.I. 2018/1333 (W. 60).
(**3**) S.I. 2015/1818 (W. 261), to which there are amendments not relevant to these Regulations.
(**4**) S.I. 2005/1513 (W. 117), to which there are amendments not relevant to these Regulations.

(a) for the definition of "adoption support agencies" substitute—

""adoption support agencies" ("*asiantaethau cymorth mabwysiadu*")—

(a) in relation to Wales, means a provider of adoption services within the meaning of paragraph 4(b) of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016, and

(b) in relation to England, has the same meaning as in section 4(7A) of the Care Standards Act 2000;";

(b) for the definition of "independent fostering agencies" substitute—

""independent fostering agencies" ("*asiantaethau maethu annibynnol*")—

(a) in relation to Wales, means a fostering service within the meaning of paragraph 5 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016, and

(b) in relation to England, means a fostering agency within the meaning of section 4(4)(a) of the Care Standards Act 2000;";

(c) for the definition of "voluntary adoption agencies" susbstitute—

""voluntary adoption agencies" ("*asiantaethau mabwysiadu gwirfoddol*")—

(a) in relation to Wales, means a provider of an adoption service within the meaning of paragraph 4(a) of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016, and

(b) in relation to England, has the same meaning as in section 4(7) of the Care Standards Act 2000;".

Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005

13.—(1) The Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005(**1**) are amended as follows.

(2) In regulation 2 (interpretation), for the definition of "registered adoption support agency" substitute—

""registered adoption support agency" ("*asiantaeth cefnogi mabwysiadu gofrestredig*") means—

(**1**) S.I. 2005/2689 (W. 189), to which there are amendments not relevant to these Regulations.

(a) in relation to Wales, an adoption support agency which is registered as an adoption service under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, or

(b) in relation to England, an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000;".

(3) In regulation 15(3) (duty to secure counselling) omit the definition of "registered adoption support agency".

Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) Regulations 2005

14.—(1) The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Wales) Regulations 2005(**1**) are amended as follows.

(2) In regulation 2 (interpretation), for the definition of "registered adoption support agency" substitute—

""registered adoption support agency" ("*asiantaeth cymorth mabwysiadu gofrestredig*") means—

(a) in relation to Wales, an adoption support agency which is registered as an adoption service under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, or

(b) in relation to England, an adoption support agency in respect of which a person is registered under Part 2 of the Care Standards Act 2000;".

Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006

15.—(1) The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006(**2**) are amended as follows.

(2) In regulation 4 (other persons to be regarded as forming a single household for the purposes of section 254 of the Act)—

(a) in paragraph (1), for the words from "receiving care receives" to the end substitute

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(**1**) S.I. 2005/2701 (W. 190), to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2006/1715 (W. 177), amended by S.I. 2016/216 (W. 85); there are other amending instruments by none are relevant to these Regulations.

"receiving care and support services receives, care and support under an individual placement agreement in accordance with the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(**1**).";

(b) in paragraph (2), for the words from "the Fostering Services (Wales) Regulations 2003" to the end substitute "the Care Planning, Placement and Case Review (Wales) Regulations 2015.";

(c) for paragraph (3) substitute—

"(3) In this regulation "individual placement plan" has the meaning given in regulation 1(2) of the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019."

Childcare (Supply and Disclosure of Information) (England) Regulations 2007

16.—(1) The Childcare (Supply and Disclosure of Information) (England) Regulations 2007(**2**) are amended as follows.

(2) In regulation 9(2) (required provision of information to various prescribed persons)—

(a) after sub-paragraph (a) insert—

"(aa) a provider of a fostering service within the meaning of paragraph 5 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016;";

(b) in sub-paragraph (b), for "that Act" substitute "the Care Standards Act 2000";

(c) after sub-paragraph (b) insert—

"(ba) a provider of an adoption service within the meaning of paragraph 4(a) of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016;".

Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010

17.—(1) The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010(**3**) are amended as follows.

(2) In regulation 2 (interpretation)—

(**1**) S.I. 2019/163 (W. 40).
(**2**) S.I. 2007/722, to which there are amendments not relevant to these Regulations.
(**3**) S.I. 2010/746 (W. 75), amended by S.I. 2016/211 (W. 84), there are other amending instruments but none are relevant.

(a) in the definition of "applicant", in paragraph (c), for "28(6)(a)" substitute "8(6)(a)";

(b) in the definition of "foster parent", for "2(1)" substitute "2";

(c) in the definition of "fostering panel", for "24" substitute "4";

(d) for the definition of "fostering service provider" substitute—

""fostering services provider" ("*darparydd gwasanaethau maethu*") has the meaning given in regulation 2 of the Fostering Regulations;";

(e) in the definition of "the Fostering Regulations", for "Fostering Services (Wales) Regulations 2003" substitute "Fostering Panels (Establishment and Functions) (Wales) Regulations 2018";

(f) in the definition of "organisation", for "fostering service provider" substitute "fostering services provider".

(3) In regulation 4 (qualifying determination – prescribed descriptions for the purposes of section 93(2)(b) of the Social Services and Well-being (Wales) Act 2014)—

(a) in paragraph (a)—

(i) for "27(6)" substitute "7(11)";

(ii) for "28(6)" substitute "8(6)";

(b) in paragraph (b)—

(i) for "27(6)" substitute "7(11)";

(ii) for "29(7)" substitute "9(7)(a)".

(4) In regulation 14(3)(a) (functions of a panel constituted to review a fostering determination), for "29A" substitute "10".

(5) In each of the provisions mentioned in paragraph (6), for "fostering service provider" substitute "fostering services provider".

(6) The provisions are—

(a) regulation 4(a) and (b);

(b) regulation 14(2), (2)(b), (3)(b) and (4).

Child Minding and Day Care (Disqualification) (Wales) Regulations 2010

18.—(1) The Child Minding and Day Care (Disqualification) (Wales) Regulations 2010(**1**) are amended as follows.

(**1**) S.I. 2010/1703 (W. 163); amended by S.I. 2018/48 (W. 15), there are other amending instruments but none are relevant.

(2) In Schedule 1 (orders etc relating to the care of children), in paragraph 16A—

(a) for the opening words substitute—

"In relation to the registration of a care home service, which is provided wholly or mainly to persons under the age of 18, or a secure accommodation service (each has the meaning given in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act"))—";

(b) in sub-paragraph (d), after "age of 18" insert ", or a secure accommodation service,".

(3) In Schedule 3 (specified offences), in paragraph 1 (offences in England and Wales), for the opening words of sub-paragraph (5) substitute—

"An offence in relation to a secure accommodation service or a care home service, which is provided wholly or mainly to persons under the age of 18 (each has the meaning given in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act")) under or by virtue of any of the following provisions of the 2016 Act—".

Child Minding and Day Care (Exceptions) (Wales) Order 2010

19.—(1) The Child Minding and Day Care (Exceptions) (Wales) Order 2010(**1**) is amended as follows.

(2) After article 11 insert—

"**11A.** A person does not provide day care where the care is provided to a child who receives a secure accommodation service (within the meaning of the Regulation and Inspection of Social Care (Wales) Act 2016) at a place where such services are provided and in respect of which a person is registered under Part 1 of the Act."

Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011

20.—(1) The Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011(**2**) are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of "adult placement carer", for the words from "adult placement agreement" to the end substitute

(**1**) S.I. 2010/2839 (W. 233); amended by S.I. 2018/48 (W. 15), there are other amending instruments but none are relevant.

(**2**) S.I. 2011/2942 (W. 318), to which there are amendments not relevant to these Regulations.

"individual placement agreement entered into by the carer in accordance with regulation 12 of the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(**1**)".

Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012

21.—(1) The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012(**2**) are amended as follows.

(2) In Schedule 1, in paragraph 25(8)—

(a) in paragraph (k), omit "Fostering Services (Wales) Regulations 2003";

(b) after paragraph (k) insert—

"(ka) by a foster parent under the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018(**3**) or a person with whom a child is placed under regulation 26 of the Care Planning, Placement and Case Review (Wales) Regulations 2015 (temporary approval of a relative, friend or other person connected with the child) or regulation 28 of those Regulations (temporary approval of a particular prospective adopter) in relation to a child other than one whom the foster parent is fostering or the person is looking after; or".

Food Hygiene Rating (Wales) Regulations 2013

22.—(1) The Food Hygiene Rating (Wales) Regulations 2013(**4**) are amended as follows.

(2) In regulation 5(1)(b) (exempt food business establishments), for paragraph (ii) substitute—

"(ii) persons who are adult placement carers within the meaning of regulation 1(3) of the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(**5**);".

(**1**) S.I. 2019/163 (W. 40).
(**2**) S.I. 2012/2885, to which there are amendments not relevant to these Regulations.
(**3**) S.I. 2018/1333 (W. 60).
(**4**) S.I. 2013/2903 (W. 282).
(**5**) S.I. 2019/163 (W. 40), regulation 1(3) of which defines an "adult placement carer" as a person who has entered into a carer agreement with a service provider. "Carer agreement" is defined in paragraph 6 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2).

Representations Procedure (Wales) Regulations 2014

23.—(1) The Representations Procedure (Wales) Regulations 2014(**1**) are amended as follows.

(2) Omit regulation 22 (handling of care standards representations).

Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014

24.—(1) The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014(**2**) are amended as follows.

(2) In regulation 19(2) (required provision of information to various prescribed persons)—

(a) after sub-paragraph (a) insert—

"(aa) a provider of a fostering service (within the meaning of paragraph 5 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016);";

(b) in sub-paragraph (b), for "that Act" substitute "the Care Standards Act 2000";

(c) after sub-paragraph (b) insert—

"(ba) a provider of an adoption service (within the meaning of paragraph 4(a) of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016;".

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

25.—(1) The Care Planning, Placement and Case Review (Wales) Regulations 2015(**3**) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) in the definition of "the Fostering Regulations", for "the Fostering Services (Wales) Regulations 2003" substitute "the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018";

(b) in the definition of "fostering service provider", in paragraph (a)—

(**1**) S.I. 2014/1795 (W. 188), to which there are amendments not relevant to these Regulations.

(**2**) S.I. 2014/1920, to which there are amendments not relevant to these Regulations.

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

(i) for "a fostering service provider" substitute "a fostering services provider";

(ii) for "2(1)" substitute "2".

(3) In regulation 22(1) (interpretation)—

(a) omit the definition of "registered person" and the "and" immediately preceding it;

(b) in the appropriate places insert—

""independent fostering service" ("*gwasanaeth maethu annibynnol*") means—

(a) a fostering service within the meaning of paragraph 5 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016, and

(b) a fostering agency within the meaning of section 4(4)(a) of the Care Standards Act 2000;";

""registered provider" ("*darparwr cofrestredig*") means—

(a) a regulated fostering services provider within the meaning of regulation 2 of the Fostering Regulations, and

(b) a registered person within the meaning of regulation 2(1) of the Fostering Services (England) Regulations 2011."

(4) In regulation 23(2)(c) (conditions to be complied with before placing a child with a local authority foster parent), for "28(5)(b)" substitute "8(5)(b)".

(5) In each of the provisions mentioned in paragraph (6), for "registered person" substitute "registered provider".

(6) The provisions are—

(a) regulation 29(1), (2) and (3);

(b) Schedule 6—

(i) paragraph 1(a), (b) and (c);

(ii) paragraph 2(b) and (e).

(7) In regulation 29 (independent fostering agencies – discharge of authority functions), in the heading, for "fostering agencies" substitute "fostering services".

(8) In regulation 63 (records – establishment of records), in paragraph (2)(e), for "fostering agency" in both places where it occurs substitute "fostering service".

(9) In the heading to Schedule 6, for "fostering agency" substitute "fostering service".

Care and Support (Business Failure) (Wales) Regulations 2015

26.—(1) The Care and Support (Business Failure) (Wales) Regulations 2015(**1**) are amended as follows.

(2) In regulation 1(3) (title, commencement, application and interpretation), in the definition of "a provider", omit the words from "or" in the first place it occurs to the end.

Childcare (Disqualification) and Childcare (Early Years Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018

27.—(1) The Childcare (Disqualification) and Childcare (Early Years Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018(**2**) are amended as follows.

(2) In Schedule 1 (orders etc relating to the care of children), in paragraph 18—

(a) for the opening words substitute—

"In relation to the registration of a care home service, which is provided wholly or mainly to persons under the age of 18, or a secure accommodation service (each has the meaning given in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act"))—";

(b) in sub-paragraph (d), after "age of 18" insert ", or a secure accommodation service,".

(3) In Schedule 3 (specified offences), in paragraph 1, in sub-paragraph (14), for the opening words substitute—

"An offence in relation a care home service, which is provided wholly or mainly to persons under the age of 18, or a secure accommodation service (each has the meaning given in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act")) under or by virtue of any of the following provisions of the 2016 Act—".

(**1**) S.I. 2015/1920 (W. 286), amended by S.I. 2018/48 (W. 15).
(**2**) S.I. 2018/794.

SCHEDULE 2 Regulation 3

Revocations

The following instruments are revoked.

Regulations revoked	*Reference*
Fostering Services (Wales) Regulations 2003	S.I. 2003/237 (W. 35)
Fostering Services (Wales) (Amendment) Regulations 2003	S.I. 2003/896 (W. 116)
Nurses Agencies (Wales) Regulations 2003	S.I. 2003/2527 (W. 242)
Nurses Agencies (Wales) (Amendment) Regulations 2003	S.I. 2003/3054 (W. 292)
Adult Placement Schemes (Wales) Regulations 2004	S.I. 2004/1756 (W. 188)
Adoption Support Agencies (Wales) Regulations 2005	S.I. 2005/1514 (W. 118)
Local Authority Adoption Service (Wales) Regulations 2007	S.I. 2007/1357 (W. 128)
Adult Placement Schemes (Wales) (Miscellaneous Amendments) Regulations 2010	S.I. 2010/2585 (W. 217)
Care Standards Act 2000 (Notification) (Wales) Regulations 2011	S.I. 2011/105 (W. 24)

Explanatory Memorandum to the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2019

This Explanatory Memorandum has been prepared by the Welsh Government's Health and Social Services department and is laid before the National Assembly for Wales in conjunction with the above Regulations and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2019.

Julie Morgan AC/AM
Deputy Minister for Health and Social Services
13 February 2019

1. Description

The Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") reforms the regulation and inspection regime for social care in Wales, replacing that established under the Care Standards Act 2000 ("the 2000 Act").

The 2016 Act provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It also enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice.

This Explanatory Memorandum relates to the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2019.

These Regulations make amendments to secondary legislation consequential upon the commencement of provisions within Part 1 of the 2016 Act, on 29 April 2019, through the Regulation and Inspection of Social Care (Wales) Act 2016 (Commencement No. 6, Savings, Transitory and Transitional Provisions) Order 2019; this Order will be made by the Deputy Minister in April 2019.

These Regulations also revoke Wales-only secondary legislation made under certain provisions of the 2000 Act which will be repealed as a consequence of this commencement.

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

No specific matters identified.

3. Legislative background

These Regulations are made using powers under section 186 of the 2016 Act and are subject to the National Assembly for Wales' Negative procedure.

4. Purpose & intended effect of the legislation

These Regulations make consequential amendments to secondary legislation arising from the commencement of the provisions in Part 1 of the 2016 Act which relate to the regulation of adoption services, adult placement services, advocacy services and fostering services. These are examples of what section 2 of the 2016 Act refers to as "regulated services".

This commencement will bring to an end the regulation of adoption, adult placement and fostering services in Wales under the Care Standards Act 2000; advocacy services are not currently regulated.

With the aforementioned exception of advocacy, these are all services which have been regulated under Part 2 of the 2000 Act. Many of the amendments within these Regulations therefore remove references to one of the sorts of establishment or agency which were hitherto regulated under the 2000 Act and replace them with references to the appropriate sort of “regulated service” under the 2016 Act. These amendments, made using powers in section 186 of the 2016 Act, are necessary to provide clarity and to ensure consistency in the law.

Regulation 3 and Schedule 2 of these Regulations provide for the revocation of the statutory instruments listed within Schedule 2, which would otherwise cease to have effect on 29 April 2019 when the relevant enabling powers within the 2000 Act will be repealed.

5. Consultation

No formal consultation has taken place as these Regulations make only consequential technical amendments.

6. Regulatory Impact Assessment (RIA)

A regulatory impact assessment has not been prepared in respect of these consequential amendment regulations as they simply make amendments to statute and do not impose or reduce costs for businesses, charities or voluntary bodies or the public sector.

SL(5)327 – The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (S.I. 2009/995) (W.81) (the "2009 Regulations"). These changes are being made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018, to address failures of retained EU law to operate effectively following the UK's withdrawal from the European Union.

Procedure

Negative.

Technical Scrutiny

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

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

Regulation 2(4) amends paragraph 1(1)(e) of Schedule 1 to the 2009 Regulations, so as to substitute a reference to "or European Union-wide" with "national or in their natural range". It is unclear whether national is a reference to Wales, or to the UK.

Paragraph 1(1)(e), before amendment by this instrument, states as follows:

> *1.— Damage to protected species and natural habitats*
>
> *(1) In the case of protected species or natural habitat (other than damage on a site of special scientific interest to which paragraph 4 applies) the damage must be such that it has a significant adverse effect on reaching or maintaining the favourable conservation status of the protected species or natural habitat taking into account—*
>
> *…(e) the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation and the rarity of the species or habitat assessed at the relevant level whether local, regional or European Union-wide; …*

No definition of "national" is provided in the 2009 Regulations or in these Regulations. The Explanatory Memorandum accompanying these Regulations also does not explain what "national" means in this context. Paragraph 4.8 of the Explanatory Memorandum states as follows:

> *4.8 The changes made to ensure that it operates effectively include the removal of references to the "EU", "Union" and "the Commission" and replaced with "the United Kingdom". It also removes a reference to assessing environmental damage in Schedule 1 by replacing "European wide", with "national or in their natural range".*

Merits Scrutiny

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

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

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

Implications arising from exiting the European Union

The 2009 Regulations will become part of retained EU law on exit day, having been made under section 2(2) of the European Communities Act 1972.

Government Response

The Committee has raised a reporting point under Standing Order 21.2(v) requiring further clarification on whether the term 'national' in the amending regulations refers to Wales or the UK.

Welsh Government lawyers discussed and considered this point at length with DEFRA counterparts. In short, we consider 'national' to refer to the UK, with the term 'regional' which precedes that term, meaning Wales.

It was considered appropriate to amend the term 'European Union-wide' by including a reference to 'natural range' to reflect the changes made to the regulations which transpose the Habitats Directive. It is acknowledged that 'natural range' goes beyond the UK and potentially the EU; although it is also considered that it is no more difficult to make assessments on that level than it is on a EU level. Therefore, it was considered necessary to bridge the gap between 'regional' (which we considered to be Wales) and 'natural range', hence the inclusion of 'national' which is considered to be the UK.

In practice, we do not consider that the range of considerations to be taken into account under paragraph 1(1)(e) is reduced and the change in terminology will not affect how this is undertaken in practice.

Legal Advisers

Constitutional and Legislative Affairs Committee

26 February 2019

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ENVIRONMENTAL PROTECTION, WALES

The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

These Regulations make amendments to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009.

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

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

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ENVIRONMENTAL PROTECTION, WALES

The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2019

Sift requirements satisfied	*7 January 2019*
Made	*11 February 2019*
Laid before the National Assembly for Wales	*13 February 2019*
Coming into force in accordance with regulation 1	

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018(**1**).

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

Title and commencement

1. The title of these Regulations is the Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(**1**) 2018 c. 16.

Amendment of the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

2.—(1) The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009(**1**) are amended as follows.

(2) In regulation 2, in paragraph (3)(a), at the end insert ", or under retained EU law(**2**) which transposed Directive 2001/18/EC in relation to Wales.".

(3) For regulation 3 substitute—

"**3.**—(1) References in these Regulations to EU instruments are to those instruments as they had effect immediately before exit day.

(2) References to—

(a) the European Union, or otherwise to the area to which that instrument applies;

(b) a Member State,

in any EU instrument referred to in these Regulations includes the United Kingdom.".

(4) In Schedule 1, in paragraph 1(1)(e), for "or European Union-wide" substitute ", national or in their natural range".

(5) In Schedule 2—

(a) after paragraph 1 insert—

"**1A.** A reference in this Schedule to an activity being authorised, prohibited, operated or managed pursuant to, or subject to, a permit or registration under an EU Directive includes, after exit day, any activity authorised, prohibited, operated or managed pursuant to, or subject to, a permit or registration under any retained EU law which transposed that Directive."; and

(b) in paragraph 10, for the words from "European Union" to the end, substitute "European Union, or after exit day into or out of the United Kingdom, requiring an authorisation or prohibited under Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste.".

(**1**) S.I. 2009/995 (W. 81), amended by S.I. 2011/1043; there are other amending instruments but none is relevant.

(**2**) Retained EU law has the same meaning as in section 6 of the European Union (Withdrawal) Act 2018.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
11 February 2019

Explanatory Memorandum to The Environmental Damage (Prevention and Remediation)(Wales)(Amendment)(EU Exit) Regulations 2019.

This Explanatory Memorandum has been prepared by 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.

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Environmental Damage (Prevention and Remediation)(Wales)(Amendment)(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.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
13 February 2019

PART 1
1. Description

1.1. These Regulations make amendments to the Environmental Damage (Prevention and Remediation)(Wales) Regulations 2009. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU and will address deficiencies in domestic legislation arising from EU Exit.

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

2.1 This instrument is being made using the power conferred by section 11 of and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018 ("the 2018 Act").

2.2 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

2.3 The Constitutional and Legislative Affairs Committee considered the regulations for sifting on 7 January 2019 and approved that the "appropriate procedure for these Regulations is the negative resolution procedure." It is, therefore, confirmed that the instrument will follow the negative procedure. A copy of the Committee's report can be found here.

3. Legislative background

3.1 This instrument is being made using the power conferred by section 11 and paragraph 1(1) of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The Environmental Damage (Prevention and Remediation)(Wales) Regulations 2009 implement Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. Directive 2004/35 has the objective of making operators of activities which cause damage financially liable for that damage (the 'polluter pays' principle).

4.2 The Regulations apply to serious environmental damage to land, water and to species and habitats. They cover not only species and habitats

protected by the Birds and Habitats Directives but also any other species and habitats protected on Sites of Special Scientific Importance (SSSIs) They impose duties on operators of economic activities to take immediate steps to prevent damage if there is an imminent threat, and to control damage which is occurring so as to limit its effects.

4.3 Operators of activities listed in Schedule 2 of the regulations will be liable for damage caused by them whether or not they are at fault, whereas operators of any other activities can also be liable for species and habitat damage, but only if they are at fault (that is, if they intended to cause damage or were negligent).

4.4 Once environmental damage has occurred, the Regulations introduce procedures for the establishment of appropriate remedial measures. Operators will be expected to propose remedial measures themselves, and there will then be consultation with interested parties before a remediation notice is served.

4.5 In the case of damage to water or species and habitats, these measures will include not only 'primary' remediation (for example, cleaning up the contaminated site), but also complementary remediation (cleaning up an alternative site if the damaged site cannot be fully restored), and compensatory remediation (carrying out other measures to provide alternative natural resources to compensate for the time during which the damaged site remains in its damaged state).

4.6 The whole package of measures (primary, complementary or compensatory) will be carried out by the operator responsible for the damage. Detailed criteria for deciding the overall remedial package are set out in Schedule 4 of the regulations. In cases where the operator cannot be found or is otherwise unable to perform his duties, the enforcing authority has a power to carry out any necessary work and to claim its costs back from the responsible operator. Responsibility for enforcing the regulations lies with Natural Resources Wales and Local Authorities.

Why is it being changed?

4.7 The minor and technical changes made by the instrument are necessary to ensure that the 2009 Regulations continues to operate effectively following the UK's withdrawal from the European Union.

4.8 The changes made to ensure that it operates effectively include the removal of references to the "EU", "Union" and "the Commission" and replaced with "the United Kingdom". It also removes a reference to assessing environmental damage in Schedule 1 by replacing "European wide", with "national or in their natural range".

4.9 Schedule 2 is also amended to clarify that any activity being authorised or prohibited, operated or managed by a permit or registration under an

EU Directive will continue after exit day under any EU retained law which transposed any of these Directives.

What will it now do?

4.10 The instrument will ensure that the assessment of environmental damage and the liability on operators to pay for that damage under the regulations and the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage continues to be operable and enforceable in Wales after we leave the EU.

5. Consultation

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

6. Regulatory Impact Assessment (RIA)

6.1 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.

Annex [x]
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 *Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)*	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	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. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 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.

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

Part 2

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

1. Sifting statement(s)

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

“In my view the The Environmental Damage (Prevention and Remediation)(Wales)(Amendment)(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 how Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 operate.

2. Appropriateness statement

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

“In my view the The Environmental Damage(Prevention and Remediation)(Wales)(Amendment)(EU Exit) Regulations 2019 does no more than is appropriate”. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

3. Good reasons

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

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 continue to be operable after the UK leaves the European Union.

4. Equalities

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

4.3 “In relation to the instrument, I, Lesley Griffiths, 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

5.1 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.

Agenda Item 8.1

SL(5)324 – Code of Practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014

Background and Purpose

This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the "Act").

This code, and the regulations to which it refers, set out the requirements for local authorities in relation to:

- setting a contribution or reimbursement in connection with direct payments under sections 50-53 of the Act (Direct payments);
- the choice of accommodation for those in a care home, including payment of additional costs in certain circumstances, under section 57 of the Act (Cases where a person expresses preference for particular accommodation);
- charging and financial assessment under section 59 of the Act (Power to impose charges) on those who are to receive care and support, or in the case of carers support;
- the deferment of payments by those in a care home under section 68 of the Act (Deferred payment agreements);
- charging under 69 of the Act (Charging for preventative services and assistance) for the provision or arrangement of preventative services and assistance;
- the recovery of debts under section 70 of the Act (Recovery of charges, interest, etc) and the transfer of assets to avoid charges under section 72 of the Act (Transfer of assets to avoid charges); and
- reviews under section 73 (Reviews relating to charges) relating to charging determinations or charges made under the Act.

The code covers:

- designing a charging policy;
- common issues in relation to charging;
- charging for care and support in a care home;
- choice of accommodation when arranging care in a care home;

- making payments for additional costs for preferred accommodation;
- charging for care and support in the community;
- charging for support to carers.

Procedure

A draft of the code must be laid before the Assembly. If, within 40 days (excluding any time when the Assembly is dissolved or is in recess for more than 4 days) of the draft being laid, the Assembly resolves not to approve the draft code then the Welsh Ministers must not issue the code.

If no such resolution is made, the Welsh Ministers must issue the code (in the form of the draft) and the code comes into force on a day specified in an order made by the Welsh Ministers.

Scrutiny under Standing Order 21.7

No points are identified for reporting under Standing Order 21.7 in respect of this code.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.7 in respect of this code.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
15 February 2019

Part 4and5

Code of practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014

This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the "Act")

This code revokes the Part 4 and 5 code of practice (charging and financial assessment) issued in April 2018.

Chapter / Contents

1. Introduction

Introduction

1.1 This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the "Act").

1.2 The Social Services and Well-being (Wales) Act 2014 is available at: http://www.legislation.gov.uk/anaw/2014/4/enacted

1.3 Local authorities, when exercising their social services functions, **must** act in accordance with the requirements contained in this code. Section 147 (Departure from requirements in codes) **does not** apply to any requirements contained in this code.

1.4 In this code a **requirement** is expressed as "must" or "must not". **Guidance,** where local authorities have discretion, is expressed as "may" or "should/should not".

1.5 This code should be read in conjunction with all relevant codes of practice issued under the Act. In particular those relating to care and support provision under Part 3 (Assessing the Needs of Individuals) and Part 4 (Meeting Needs). It must also be read in conjunction with the relevant regulations made under Part 4 (Meeting Needs) and Part 5 (Charging and Financial Assessment) of the Act which are referred within it.

Advocacy

1.6 The dedicated code of practice on advocacy under Part 10 of the Act sets out the functions when a local authority, in partnership with the individual, must reach a judgement on how advocacy could support the determination and delivery of an individual's personal outcomes; together with the circumstances when a local authority must arrange an independent professional advocate. Professionals and individuals must ensure that judgements about the needs for advocacy are integral to the relevant duties under this code.

1.7 An individual must feel that they are an equal partner in their relationship with professionals. It is open to any individual to invite someone of their choice to support them to participate fully and express their views, wishes and feelings. This support can be provided by someone's friends, family or wider support network

2. Purpose

2.1 This code, and the regulations to which it refers, set out the requirements for local authorities in relation to:

- setting a contribution or reimbursement in connection with direct payments under sections 50-53 of the Act (Direct payments);
- the choice of accommodation for those in a care home, including payment of additional costs in certain circumstances, under section 57 of the Act (Cases where a person expresses preference for particular accommodation);
- charging and financial assessment under section 59 of the Act (Power to impose charges) on those who are to receive care and support, or in the case of carers support;
- the deferment of payments by those in a care home under section 68 of the Act (Deferred payment agreements);
- charging under 69 of the Act (Charging for preventative services and assistance) for the provision or arrangement of preventative services and assistance;
- the recovery of debts under section 70 of the Act (Recovery of charges, interest, etc) and the transfer of assets to avoid charges under section 72 of the Act (Transfer of assets to avoid charges); and
- reviews under section 73 (Reviews relating to charges) relating to charging determinations or charges made under the Act.

2.2 This code covers:

- designing a charging policy;
- common issues in relation to charging;
- charging for care and support in a care home;
- choice of accommodation when arranging care in a care home;
- making payments for additional costs for preferred accommodation;
- charging for care and support in the community;
- charging for support to carers.

2.3 This code must be read in conjunction with annexes A to F which provide further information and set out the detailed requirements in particular instances.

3. General

3.1 The Act provides for a single legal framework for charging for care and support, or in the case of a carer, charging for support. It provides a local authority with the discretion to charge in either case. It also provides authorities with the discretion to require payment of a contribution, or a reimbursement, towards the cost of securing care and support (or support to a carer) where a person receives direct payments to enable them to obtain this. Local authorities can exercise this discretion to charge, or to require a contribution or reimbursement, where they feel it is appropriate to do so and where they have established that the person required to pay any charge, contribution or reimbursement, has sufficient financial means to do so.

3.2 References in this code and its annexes to "care and support" should be construed to include reference to "support to carers". References to "charging" should be construed to include reference to requiring payment of "contributions" or "reimbursements" in relation to the provision of direct payments.

3.3 Where a local authority provides or arranges care and support to meet a person's needs, or support to meet a carer's needs, under sections 35 to 45 of the Act (Meeting Needs) it has the discretion to charge for this, except where it is required by regulations not to charge a particular person or not to charge for a particular type of care and support. In addition, where a local authority provides direct payments to enable a person to obtain care and support, or a carer to obtain support, under sections 50 to 53 of the Act (Direct payments) it has the discretion to require payment of a contribution or a reimbursement in respect of such direct payments.

3.4 The charging and financial assessment framework introduced by the Act, the regulations and this code are intended to make charging, where it occurs, consistent, fair and clearly understood. The overarching principle is that people who are asked to pay a charge **must** only be required to pay what they can afford. People who require care and support will be entitled to financial support from their local authority in certain circumstances based on their financial means and some will be entitled to care and support at no charge. Local authorities **must** take into account, when deciding whether to charge and in setting the level of any charge, contribution or reimbursement they require to be paid or made, the principles upon which this framework is based. Local authorities **must**:

- ensure that people **are not** charged more than it is reasonably practicable for them to pay and **must not** be charged more than the cost to the authority of providing or arranging the care and support they are receiving or which they are to obtain themselves through direct payments;
- be consistent, to remove variation in the way people are financially assessed and charged;
- be clear and transparent, so people know what they will be charged;
- promote well-being outcomes, social inclusion and support the vision of independence, voice and control;
- support carers to look after their own health and well-being, and to care effectively and safely;
- be person-focused, reflecting the variety of care and caring situations and the variety of options available to help meet people's needs and well-being outcomes;

- apply charging equally so those with similar needs for care and support are treated the same and minimise anomalies between charging for different types of care and support;
- encourage and enable those who wish to stay in or take up employment, education or training, or plan for the future costs of meeting their needs, to do so;
- be sustainable for local authorities in the long-term.

3.5 Alongside this local authorities **must** ensure there is information and advice about their charging and charging policies available in appropriate formats, which take account of people's communication needs (in particular for those with a sensory impairment, learning disability or for whom English is not their first language). This is to ensure that individuals are able to understand why they are being charged and how such charges have been calculated. Local authorities **should** also make the person aware of the availability of independent financial information and advice.

3.6 Where people obtain care and support in addition to that provided by or arranged by a local authority exercising its duties or powers under the Act, then the financial assessment and charging requirements of the Act, this code and the Regulations to which it refers do not apply. In such circumstances it is a matter for the person concerned as to what other care and support, if any, they wish to receive and what arrangements there are in place for paying for this. Nothing in the Act, this code or those Regulations precludes a person from entering into such private arrangements should they choose to do so.

4. Designing a charging policy

4.1 Save for the requirements of the Act, the Regulations and this code, where a local authority decides to use its discretion to charge for care and support it provides or arranges the design and content of its policy for that charging is a matter for that authority. In line with the requirements of the Act, the Regulations and this code, authorities need to decide which care and support, if any, they will make a charge for, the nature and level of any charges to be made and how these charges will be applied to particular care and support recipients. Within this framework authorities will also need to determine how their processes for undertaking the various stages of their charging procedure would operate and ensure that these are compliant with the requirements of the Act, the regulations and this code. In particular, authorities will need to decide what allowances, disregards or other aspects they wish to incorporate within the financial assessments they undertake beyond those required by legislation. It should be stressed that the Act, Regulations and this code do not make any presumption that local authorities will charge for care and support but enables them to exercise their discretion to impose a charge, and imposes requirements which local authorities **must** follow, should they wish to exercise this discretion.

4.2 The care and support policies of the Welsh Government aim to promote the independence and social inclusion of individuals. Authorities may wish to take a similar approach in designing any charging policy, taking into account the principles of the Social Model of Disability and the UN Convention on the Rights of Persons with Disabilities. Where authorities decide to charge, charging policies **should** be seen within this context and **should** equally seek to promote the independence and social inclusion of care and support recipients. Charging policies therefore **must** be fair and reasonable, taking due account of the costs to authorities of providing or arranging care and support, the impact of this on the provision of care and support overall, the financial means of recipients and the financial and other impacts on those having to pay charges. Policies therefore **must** strike an appropriate balance between ensuring that any contributions sought from individuals who are to receive care and support towards the cost of its provision are reasonable, while securing sufficient funds to help assist in the provision of such care and support. Where authorities design new policies, or significantly amend existing polices, they **must** consult those affected locally and take their views into account before deciding upon what policy, or what amendments to their policy, they should operate.

4.3 Where local authorities are designing policies for charging, they should consider whether to do this in conjunction with other local authorities. This would be particularly relevant for authorities within the same Local Health Board area, so as to create a consistency of practice across that region.

5. Common issues for charging

5.1 Local authorities have a duty to arrange care and support for those with eligible needs, and a power to meet non-eligible needs should it wish to do so. In all cases a local authority has the discretion under the Act to choose whether or not to charge for this under sections 50-53 (Direct payments) in relation to direct payments, under section 59 (Power to impose charges) in relation to care and support it provides or arranges, or under section 69 (Charging for preventative services and assistance) in relation to preventative services or assistance. Where a local authority decides to charge it **must** follow the requirements set out in the Care and Support (Charging) (Wales) Regulations 2015* (the "Charging Regulations") and the Care and Support (Financial Assessment) (Wales) Regulations 2015* (the "Financial Assessment Regulations") and this code. These Regulations set out the details of a local authority's obligations when undertaking financial assessments and the requirements local authorities must follow in determining charges based upon such assessments.

* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017, the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

5.2 The detail of how the charging regime operates depends on whether someone is receiving care in a care home, or in their own home or in the community. However, they share common elements, which are set out in the following sections.

- Needs assessments / individual financial assessments

5.3 This code and its supporting annexes assume that the appropriate assessment of needs has been carried out and the local authority has chosen to charge in a particular case. It therefore provides detail on how to conduct the financial assessment of that person, where this is required, and what to take account of in setting that charge. In undertaking charging only the financial means of the person being assessed can be taken into account in the financial assessment of what they can afford to pay. Where this person holds income or capital as one of a couple, the starting presumption is that each person has an equal share of each. However, a local authority can assess the income or capital of a couple but only where this is financially more advantageous to the person being assessed. A local authority **must** only assess the financial means of couples in these circumstances.

5.4 For further advice on assessment of needs see the code on Parts 3 and 4 of the Act on assessment and meeting needs.

- People who lack capacity

5.5 Where a person lacks capacity they may still be assessed as being able to contribute towards the cost of their care and support. However, a local authority **must** put in place policies regarding how they communicate, how they carry out financial assessments and how they collect any charges from that person that take into consideration the capacity of the person as well as any medical condition or impairment they might have. Local authorities **must** use their social work skills both to communicate with people and also to design a system that works with, and for, very vulnerable people. In such circumstances local authorities **must** consult

with and engage with family members where this is required. Where possible, local authorities should work with someone who has the legal authority to make financial decisions on behalf of a person who lacks capacity. If there is no such person, then an approach to the Court of Protection may be required.

- Children

5.6 The Act prevents local authorities from charging a child for the care and support they receive, or for support provided to a child who is a carer. While the Act allows authorities to charge a parent or guardian for this, the Regulations and code preclude this. This is on the grounds that this provision was included in the Act to "future proof" it and not by a desire to introduce such charging at this time. Local authorities **must not** therefore charge for care and support to a child, or for support to a child who is a carer, provided under Part 4 of the Act (Meeting Needs), nor must authorities seek payment of a contribution or a reimbursement towards such costs when direct payments are being made to secure such care and support.

- Prisoners

5.7 The charging framework also applies to people who are detained in the secure estate. Whilst detainees have restricted access to paid employment and welfare benefits (and earnings are disregarded for the purposes of financial assessments), any capital assets, savings, income and pensions will need to be considered when undertaking a financial assessment as with any other person in receipt of care and support.

- Welfare Benefits Advice

5.8 Authorities **should** provide appropriate welfare benefits advice to those to receive care and support to aid them in their understanding as to the benefits to which they may be entitled. This **should** normally be provided by means of a personal discussion with the person in their own home by appropriately skilled staff with, if the person requests one, their representative. This assistance **should** include advice about entitlement to benefits, help with completion of benefit claims and follow-up action, if the person wishes. In many cases it may be both convenient for individuals and cost-effective to provide combined financial assessments and benefits advice discussions. However, people may prefer to obtain assistance from an independent source and should be offered this choice, where possible.

- Capital limit

5.9 The financial limit, known as the "capital limit", exists for the purposes of the financial assessment and sets out at what point a person is entitled to access local authority financial support to meet their eligible needs. Full details of it are set out in Annex A on the treatment of capital, and a local authority **must** follow that Annex in undertaking a financial assessment and applying the capital limit.

5.10 The level of the capital limit is set in the Charging Regulations and this level may change from time to time. Those with capital assets at or below this limit can seek means-tested financial support from their local authority. This means that the local authority will undertake a financial assessment of the person's means and may make a charge for the care and support they are or will be receiving based on what the person can afford to pay towards the cost of providing or arranging this. When undertaking the financial assessment capital at or below the capital limit **must** be disregarded in the assessment of what a person can afford to pay. Where

a person's capital is at or below the capital limit they **must not** be required to contribute to the cost of their care and support from their capital.

5.11 A person with more in capital than the capital limit can ask their local authority to arrange their care and support for them if they choose under section 35(4)(b)(ii) (Duty to meet care and support needs of an adult) of the Act. However, people in this position will be required to pay the full cost of their care and support in residential care, or the full cost up to the weekly maximum charge in relation to non-residential care and support, until such time as the value of their capital is at or below the level of the capital limit. It should be noted that a different capital limit may apply in relation to residential care and support and non-residential care and support.

- Care and support for which a charge cannot be made

5.12 A local authority **must not** charge for certain types of care and support which must be arranged free of charge. These are:

- care and support provided as reablement arranged under Part 2 (General Functions) or Part 4 (Meeting needs) of the Act, or reablement arranged as direct payments under sections 50 or 52 (Direct payments) of the Act, to a person for up to 6 weeks to enable them to maintain or regain their ability to live independently at home. (In providing reablement or direct payments to secure such provision local authorities **should** have regard as to whether to extend this period in individual cases where a person's needs as such that their outcomes would benefit from a longer period of free reablement support, such as those who may require rehabilitation for a longer period for a visual impairment);
- care and support provided to those with Creutzfeldt-Jacob Disease;
- after-care services/support provided under section 117 of the Mental Health Act 1983;
- assessment of needs, care planning, care plans, provision of statements of a charge and undertaking a review of a determination of a charge or a charge itself, **must** not be charged for since these processes do not constitute the provision of care and support. This includes the provision of information and advice;
- transport to a day service where the transport is provided as part of meeting a person's needs;
- independent professional advocacy where a local authority has arranged for the provision of this in accordance with the code of practice on advocacy under Part 10 (Complaints, Representatives and Advocacy Services) of the Act where a person can only overcome the barrier(s) to participate fully in the assessment, care and support planning, review and safeguarding processes with assistance from an appropriate individual and no such individual was available. Such processes, as set out in the code relating to Part 10, encompass the full range of relevant functions under the Act.

- Carrying out a financial assessment

5.13. Where a local authority has decided to charge for the provision or arrangement of care and support under Part 5 (Charging and Financial Assessment) of the Act, or requires payment of a contribution or reimbursement for care and support which a person is to obtain through direct payments under Part 4 (Meeting Needs) of the Act, except where a flat rate charge is to be applied (see later in this chapter) it **must** carry out a financial assessment and determine what the person can afford to reasonably pay. Once complete, it **must** provide a written statement of the

charge, contribution or reimbursement it is to set to the person. This could be provided alongside a person's care and support plan or separately.

5.14 The Financial Assessment Regulations set out the requirements of a financial assessment, determining a charge and providing a statement of this charge. Regulation 3 (Information to be provided by a local authority) set outs the information that **must** be provided to the person to be assessed and includes:

- information upon the care and support which is the subject of the assessment;
- details of its charging policy for care and support or for the provision of direct payments, as appropriate;
- details of its financial assessment process;
- details of any information or documentation it requires in order to complete the assessment and the time scale to provide this with details of any home visiting facility the authority provides in order to obtain this;
- information about the right of the person to appoint a third party to act on their behalf for all or part of the assessment with details of organisations within its area that provide this type of support;
- the fact that it will provide the person with a statement of any charge, contribution or reimbursement on completion of the assessment; and
- the contact details of those in an authority who can be contacted if the person requires more information.

5.15 In carrying out the financial assessment the local authority **must** follow the requirements within the Financial Assessment Regulations and this code. A local authority **must** reassess a person's ability to meet the cost of any charges, contribution or reimbursement should their financial circumstances change. This is likely to occur at least on an annual basis as a result of revisions to levels of welfare benefits and state pensions, but may occur more frequently according to individual circumstances. However, this **must** take place if there is a change in circumstance or at the request of the person.

5.16. Requirements about the treatment of capital in a financial assessment are set out in detail in Part 4 (Treatment and calculation of capital) of the Financial Assessment Regulations and Annex A of this code (Treatment of Capital). The person's capital is taken into account in the assessment unless it is subject to one of the disregards set out in the Regulations and described in Annex A. The main examples of capital considered are the value of property and savings a person holds.

5.17 Requirements about the treatment of income in a financial assessment are set out in detail in Part 3 (Treatment and calculation of income) of the Financial Assessment Regulations and Annex B of this code (Treatment of Income). In assessing what a person can afford to pay, a local authority **must** take into account their income. However, to help encourage people to remain in or take up employment, with the benefits this has for a person's well-being, earnings from employment **must** be disregarded when working out how much the person can pay. While in the main income is treated the same whether a person is in a care home or in receipt of care and support in the community (whether receiving this arranged or provided by a local authority or via direct payments), there are some differences between the two as to how income is treated. Full details of this are set out in Part 3 of the Regulations and Annex B of this code.

- No requirement for a financial assessment

5.18. In some circumstances a local authority is **not** required to undertake a financial assessment. The circumstances where this applies are included in regulation 7 (Circumstances in which there is no duty to carry out a financial assessment) of the Financial Assessment Regulations. They include situations where:

(a) the local authority charges a flat rate charge for particular care and support (including for preventative services and assistance) and as such, carrying out a financial assessment would be disproportionate to the charge levied;
(b) the person declines to provide information and/or documentation reasonably required to undertake the assessment, or only provides partial information. In that case the authority can determine whether to charge, and the level of that charge, on the basis of available information / documentation if it considers that it has sufficient information to do so;
(c) the person is receiving care and support for which no charge can be made.

5.19 Ways a local authority may be satisfied that a person is able to afford any charges due where no or partial information is provided include:

(a) property clearly worth more than the capital limit, where it can be established they are the sole owner or it is clear what their share of the property is; or
(b) savings, where they can be established, are clearly worth more than the capital limit.

- Determination of a charge

5.20 In determining the amount of a charge, contribution or reimbursement, a local authority **must** following the requirements of the Charging Regulations. These set out:

- the persons who may not be charged;
- services for which a charge may not be made;
- the maximum weekly charge for non-residential care and support (see later in this chapter);
- the capital limit (referred to at paragraph 5.9 to 5.11); and
- the minimum income amount for a person provided with non-residential care and support and for a person in receipt of care and support in a care home.

5.21 A local authority **must** make a determination as soon as it has sufficient information and documentation to do so. Once a determination has been made under regulation 14 (Statement of determination) of the Charging Regulations a local authority **must** provide a statement to the person who has been financially assessed setting out the charge, contribution of reimbursement to be made. This statement **must** explain how the assessment has been carried out, what the charge, contribution or reimbursement will be and how often it will be made, and if there is any fluctuation in these amounts, the reason for this. The local authority **must** ensure that this is provided in a format to meet the communication needs of the person.

5.22 Once a statement has been issued a local authority may then require the person to pay a charge, contribution or reimbursement for the care and support which is the subject of this from the date that care and support was first provided. A local authority **must** provide a statement as soon as a determination is made. Authorities **must not** delay either undertaking a determination, or issuing a statement, where they are in a position to do so.

6. Flat rate charges

6.1 Local authorities can make a flat rate charge for low level, low cost care and support, or set a flat rate contribution or reimbursement for direct payments for such care and support. Flat rate charges would typically be for that care and support that substitutes for ordinary living, such as meals or laundry. While potentially being care and support provided regularly, in some cases it might be the only care and support a person receives. Local authorities can also charge flat rate charges under section 69 (Charging for preventative services and assistance) of the Act for preventative services or assistance it provides or arranges. Flat rate charges made **must not** exceed the cost incurred in arranging or providing for the care and support, preventative service or assistance to which they relate.

6.2 Where it does make a flat rate charge in these circumstances, or sets a flat rate contribution or reimbursement, a local authority is **not** under a duty to undertake a financial assessment in relation to the care and support, or the preventative services or assistance, to which this relates. This is to prevent a disproportionate situation where a person is required to provide financial information on their means, or an authority is required to undertake a financial assessment, for what would be a relatively low level charge. As a result, a local authority **must** consider both the level of the flat rate amount it proposes to charge, and its potential financial effect on the person required to pay this.

6.3 However, it is **not** acceptable for local authorities to set flat rate charges for all care and support as a way of potentially avoiding the duties placed upon them by the Act and the Regulations. This is on the basis that a flat rate charge for such other forms of care and support would not adequately take account of the cost of this being provided, the financial means of a care and support recipient to meet such a charge and the principle that a person should not ordinarily pay more that the maximum weekly charge prescribed by the Charging Regulations for all of the non-residential care and support they receive (see later in this chapter).

6.4 Particular care needs to be taken to avoid an adverse impact on a person's income where they are receiving a number of flat rate charges. In such circumstances local authorities **must** take account of these flat rate charges to avoid a situation where the accumulative effect of these, and charges or payments made under Parts 4 or 5 of the Act for care and support, makes these unaffordable for the individual. While the Regulations remove the obligation to carry out a financial assessment, where concerns arise authorities **must** offer the person the opportunity to have a financial assessment undertaken should they have any reason to believe that the accumulative effect of flat rate charges is or may be unaffordable.

6.5 In deciding whether to levy flat rate charges in accordance with section 69 of the Act for preventative services or assistance, local authorities **must** consider the balance between collecting income to help provide such care and support on a sustainable basis, and the effect making such charges may have on the take up of them. Local authorities should avoid a situation where the flat rate charges they set, and the level of these, result in a low take up of preventative services and assistance which results in more people than might otherwise be the case developing care and support needs, either at an earlier point or at a higher level of need, so as to prevent local authorities from adequately discharging their well-being duties under Part 2 (General Functions) of the Act.

6.6 Where local authorities choose to use their discretion to levy a flat rate charge for preventative services or assistance which are provided by the third sector on their behalf, they will need to agree with those providers how such charges are to be collected.

7. Maximum weekly charge

7.1 In determining the amount of a charge under section 59 of the Act, or of a contribution or reimbursement under sections 50-53 of the Act in connection with direct payments, local authorities **must not** charge a person in receipt of non-residential care and support more than a weekly maximum charge for all of the non-residential care and support they receive.

7.2 This requirement was introduced in 2011 by Ministers to bring about more consistency across Wales in respect of such charges. Hence the Charging Regulations maintain this requirement and set the level of the maximum charge to which authorities **must** adhere. Local authorities **are not** at liberty to charge a non-residential care and support recipient more than this maximum charge in a week irrespective of the size and cost of the non-residential care package they have. This applies equally where a person receives dual services; ie care and support provided or arranged by their local authority and care and support provided through direct payments. The total of any charge made, or amount required, for both of these must not exceed the weekly maximum charge or weekly maximum amount in connection with direct payments. However, the maximum weekly charge and maximum weekly amount do not include the level of any flat rate charges which a person is liable to as outlined at paragraphs 6.1 to 6.6.

7.3 It is open to authorities to operate a lower maximum weekly charge than set in the Charging Regulations if they wish. The maximum weekly charge set in the Regulations will be kept under review and may, from time to time, be revised.

8. Deprivation of assets and debts

8.1 People with care and support needs are generally free to spend their income and use their capital assets as they see fit, including making gifts to friends and family. This is important for promoting their well-being and enabling them to live independent lives. However, while this is the case it should not be done deliberately to avoid charges all together or to reduce their liability for charges due to reduced financial means.

8.2 There are cases where a person may have tried to deliberately avoid paying for care and support through depriving themselves of assets – either capital or income. Where a local authority believes it has evidence to support this it can, if it deems appropriate, seek to recover costs under section 72 (Transfer of assets to avoid charges) of the Act. In such cases the local authority may either charge the person as if they were still in possession of the asset, or if the asset has been transferred to someone else, seek to recover the lost income from charges or from lost contributions or reimbursements where direct payments have been made from that person.

8.3 However, the local authority **cannot** recover more than the person gained from the transfer and **must** apply the Financial Assessment and Charging Regulations in calculating the charge which would have been levied. In addition, local authorities **must not** automatically assume that deprivation of an asset has occurred in a particular case and **must** treat each case where they have concerns on its merits.

8.4 Where a person has accrued a debt, the local authority may use its powers under section 70 (Recovery of charges, interest, etc) of the Act to recover that debt. In deciding how to proceed the local authority **must** consider the circumstances of the case before deciding a course of action. For example, a local authority should consider whether this was a deliberate avoidance of payment or due to circumstances beyond the person's control.

8.5 Ultimately, the local authority may institute court proceedings to recover the debt. However, they **must** only use this power after other reasonable alternatives for recovering the debt have been exhausted with the person owing the debt.

8.6 More information on deprivation of assets and upon debits is in Annex F of this code.

9. Charging for care and support in a care home

9.1 This part of the code must be read in conjunction with the Financial Assessment and Charging Regulations and Annexes A and B on the treatment of capital and income respectively in relation to care homes.

9.2 Where a local authority has decided to charge for the provision or arrangement of accommodation in a care home and is undertaking a financial assessment, it **must** support the person to identify options of how best to pay any charge. This may include offering the person a deferred payment agreement against the value of a property taken into account in the financial assessment. Such cases are described in more detail in Annex D on deferred payments agreements.

9.3 Where a person is a short-term resident (ie a stay not exceeding eight weeks) in a care home and a local authority uses its discretion to charge for this, it **must** undertake any financial assessment of a person's means to do this as if the person were receiving non-residential care and support, or receiving direct payments for non-residential care and support. For example, such a person could be receiving respite care on a short term basis. Should a stay be longer than eight weeks but not a permanent stay (such as where a person is awaiting a permanent stay in another care home), a local authority will need to consider whether to continue to charge on this basis or whether to commence charging as if the person were receiving residential care.

9.4 People in a care home with capital at or below the capital limit will contribute most of their income, excluding their earnings, towards the cost of their care and support. However, a local authority **must** leave the person with a specified amount of their own income so that the person has money to spend on personal items such as clothes and other items that are not part of their care and support. This is known as the minimum income amount (MIA). This is in addition to any income the person receives from earnings. Local authorities have discretion to apply a higher MIA in individual cases, for example where the person needs to contribute towards the cost of maintaining their former home. The Charging Regulations set the level of the MIA which authorities **must** allow residents to retain. This level may change from time to time.

10. Choice of accommodation

10.1 This part of the code must be read in conjunction with the current guidance on procedures when discharging patients from hospital to a care setting, where that is occurring.

10.2 Other than where a person is a short-term resident (ie less than 8 weeks), where a person's needs are to be met by provision of accommodation in a care home, the local authority **must** provide for the person's preferred choice of accommodation, subject to certain conditions. Determining the appropriate type of accommodation should be made with the person as part of the care and support planning process, therefore this choice only applies between providers of the same type.

10.3 In this situation the local authority **must** ensure that the person has a genuine choice and **must** ensure that more than one option is available within its usual commissioning rate for a care home of the type a person has been assessed as requiring. However, a person must also be able to choose alternative options, including a more expensive home. Where a home costs a local authority more than it would usually pay, a person **must** be able to be placed there if certain conditions are met and where a third party (or in certain circumstances the resident) is willing and able to pay the additional cost. However, an additional cost payment **must** always be optional and never as a result of a shortfall in the funding a local authority is providing to a care home to meet a person's assessed care needs. Local authorities **must** follow the Care and Support (Choice of Accommodation) (Wales) Regulations 2015* in connection with this type of arrangement and Annex C on choice of accommodation and additional cost payments.

* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018.

11. Charging for care and support in the community including a person's own home

11.1 This part of the code must be read in conjunction with the Financial Assessment and Charging Regulations and Annexes A and B on the treatment of capital and income respectively in relation to non-residential care and support.

11.2 These charging arrangements cover meeting care and support needs outside of a care home, either in a person's own home or in the community. The intention of the Regulations and this code is to support local authorities, where they have decided to charge for the care and support a person is to receive, to assess what that person can afford to contribute towards the cost of this provision.

11.3 Because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging framework seeks to ensure they have enough money to meet these costs. As a result after charging local authorities **must** leave a person who is being charged with a minimum income amount (MIA), equivalent to a "basic entitlement" plus a buffer of 35% of that amount. Regulation 12 and 27 (Minimum income amount for a person being provided with non-residential care and support) of the Charging Regulations define "basic entitlement", set out the application of this and what to take into account in each person's case. In addition, to assist with disability-related expenditure, those being charged **must** also be left with an additional 10% of their "basic entitlement" towards the cost of this. The level of these allowances may change from time to time.

11.4 Additionally, the financial assessment of their capital **must** exclude the value of the property which they occupy as their main or only home. Beyond this, how capital is treated in a financial assessment is the same as for residential care. However, local authorities have flexibility within this framework to take account of local circumstances and promote independence and integration. For example, they may choose to disregard additional sources of income, set a lower weekly maximum charge than that required, or charge a person a percentage of their disposable income. That said, this **should not** lead to two people with similar needs, and receiving similar types of non-residential care and support, being charged differently.

11.5 The level of the capital limit applicable in charging for non-residential care and support may be different, however, to that used in charging for residential care and support.

12. Charging for support to adult carers

12.1 Where an adult carer has eligible support needs of their own, the local authority has a duty, or in some cases a power, to arrange support to meet their needs. Where a local authority is meeting the needs of an adult carer by arranging or providing support directly to them, or providing direct payments to enable them to obtain this support, it has the discretion to charge the adult carer for these.

12.2 However, a local authority **must not** charge an adult carer for care and support provided directly to the person for whom they care. In addition, local authorities **are not** required to charge an adult carer for support and indeed in many cases it would be a false economy to do so. When deciding whether to charge, and in determining what an appropriate charge is, a local authority **must** consider how it wishes to express the way it values carers within its local community as partners in care, and recognise the significant contribution carers make. Carers help to maintain the health and well-being of the person for whom they care, support this person's independence and enable them to stay in their own homes for longer. In many cases, carers voluntarily meet eligible needs that the local authority would otherwise be required to meet.

12.3 Local authorities **must** consider carefully the likely impact of any charges on adult carers, particularly in terms of their willingness and ability to continue their caring responsibilities. It may be that there are circumstances where a nominal charge may be appropriate, for example to provide support which is subsidised but for which the carer may still pay a small charge. Ultimately, a local authority **must** ensure that any charges do not negatively impact on a carer's ability to look after their own health and well-being and to care effectively and safely for the cared for person.

12.4 Where a local authority takes the decision to charge an adult carer it **must** assess such charges in accordance with the requirements for charging for care and support, or where an adult carer receives direct payments, in accordance with the requirements for considering a contribution or reimbursement for such payments. In doing so, it is required to carry out a financial assessment to ensure that any charges, contributions or reimbursements are affordable. However, it may be more likely in the case of an adult carer where low level support tends to be required, that the local authority will agree to charge a flat rate charge where a financial assessment would not be required and would in any event, be disproportionate as against the level of the charge made.

12.5 In considering whether to charge or to seek a contribution or reimbursement from adult carers, local authorities **must** consider both the level of the charge, contribution or reimbursement it proposes to require and the impact this will have on the carer's ability to undertake their caring role.

Annex A – Treatment of Capital

This annex covers:

- The treatment of capital when conducting a financial assessment.

General

1.1 This annex of the code applies where a local authority has decided to use its discretion under section 59 (Power to impose a charge) of the Social Services and Well-being (Wales) Act 2014 ("the Act") to charge a person for the care and support it is providing or arranging, or under section 50 (Direct payments to meet an adult's needs) or section 52 (Direct payments to meet a carer's needs) of the Act when setting a contribution or reimbursement in connection with direct payments. As a result it has a duty under sections 50, 52 and 63 (Duty to carry out a financial assessment) of the Act to undertake a financial assessment of the person's means. It **must** therefore undertake such an assessment and in doing so, it **must** assess the income and capital of the person.

1.2 This annex covers the treatment of capital and should be read in conjunction with Annex B on the treatment of income. The detail of the forms of capital which local authorities **must** take account of in the financial assessment, and how these should be treated in the assessment, are set out in the Care and Support (Financial Assessment) (Wales) Regulations 2015* (the "Regulations"). Local authorities must follow the requirements of the Regulations and this annex with regard to capital when undertaking a financial assessment. They apply equally to where an assessment is being made to consider a charge for care and support provided by, or arranged by, a local authority and where a contribution or reimbursement is being considered in relation to the making of direct payments to enable a person to secure the provision of such care and support.

* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

1.3 The treatment of capital is broadly the same when undertaking a financial assessment involving all types of care and support. However, there are some differences in how capital is treated when undertaking a financial assessment for those in a care home and those in receipt of other forms of care and support. The following sections set out the common issues applicable to both and then any particular issues unique to each.

Common issues

2.1. The following section sets out the issues common in the treatment of capital in a financial assessment.

2.2. Only the capital of the person being assessed can be taken into account in the financial assessment of what they can afford to pay. Where this person holds capital as one of a couple, the starting presumption is that each person has an equal share of that capital. However, a local authority can assess the capital of a couple but only where this is financially more advantageous to the person being assessed. A local authority **must** only assess the capital of couples in these

circumstances.

- Defining capital

2.3. Capital in general refers to financial resources held by a person which are available for use and tend to be from sources that are considered more durable than income in the sense that they can generate a return. In most cases capital will involve financial resources held by a person in the form of savings, investments and property.

2.4 It is not possible to provide a definitive list of all forms of capital but the following list gives examples of capital. This list is intended as a guide and is not exhaustive:

(a) Buildings;
(b) Land;
(c) National Savings Certificates and Ulster Savings Certificates;
(d) Premium Bonds;
(e) Stocks and shares;
(f) Capital held by the Court of Protection or a Deputy appointed by that Court;
(g) Any savings held in:
    (i) Building society accounts;
    (ii) Bank current accounts, deposit accounts or special investment accounts. This includes savings held in the National Savings Bank and Trustee Savings Bank;
    (iii) SAYE schemes;
    (iv) Unit Trusts;
    (v) Co-operatives share accounts;
    (vi) Cash;
(h) Trust funds.

2.5 A person **must not** be charged twice on the same resources. Resources should only be treated as income or capital but not both. If a person has saved money from their income, such savings should normally be treated as capital and not assessed as both income and capital in the same period. Therefore in the period when such resources are received as income, they should be disregarded as capital.

- Cases where it is not clear whether a payment is capital or income

2.6 In assessing a person's financial means it may not be immediately clear whether a resource is capital or income, particularly where a person is due to receive planned payments. In order to guide a local authority's decision, in general a planned payment of capital is one which is:

(a) not in respect of a specified period; and
(b) not intended to form part of a series of payments.

- Who owns the capital

2.7 A capital asset is normally defined as belonging to the person in whose name it is held, the legal owner. However in some cases this may be disputed and/or beneficial ownership argued. Beneficial ownership is where a person enjoys the benefits of ownership, even though the title of the asset is held by someone else, or where they directly or indirectly have the power to vote or influence a transaction regarding a particular asset. In most cases the person will be both the legal and beneficial owner.

2.8 Where ownership is disputed, a local authority **must** seek written evidence to prove where the ownership lies where it is being taken into account in a financial assessment. If a person states they are holding capital for someone else, the local authority **must** obtain evidence of the arrangement, the origin of the capital and intentions for its future use.

2.9 Where a person has joint beneficial ownership of capital, except where there is evidence that the person owns an unequal share, the total value should be divided equally between the joint owners and the person should be treated as owning an equal share. Once the person is in sole possession of their actual share, they can be treated as owning that actual amount.

2.10 In some cases a person may be the legal owner of a property but not the beneficial owner of a property. In other words, they have no rights to the proceeds of any sale. In such circumstances the property **should** not be taken into account.

- Calculating the value of capital

2.11 A local authority **must** work out what value a capital asset has in order to take account of it in the financial assessment. Other than National Savings Certificates, valuation **must** be the current market or surrender value of the capital asset, e.g. with property whichever is higher of market or surrender value minus:

(a) 10% of the value if there will be any actual expenses involved in selling the asset. This must be expenses connected with the actual sale and not simply the realisation of the asset. For example the costs to withdraw funds from a bank account are not expenses of sale, but legal fees to sell a property would be; and
(b) any outstanding debts secured on the asset, for example a mortgage.

2.12. A capital asset may have a current market value, for example stocks or shares, or a surrender value, for example premium bonds. The current market value will be the price a willing buyer would pay to a willing seller. The way the market value is obtained will depend on the type of asset held.

2.13 If the person and the officer undertaking the financial assessment both agree that, after deducting any debts or expenses connected to a person's capital that the total estimated value of this is more than the capital limit (see paragraph 2.21) so that they are liable for the full cost of their care and support, then it is not necessary to obtain a precise valuation of this. If there are any disputes, however, as to whether this occurs a precise valuation should be obtained. In following this a local authority should bear in mind how close the total value of a person's capital is to the capital limit when deciding whether or not to obtain a precise valuation.

2.14 Where a precise valuation is required, a professional valuer **must** be asked to provide a current market valuation. If an asset is subsequently sold, the capital value to be taken into account in a financial assessment is the actual amount realised from the sale, minus any actual expenses of the sale, not any previous valuation.

2.15 Where a property is being taken into account in a financial assessment and the value of this is disputed, the aim should be to resolve this as quickly as possible. Local authorities should try to obtain an independent valuation of the person's beneficial share of the property within the 12-week disregard period (see paragraphs 3.10 to 3.11) where a person has entered a care home on a permanent basis. This will enable local authorities to work out what charges a

person should pay, or determine whether they are liable to meet the full costs of their care, before this disregard ends.

2.16 The value of National Savings Certificates, Ulster Savings Certificates and Premium Bonds are assessed in the same way as other capital assets. A valuation for savings certificates can be obtained by contacting the NS&I helpline. An alternative method of obtaining the value of National Savings Certificates is to use the NS&I online calculator. To enable an accurate value for the savings certificates the person must provide details of the:

- certificate issue number(s);
- purchase price; and
- date of purchase.

- Assets held abroad

2.17 Where capital is held abroad, and all of it can be transferred to the UK, its value in the other country **must** be obtained and taken into account less any appropriate deductions for debts or expenses connected to it. Where capital is held jointly, it should be treated the same as if it were held jointly within the UK.

2.18 Where the capital cannot be wholly transferred to the UK due to the rules of that country, for example currency restrictions, the local authority **must** require evidence confirming this fact. Examples of acceptable evidence could include documentation from a bank, government official or solicitor in either this country or the country where the capital is held.

2.19 Where some restriction is in place, a local authority **must** seek evidence showing what the asset is, what its value is and to understand the nature and terms of the restriction so that should this change, the amount can be taken into account. It should also take into account the value that a willing buyer would pay in the UK for those assets, but be aware that it may be less than the market or surrender value in the foreign country.

- Capital which cannot be immediately realised

2.20 Capital which cannot be immediately realised due to notice periods, for example National Savings Bank investment accounts or Premium Bonds, **must** be taken into account in the normal way at its face value. This will be the value at the time of the financial assessment. It may need to be confirmed and adjusted when the capital is realised. If the person chooses not to release the capital, the value at the time of assessment should be used and it should be reassessed at intervals in the normal way.

- Capital limit

2.21 The capital limit sets the total value of a person's capital which determines whether they are:

- liable to meet the full cost of their care and support in a care home;
- required to pay the weekly maximum charge, contribution or reimbursement (see the main body of the code for a definition of this) applicable if they receive care and support in their own home or in the community, subject to the weekly cost of their care and support being at or above the level of the weekly maximum charge.

2.22 Where capital is taken into account in a financial assessment, a local authority

must apply the capital limit. The capital limit is set in regulations 11(Relevant capital limit) and 26 (Relevant capital limit – direct payments) of the Care and Support (Charging) (Wales) Regulations 2015*.

* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017, the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

2.23 Where capital is taken into account in a financial assessment, any capital which a person holds at or below the capital limit **must** be disregarded in the assessment. Any capital a person holds at or below the capital limit cannot be used to pay for their assessed care and support, and should be retained by the person to use as they wish.

- Notional capital

2.24 In some circumstances a person may be treated as possessing capital even where they do not actually possess it. This is called notional capital.

2.25 Notional capital may be capital which:

(a) would be available to the person if they applied for it;
(b) is paid to a third party in respect of the person;
(c) the person has deprived themselves of in order to reduce the amount of a charge, contribution or reimbursement, or remove the need for this, that they have to pay for their care and support.

2.26 A person's capital should therefore be the total of both actual and notional capital. However, if a person has actual capital above the capital limit, it may not be necessary to consider notional capital.

2.27 Where a person has been assessed as having notional capital, the value of this **must** be reduced over time. The rule is that the value of notional capital **should** be reduced weekly by the difference between the weekly rate the person is paying for their care and support and the weekly rate they would have paid if notional capital did not apply.

- Capital disregarded

2.28 The treatment of capital that **should** it be taken into account in a financial assessment is set out in Part 4 (Treatment and calculation of capital) and Schedule 2 (Capital to be disregarded) of the Regulations. The Regulations set out the following capital that **should** be disregarded where capital is taken into account:

(a) Property in specified circumstances (see paragraph 3.1);
(b) The surrender value of any:
    (i) Life insurance policy;
    (ii) Annuity.
(c) Payments of training bonuses of up to £200;
(d) Payments in kind from a charity;
(e) Any personal possessions such as paintings or antiques, unless they were purchased with the intention of reducing capital in order to avoid charges for care and support;

(f) Any capital which is to be treated as income or student loans;
(g) Any payment that may be derived from:
  (i) The Macfarlane Trust;
  (ii) The Macfarlane (Special Payments) Trust;
  (iii) The Macfarlane (Special Payment) (No 2) Trust;
  (iv) The Caxton Foundation;
  (v) The Fund (payments to non-haemophiliacs infected with HIV);
  (vi) The Eileen Trust;
  (vii) The MFET Trust;
  (viii) The Independent Living Fund (2006);
  (ix) Any amount paid under or by the Welsh Independent Living Grant;
  (x) The Skipton Fund;
  (xi) The London Bombings Relief Charitable Fund;
  (xii) The Scottish Infected Blood Support Scheme;
  (xiii) An approved blood scheme, that is a scheme established or approved by the Secretary of State for Work and Pensions, or a trust established with funds provided by the Secretary of State, to provide compensation in respect of a person having been infected from contaminated blood products;
  (xiv) The London Emergencies Trust;
  (xv) The We Love Manchester Emergency Fund;
  (xvi) Any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled people whose disabilities were caused by their mother during their pregnancy taking a preparation containing the drug know as “Thalidomide”, which is approved by the Secretary of State for Work and Pensions (the Thalidomide Trust);
(h) The value of funds held in trust or administered by a court which derive from a payment for personal injury to the person. For example, the vaccine damage and criminal injuries compensation funds;
(i) The value of a right to receive:
  (i) Income under an annuity;
  (ii) Outstanding instalments under an agreement to repay a capital sum;
  (iii) Payment under a trust where the funds derive from a personal injury;
  (iv) Income under a life interest or a life-rent;
  (v) Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK;
  (vi) An occupational pension;
  (vii) Any rent (however that this does not necessarily mean the income is disregarded. See Annex B on the treatment of income).
(j) Capital derived from an award of damages for personal injury which is administered by a court or which can only be disposed of by a court order or direction;
(k) The value of the right to receive any income under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury or from funds derived from a payment in consequence of a personal injury and any surrender value of such an annuity;
(l) Periodic payments in consequence of personal injury pursuant to a court order or agreement to the extent that they are not a payment of income and are treated as income (and disregarded in the calculation of income);
(m) Any Social Fund payment;
(n) Refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home;
(o) Any capital resources which the person has no rights to as yet, but which will come into his possession at a later date, for example on reaching a certain age;
(p) Payments from the Department for Work and Pensions to compensate for the

loss of entitlement to Housing Benefit or Housing Benefit Supplement;

(q) The amount of any bank charges or commission paid to convert capital from foreign currency to sterling;

(r) Payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit);

(s) Community charge rebate/council tax reduction scheme payments;

(t) Money deposited with a Housing Association as a condition of occupying a dwelling;

(u) Any Child Support Maintenance Payment;

(v) The value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's, imprisonment or internment by the Japanese during the Second World War;

(w) Any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(b)(b) or 3 of this act);

(x) The value of any ex-gratia payments from the Skipton Fund made by the Secretary of State for Health to people infected with Hepatitis C as a result of NHS treatment with blood or blood products;

(y) Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at the time of death of the victim);

(z) Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983);

(aa) Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a person to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section;

(ab) Any payment made in accordance with regulations under Section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian, whether income or capital.

- Treatment of investment bonds

2.29 The treatment of investment bonds in a financial assessment is complex due to the differing products available and their differing arrangements and purposes. For this reason local authorities **should** seek their own advice on the appropriateness of taking the capital into account from a particular product in an assessment.

2.30 In general, capital involving investment bonds could be taken into account in a financial assessment. Actual payments of capital by periodic instalments, with or without insurance, should be treated as income (see Annex B on treatment of income).This is provided that any payments are outstanding on the first day a person becomes liable to pay for their care and support and the aggregate of the outstanding instalment, and any other capital sum not disregard in the financial assessment, does not exceed the capital limit (see paragraphs 2.21 to 2.23).

2.31 Where an investment bond includes one or more elements of life insurance that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights should be disregarded as a capital asset where investment bonds are taken into account in the financial assessment.

- Capital treated as income

2.32 If a person is entitled to capital which is payable by instalments the following capital payments should be treated as income in a financial assessment (see

Annex B on treatment of income):

(a) Any payment made under an annuity;
(b) Capital paid by instalment where the total of:
  (i) the instalments outstanding at the time the person first becomes liable to pay for their care and support; and
  (ii) the amount of other capital held by the person is over the capital limit (see paragraphs 2.21 to 2.23). If it is at or under the capital limit, each instalment should be treated as capital.

- Income treated as capital

2.33 The following types of income should be treated as capital when taken into account in a financial assessment:

(a) Any refund of income tax charged on profits of a business or earnings of an employed earner;
(b) Any holiday pay payable by an employer more than 4 weeks after the termination or interruption of employment;
(c) Income derived from a capital asset. For example, building society interest or dividends from shares. This should be treated as capital from the date it is normally due to be paid to the person;
(d) Any advance of earnings or loan made to an employed earner by the employer if the person is still in work. This is as the payment does not form part of the employee's regular income and could have to be repaid;
(e) Any bounty payment paid at intervals of at least one year from employment as:
  (i) A part time firefighter;
  (ii) An auxiliary coastguard;
  (iii) A part time lifeboat crew member;
  (iv) A member of the territorial or reserve forces.
(f) Charitable and voluntary payments which are not made regularly, nor due to be made regularly, apart from payments from AIDS trusts. Payments will include those made by a third party to the person to help them meet arrears of charges for residential accommodation;
(g) Any payment of arrears of contributions by a local authority to a custodian towards the cost of accommodation and maintenance of a child.

- Capital available on application

2.34 In some instances a person may need to apply for access to capital assets but has not yet done so. In such circumstances this capital should be treated as already belonging to the person (see paragraph 2.24 to 2.27 on notional capital) except in the following instances:

(a) Capital held in a discretionary trust;
(b) Capital held in a trust derived from a payment in consequence of a personal injury;
(c) Capital derived from an award of damages for personal injury which is administered by a court;
(d) Any loan which could be raised against a capital asset which is disregarded; for example their home.

2.35 In terms of determining whether capital assets already belong to a person a local authority should distinguish between:

(a) Capital already owned by the person but which in order to access they must make an application. For example:
  (i) Money held by the person's solicitor;
  (ii) Premium Bonds;
  (iii) National Savings Certificates;
  (iv) Money held by the Registrar of a County Court which will be released on application; and
(b) Capital not owned by the person that will become theirs on application; for example an unclaimed Premium Bond win. This should be treated as notional capital.

2.36 Where a local authority treats capital available on application as notional capital they should do so only from the date at which it could be acquired by the person.

Property disregards

3.1 In the following circumstances the value of the person's main or only home **must** be disregarded where capital is taken account of in a financial assessment:

(a) Where the person is receiving non-residential care and support at home or in the community;
(b) Where the person is temporarily receiving care and support in a care home and they:
  (i) intend to return to that property and that property is still available to them; or
  (ii) are taking reasonable steps to dispose of the property in order to acquire another more suitable property to which to return.
(c) Where the person is receiving care and support in a care home and no longer occupies their main and only home, but it is occupied in part or whole as their main or only home by any of the people listed below, its value **must** be disregarded in a financial assessment where capital is taken into account. This only applies where that property has been continuously occupied since before the person went into a care home:
  (i) the person's partner, former partner or civil partner, except where they are estranged or divorced;
  (ii) a lone parent with a dependent child who is the person's estranged or divorced partner;
  (iii) a relative (as defined in paragraph 3.2 below) of the person or member of the person's family (as defined in paragraph 3.3) who is:
    (1) Aged 60 or over, or
    (2) Is a child of the resident aged under 18, or
    (3) Is incapacitated.

3.2 For the purposes of this disregard a relative is defined as including any of the following:

(a) Parent (including an adoptive parent);
(b) Parent-in-law;
(c) Son (including an adoptive son);
(d) Son-in-law;
(e) Daughter (including an adoptive daughter);
(f) Daughter-in-law;
(g) Step-parent;
(h) Step-son;
(i) Step-daughter;
(j) Brother;

(k) Sister;
(l) Grandparent;
(m) Grandchild;
(n) Uncle;
(o) Aunt;
(p) Nephew;
(q) Niece;
(r) The spouse, civil partner or unmarried partner of (a) to (k) inclusive.

3.3 A member of the person's "family" is defined as someone who is living with the qualifying relative as part of an unmarried couple, married to or in a civil partnership.

3.4 For the purposes of this disregard the meaning of "incapacitated" is not closely defined. However, it will be reasonable to conclude that a relative is incapacitated if either of the following conditions apply:

(a) the relative is receiving one (or more) of the following welfare benefits: incapacity benefit, severe disablement allowance, disability living allowance, personal independence payments, armed forces independence payments, attendance allowance, constant attendance allowance, or a similar benefit; or
(b) the relative does not receive any disability related benefit but their degree of incapacity is equivalent to that required to qualify for such a benefit. Medical or other evidence may be needed on this before a decision is reached on whether to apply this.

3.5 For the purpose of this property disregard, the meaning of "occupy" is not closely defined. In most cases it will be obvious whether or not the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear and the local authority should undertake a factual inquiry weighing up all relevant factors in order to reach a decision. An emotional attachment to the property alone is not sufficient for the disregard to apply.

3.6 Circumstances where it may be unclear might include where a qualifying relative has to live elsewhere for a particular reason; for example for the purposes of their employment or due to them serving a prison sentence. Whilst they live elsewhere in order to undertake their employment, or serve their sentence, the property remains their main or only home. It would not be reasonable to regard their temporary accommodation as the person's main or only home as they may well intend to return to the property in question in the future. Essentially in such circumstances the qualifying relative is occupying the property but is not physically present.

- Discretionary disregard

3.7 A local authority may also use its discretion to apply a property disregard in relation to those in residential care in other circumstances. However, the local authority will need to balance this discretion with ensuring a person's assets are not maintained at public expense. An example where it may be appropriate to apply a discretionary disregard is where it is the sole residence of someone who has given up their own home in order to become a carer for the person who is now in a care home, or who is perhaps a companion of the person.

3.8 A property may be disregarded when a qualifying relative moves into the property after the resident enters a care home. Where this happens the local authority will

need to consider all the relevant factors in deciding whether the property should be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property is the relative's main or only home. The purpose of the disregard in these circumstances is to safeguard certain categories of people from the risk of homelessness.

3.9 The local authority should consider if the principle reason for the move is that it is necessary to ensure the relative has somewhere to live as their main or only home. A disregard would not be appropriate, for example, where a person moves into a property solely to protect the family inheritance. Local authorities need to ensure that people are not financially supported at public expense inappropriately.

- 12-week property disregard

3.10 A key principle of the charging framework is not to require people to have to sell their home immediately upon entering a care home where the vast majority of their capital assets are tied up in their property. This is in order to allow them time to make decisions as to how to meet their care home costs. The Regulations, therefore, require that if property is taken into account in a financial assessment, the value of a person's main or only home **must** be disregarded for the first 12 weeks where the value of any of their other capital is below the capital limit. This disregard **must** be applied:

(a) when they first enter a care home as a permanent resident (or subsequently enter after a stay of less than 12 weeks so that they would receive the balance of the 12 weeks as a further disregard);
(b) when a property disregard based on a qualifying relative unexpectedly ends because the qualifying relative has died or moved into a care home.

3.11 In addition, a local authority has discretion to choose to apply the 12-week disregard when there is a sudden and unexpected change in the person's financial circumstances. In deciding whether to do so, the local authority will want to consider the individual circumstances of the case. Such circumstances might include a fall in share prices or an unanticipated debt.

- 26-week disregard

3.12 Where capital is taken into account in a financial assessment the following capital assets **must** be disregarded for at least 26 weeks. However, a local authority may choose to apply the disregard for longer where it considers this appropriate. For example, where a person is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.

(a) Assets of any business owned or part-owned by the person in which they were a self-employed worker and has stopped work due to some medical condition or impairment but intends to take up work again when they are fit to do so. Where the person is in a care home, this should apply from the date they first took up residence;
(b) Money acquired specifically for repairs to, or replacement of, the person's home or personal possessions provided it is used for that purpose. This should apply from the date the funds were received;
(c) Premises which the person intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced;
(d) Premises which the person intends to occupy as their home where essential repairs or alterations are required. This should apply from the date the

person takes action to effect the repairs;

(e) Capital received from the sale of a former home where the capital is to be used by the person to buy another home. This should apply from the date of completion of the sale;

(f) Money deposited with a Housing Association which is to be used by the person to purchase another home. This should apply from the date on which the money was deposited;

(g) Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received.

- 52-week disregard

3.13 The following payments of capital **must** be disregarded for a maximum of 52 weeks from the date they are received where capital is taken into account in a financial assessment:

(a) The balance of any arrears of, or any compensation due, to non-payment of:
  (i) Mobility supplement;
  (ii) Attendance Allowance;
  (iii) Constant Attendance Allowance;
  (iv) Disability Living Allowance / Personal Independence Payment;
  (v) Exceptionally Severe Disablement Allowance;
  (vi) Severe Disablement Occupational Allowance;
  (vii) Armed forces service pension based on need for attendance;
  (viii) Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance;
  (ix) Income Support/Pension Credit;
  (x) Minimum Income Guarantee;
  (xi) Working Tax Credit;
  (xii) Child Tax Credit;
  (xiii) Housing Benefit;
  (xiv) Universal Credit;
  (xv) Special payments to pre-1973 war widows.

(b) Payments or refunds for:
  (i) NHS glasses, dental treatment or patient's travelling expenses;
  (ii) Cash equivalent of free milk and vitamins;
  (iii) Expenses in connection with prison visits.

(c) Personal Injury Payments.

3.14. Local authorities **must** also disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:

(a) A member of the victim's family for two years from the date of death of the victim (or from the date of payment from the trust if later); or

(b) A dependent child or young person until they turn 18.

Annex B – Treatment of Income

This annex covers:

- The treatment of income when conducting a financial assessment. This is divided into:
- Care homes;
- All other care and support.

General

1.1. This annex of the code applies where a local authority has decided to use its discretion under section 59 (Power to impose a charge) of the Social Services and Well-being (Wales) Act 2014 (the "Act") to charge a person for the care and support it is providing or arranging, or under section 50 (Direct payments to meet an adult's needs) or section 52 (Direct payments to meet a carer's needs) of the Act when setting a contribution or reimbursement in connection with direct payments. As a result it has a duty under sections 50, 52 and 63 (Duty to carry out a financial assessment) of the Act to undertake a financial assessment of the person's means. It **must** therefore undertake such an assessment and in doing so, it **must** assess the income and capital of the person.

1.2 This annex covers the treatment of income and should be read in conjunction with the Annex A on the treatment of capital. The detail of the forms of income which local authorities **must** take account of in a financial assessment, and how these should be treated in the assessment, are set out in the Care and Support (Financial Assessment) (Wales) Regulations 2015* (the "Regulations"). Local authorities **must** follow the requirements of the Regulations and this annex in respect of a person's income when undertaking a financial assessment. They apply equally to where an assessment is being undertaken to consider a charge for care and support provided by, or arranged by, a local authority and where a contribution or reimbursement is being considered for the provision of direct payments to enable the recipient to secure their own care and support.

* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

1.3 There are differences in the way in which income is treated when undertaking a financial assessment for those in a care home and those in receipt of other forms of care and support. The following sections set out the common issues applicable and any particular issues unique to each.

Common issues

2.1. The following section sets out the issues common in the treatment of income in a financial assessment.

2.2. Only the income of the person being assessed can be taken into account in the financial assessment of what they can afford to pay. Where this person receives income as one of a couple, the starting presumption is that each person has an equal share of that income. The exception to this is where a person is in receipt of a welfare benefit awarded on the basis of the resources of both members of the

couple. In that situation it may be difficult to determine each partner's share of this payment. Where this is the case, local authorities **should** undertake a financial assessment on the basis of the couple's joint income and apply the appropriate couple's rate of the basic weekly entitlement in the calculation of the minimum income amount. Where the income of a couple does not consist of welfare benefits awarded on the basis of the resources of both members of the couple, a local authority may charge on the basis of an assessment of the joint income of the couple. This is only where the couple agree to declare their joint resources and the result of the assessment is financially more advantageous to the person being assessed. A local authority **must** only assess the income of couples in these circumstances.

2.3. Income taken account of **must** be net of any tax or National Insurance contributions.

2.4. Where local authorities decide to exercise their discretion to charge, income **should** always be taken into account unless it is disregarded under the Regulations. Income that is disregarded will either be:

(a) Partially disregarded; or
(b) Fully disregarded.

- Earnings

2.5 In all cases earnings as an employed earner or self-employed earner, as defined in regulation 14 (Earnings to be disregarded) of the Regulations, **must** be fully disregarded where income is taken into account.

2.6 Earnings in relation to an employed earner consist of any remuneration or profit from employment. This will include:

(a) any bonus or commission;
(b) any payment in lieu of remuneration except any periodic sum paid to the person on account of the termination of their employment by reason of redundancy;
(c) any payments in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
(d) any holiday pay except any payable more than four weeks after the termination or interruption of employment;
(e) any payment by way of a retainer;
(f) any payment made by the person's employer in respect of any expenses not wholly, exclusively and necessarily incurred in the performance of the duties of employment. This includes any payment made by the person's employer in respect of travelling expenses incurred by the person between their home and the place of employment and expenses incurred by the person under arrangements made for the care of a member of the person's family owing to the person's absence from home;
(g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (remedies and compensation for unfair dismissal);
(h) any such sum as is referred to in section 112 of the Social Security Contributions and Benefits Act 1992 (certain sums to be earnings for social security purposes);
(i) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, or a corresponding payment under any enactment

having effect in Northern Ireland;

(j) any remuneration paid by or on behalf of an employer to the person who for the time being is on maternity leave, paternity leave or adoption leave or is absent from work because of illness;

(k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001.

2.7 Earnings in relation to an employed earner do not include:

(a) any payment in kind, with the exception of any non-cash voucher which has been taken into account in the calculation of the person's earnings (as referred to above);
(b) any payment made by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
(c) any occupational/personal pension.

2.8. Earnings in the case of employment as a self-employed earner mean the gross receipts of the employment. This includes any allowance paid under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990 to the person for the purpose of assisting the person in carrying on his business.

2.9 Earnings in the case of employment as a self-employed earner do not include:

(a) any payment to the person by way of a charge for board and lodging accommodation provided by the person;
(b) any sports award.

2.10 Earnings also include any payment provided to people in the secure estate to encourage and reward their constructive participation in the regime of the establishment in which they are detained. This may include payment for working, education or participation in other related activities.

- Welfare benefits

2.11 Local authorities are able to take most welfare benefits people receive into account in a financial assessment. Those they **must** disregard are detailed in the Regulations but are highlighted below for ease of reference. However, local authorities **must** ensure that in addition to the minimum guaranteed income (details of which are set out later in this annex) people retain enough of their benefits to pay for things to meet their needs which are not being met by the local authority.

2.12 Any income from the following welfare benefits and sources **must** be fully disregarded:

(a) Direct Payments;
(b) The mobility component of Disability Living Allowance;
(c) The mobility component of Personal Independence Payments;
(d) Working Tax Credit.

2.13 Any income from the following benefits **should** be taken fully or partially into account when considering what a person can afford to pay towards the cost of their care and support:

(a) Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance;
(b) Bereavement Allowance;
(c) Carers Allowance;
(d) Disability Living Allowance (Care component);
(e) Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit;
(f) Income Support;
(g) Industrial Injuries Disablement Benefit or equivalent benefits;
(h) Jobseeker's Allowance;
(i) Maternity Allowance;
(j) Pension Credit;
(k) Personal Independence Payment (Daily Living component);
(l) State Pension;
(m) Universal Credit*.

* The components which make up a person's Universal Credit payment should be treated in the same manner as the benefits it is replacing. Those are Jobseeker's Allowance, Employment and Support Allowance, Income Support, Child Tax Credits, Working Tax Credits and Housing Benefit. To do that local authorities will need to obtain a copy of the person's Universal Credit payment statement which should provide a breakdown of their entitlement.

2.14 Where any welfare benefit payment has been reduced (other than a reduction because of voluntary unemployment), for example because of an earlier overpayment, any amount taken into account should be the gross amount of the benefit before reduction.

- Annuity, pension and investment bonds income

2.15 An annuity is a type of pension product that provides a regular income for a number of years in return for an investment. Such products are usually purchased at retirement in order to provide a regular income. While the capital is disregarded, any income from an annuity **may** be taken fully into account except where it is:

(a) purchased with a loan secured on the person's main or only home; or
(b) a gallantry award such as the Victoria Cross Annuity or George Cross Annuity.

2.16 For those who have purchased an annuity with a loan secured on their main or only home, this is known as a 'home income plan'. Under these schemes, a person has purchased the annuity against the value of their home, similar to a Deferred Payment Agreement.

2.17 Where a person is in a care home and paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner the local authority **must** disregard 50% of its value where it takes an annuity into account.

2.18 In order to qualify for the disregard, one of the annuitants must still be occupying the property as their main or only home. This may happen where a couple has jointly purchased an annuity and only one of them has moved into a care home. If this is not the case, the disregard need not be applied.

2.19 Where the disregard is applied, only the following aspects may be disregarded:

(a) the net weekly interest on the loan where income tax is deductible from the interest; or
(b) the gross weekly interest on the loan in any other case.

2.20 Before applying the disregard, the following conditions **must** be met:

(a) The loan must have been made as part of a scheme that required that at least 90% of that loan be used to purchase the annuity;
(b) The annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant;
(c) The person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan;
(d) The person who obtained the loan (or each of the annuitant where there are more than one) must have reached the age of 65 at the time the loan was made;
(e) The loan was secured on a property in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that property; and
(f) The person who obtained the loan or one of the other annuitant occupies the property as their main or only home at the time the interest is paid.

2.21 Where the person is using part of the income to repay the loan, the amount paid as interest **must** be disregarded. If the payments the person makes on the loan are interest only and the person qualifies for tax relief on the interest they pay, disregard the net interest. Otherwise, disregard the gross interest.

2.22 Reforms to defined contribution pensions came into effect from April 2015. The aim of the reforms was to provide people with much greater flexibility in how they fund later life. This has led to changes in how people use the money in their pension fund. The rules for how to assess pension income for the purposes of charging are:

(a) If a person has removed the funds and placed them in another product or savings account, they should be treated according to the rules for that product;
(b) If a person is only drawing a minimal income, then a local authority can apply notional income rather than drawn income, according to the maximum income that could be drawn under an annuity product. If applying maximum notional income, the actual income **must** be disregarded to avoid double counting;
(c) If a person is drawing down an income that is higher than the maximum available under an annuity product, the actual income that is being drawn down **should** be taken into account.

2.23 Treatment of investment bonds in a financial assessment is complex due to the differing products available and their differing arrangements and purposes. For this reason local authorities should seek their own advice on the appropriateness of taking the income into account from a particular product in an assessment.

2.24 In general, income from investment bonds (with or without life assurance) could be taken into account in a financial assessment. Actual payments of capital by periodic instalments, with or without insurance, are treated as income and taken into account. This is provided that any payments are outstanding on the first day a person becomes liable to pay for their care and support and the aggregate of the

outstanding instalment, and any other capital sum not disregarded in the financial assessment, does not exceed the financial limit (see Annex A on treatment of capital).

- Mortgage protection insurance policies

2.25 Any income from an insurance policy can be taken into account. However, this does not apply in the case of mortgage protection policies. This is where a policy is taken out to insure against the risk of not being able to make repayments on a loan or to protect the premiums payable on an endowment policy where the policy is held as a security for a loan. The income from these polices **must** be disregarded where the loan is specifically intended to support the person to acquire or retain an interest in their main or only home, or to support them to make repairs or improvements to their main or only home, and the income is being used to meet the repayments on the loan.

2.26 The amount of income from a mortgage protection insurance policy that **must** be disregarded in these circumstances is the weekly sum of:

(a) The amount which covers the interest on the loan; plus
(b) The amount of the repayment which reduced the capital outstanding; plus
(c) The amount of the premium due on the policy.

2.27 It should be remembered that any Income Support or Pension Credit payments a person receives may have been adjusted to take account of the income from such a policy so that where these are taken account of, this **should** include any such adjustment.

- Other income that must be fully disregarded

2.28 Any income from the following sources **must** be fully disregarded in a financial assessment:

(a) Armed Forces Independence Payments and Mobility Supplement;
(b) Child Support Maintenance Payments and Child Benefit;
(c) Child Tax Credit;
(d) Council Tax Reduction Schemes where this involves a payment to the person;
(e) Disability Living Allowance (Mobility Component) and Mobility Supplement;
(f) Christmas bonus;
(g) Dependency increases paid with certain benefits;
(h) Discretionary Trust;
(i) Gallantry Awards;
(j) Guardian's Allowance;
(k) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme;
(l) Income frozen abroad;
(m) Income in kind;
(n) Pensioners' Christmas payments;
(o) Personal Independence Payment (Mobility Component) and Mobility Supplement;
(p) Personal injury trust, including those administered by a Court;
(q) Resettlement benefit;
(r) Savings credit disregard;
(s) Social Fund payments (including winter fuel payments);
(t) War widows and widowers special payments;

(u) Any payments received as a holder of the Victoria Cross, George Cross or equivalent;
(v) Any grants or loans paid for the purposes of education;
(w) Payments made in relation to training for employment;
(x) Any payment from the:
(i) Macfarlane Trust;
(ii) Macfarlane (Special Payments) Trust;
(iii) Macfarlane (Special Payment) (No 2) Trust;
(iv) Caxton Foundation;
(v) The Fund (payments to non-haemophiliacs infected with HIV);
(vi) Eileen Trust;
(vii) MFET Limited;
(viii) Independent Living Fund (2006);
(ix) Any amount paid under or by the Welsh Independent Living Grant;
(x) Skipton Fund;
(xi) London Bombings Relief Charitable Fund;
(xii) War Disablement Pension;
(xiii) The Scottish Infected Blood Support Scheme;(xiv) An approved blood scheme, that is a scheme established or approved by the Secretary of State for Work and Pensions, or a trust established with funds provided by the Secretary of State, to provide compensation in respect of a person having been infected from contaminated blood products;
(xv) The London Emergencies Trust;
(xvi) The We Love Manchester Emergency Fund.

- Charitable and voluntary payments

2.29 Charitable payments are not necessarily made by a recognised charity, but could come from charitable motives. The individual circumstances of the payment will need to be taken into account before making a decision on whether to disregard such payments. In general a charitable or voluntary payment which is not made regularly is treated as capital.

2.30 Charitable and voluntary payments that are made regularly **must** be fully disregarded.

- Partially disregard income

2.31 The following income **must** be partially disregarded:

(a) The first £10 per week of War Widows and War Widowers pension, survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme, Civilian War Injury pension and payments to victims of National Socialist persecution (paid under German or Austrian law);
(b) A savings disregard based on qualifying income. Where a person is in receipt of qualifying income of less than a set amount per week there will be no savings disregard but where a person is in receipt of qualifying income between particular levels a set saving disregard **must** apply. The levels of the qualifying income and of the saving disregard are set out in Part 1 of Schedule 1 (Sums to be disregarded in the calculation of income) of the Regulations.

- Notional income

2.32 In some circumstances a person may be treated as having income that they do not actually have. This is known as notional income. This might include, for example, income that would be available on application but has not been applied for, income

that is due but has not been received, or income that the person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care and support. In all cases where a local authority plans to take notional income into account it **must** satisfy itself that the income would or should have been available to the person.

2.33 Notional income should also be applied where a person who has reached retirement age and has a personal pension plan but has not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available from the plan. In this circumstance notional income **should** be applied. Estimates of the notional income in this case can be received from the pension provider or from estimates provided by the UK Government Actuary's Department.

2.34 Where notional income is included in a financial assessment, it **must** be treated the same way as actual income. Therefore any income that would usually be disregarded should continue to be so.

2.35 Notional income should be calculated from the date it could be expected to be acquired if an application had been made. In doing so, a local authority **must** assume the application was made when it first became aware of the possibility and take account of any time limits which may limit the period of arrears.

2.36 However, there are some exemptions and the following sources of income **must not** be treated as notional income:

(a) Income payable under a discretionary trust;
(b) Income payable under a trust derived from a payment made as a result of a personal injury where the income would be available but has not yet been applied for;
(c) Income from capital resulting from an award of damages for personal injury that is administered by a court;
(d) Occupational pension which is not being paid because:
(i) The trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources; or
(ii) The trustees or managers of the scheme have insufficient resources available to them to meet the scheme's liabilities in full.
(e) Working Tax Credit.

- Disability-related expenditure

2.37 Where disability-related benefits are taken into account, the local authority **should** make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.

2.38 In relation to charging for non-residential care and support local authorities **must** include in their minimum income amount for the person being charged (see paragraph 4.2 and 4.3) at least 10% of their "basic entitlement" to a relevant welfare benefit as an allowance for disability related expenditure. Exact details of this are set out in regulations 12 and 27 (Minimum income amount for a person with needs for non-residential care and support) of the Care and Support (Charging) (Wales) Regulations 2015 (the "Charging Regulations"). Local authorities have the discretion to provide for more than this level should they choose, such as operating a higher disability expenditure disregard based on particular items of expenditure a person may have or based on particular expenditure required to meet their needs as identified in a person's care and

support plan.

2.39 When considering what disability-related expenditure to include in any higher disregard that local authorities may operate, authorities may wish to consider the following list of examples. This list is not intended to be exhaustive but to illustrate the types of expenditure that authorities may wish to include. In addition, local authorities have the discretion to provide for a disability related expenditure disregard when undertaking a financial assessment in relation to charging for residential care and support. In considering this list, therefore, authorities may also wish to consider whether to operate any of these in relation to charging for residential care, particularly where such items are not covered within a person's agreed package of residential care:

(a) Payment for any community alarm system;
(b) Costs of any privately arranged care services required, including respite care;
(c) Costs of any specialist items needed to meet the person's medical condition or disability needs, for example:
    i. Privately arranged day or night care;
    ii. specialist washing powders or laundry requirements;
    iii. additional costs of special dietary needs due to a medical condition or disability (the person may be asked for permission to approach their GP in cases of doubt);
    iv. special clothing or footwear, for example, where this needs to be specially made; or additional wear and tear to clothing and footwear caused by a medical condition or disability;
    v. additional costs of bedding, for example, because of incontinence;
    vi. any additional heating costs, or metered costs of water, due to a medical condition or disability;
    vii. reasonable costs of any privately arranged basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's medical condition or disability;
    viii. purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work, where necessitated by the person's medical condition or disability. This may include IT costs and reasonable hire costs of equipment if due to waiting for supply of replacement equipment;
    ix personal assistance costs, including any household or other necessary costs associated with their employment;
    x. internet access, for example those with a visual impairment to aid their communication;
    xi. transport costs necessitated by a medical condition or disability over and above the mobility component of Disability Related Allowance or Personal Independent Payments, where these are received and available for these costs. In some cases it may be reasonable for an authority not to take account of claimed transport costs if, for example, a suitable, cheaper form of transport is available, such as authority provided transport to a day centre but has not been used.

2.40 In considering the above, it may be reasonable for a local authority not to allow for items where a reasonable alternative is available at a lesser cost. For example, an authority might adopt a policy not to allow for the private purchase cost of continence pads, where these are available from the NHS at no charge.

Care homes

3.1 The following sections only apply to financial assessments in relation to those who are receiving care and support in a care home.

- Minimum income amount (MIA)

3.2 When undertaking a financial assessment a local authority **must** leave the person with a minimum amount of income (MIA). The amount of this is set out in regulations 13 and 28 (Minimum income amount where a person is provided with accommodation in a care home) of the Charging Regulations. Anything above this may be taken into account in determining charges in accordance with the requirements of those Regulations and this code of practice.

3.3 The MIA is not a benefit but the amount of a person's own income that they **must** be left with after charges have been deducted. Where a person has no income, the local authority is not responsible for providing one. However, the local authority **should** support the person to access any relevant welfare benefits to which they may be entitled or any independent advocacy available to help them access such benefits.

3.4 The purpose of the MIA is to ensure that a person has a certain amount of money left after contributing to the costs of their care and support to spend as they wish. It **must not** be used to cover any aspect of their care and support that has been provided or arranged by the local authority, or is to be provided through direct payments, to meet a person's eligible needs. This amount is for the person to spend as they wish and local authorities **must not** put pressure on a person to spend their MIA in a particular way.

3.5 There may be some circumstances where it would not be appropriate for the local authority to leave a person only with their MIA. For example:

(a) Where a person has a dependent child the local authority **should** consider the needs of the child in determining how much income a person should be left with after charges. This applies whether the child is living with the person or not;

b) Where a person is paying half their occupational or personal pension or retirement annuity to a spouse or civil partner who is not living in the same care home, the local authority **must** disregard this money. This does not automatically apply to unmarried couples although the local authority may wish to exercise its discretion in individual cases to do so;

(c) Where a person is temporarily in a care home and is a member of a couple (whether married or unmarried) the local authority **must** disregard any Income Support or Pension Credit awarded to pay for home commitments and should consider the needs of the person at home in setting the MIA. It should also consider disregarding other costs related to maintain the couple's home (see below);

(d) Where a person's property has been disregarded the local authority **must** consider whether the MIA is sufficient to enable the person to meet any resultant costs. For example, allowances should be considered for fixed payments (like mortgages, rent and council tax), building insurance, utility costs (including basic heating during the winter) and reasonable property maintenance costs;

(e) Where a person is funding their own residential care and has a deferred payment agreement in place (see Annex D on Deferred Payment Agreements), the local authority **must** ensure the person retains sufficient resources to maintain and insure the property in line with the appropriate minimum guarantee used in those agreements.

Non-residential care and support

4.1 The following sections only apply to financial assessments in relation to those who are receiving non-residential care and support.

- Minimum income amount

4.2 Local authorities **must** ensure that a person's income is not reduced below a specified level after charges have been deducted for non-residential care and support. This is referred to as the minimum income amount (MIA) and **must** be at least the equivalent of the value of their "basic entitlement" to a relevant welfare benefit plus a minimum "buffer" of 35% of this. Exact details of this are set out in regulations 12 and 27 (Minimum income amount for a person with needs for non-residential care and support) of the Charging Regulations. As indicated in paragraph 2.38 this MIA **must** also include at least a further 10% of a person's "basic entitlement" to a relevant welfare benefit to allow for disability related expenditure. These amounts of the MIA are minimum requirements and local authorities have discretion to set higher levels of either the "buffer", the disability related allowance, or both if they wish.

4.3 The purpose of the MIA is to promote independence and social inclusion and ensure that people have sufficient funds after charging has occurred to meet the costs of basic needs aside from their care and support, such as food, utility costs or insurance.

Annex C – Choice of Accommodation and Additional Costs

This annex covers:

- Choice of accommodation when arranging care and support in a care home
- An additional cost for preferred accommodation in a particular care home

General

1.1 A person's ability to make an informed choice as to how their needs will be met is a key element of the care and support system. This must extend to where the care and support assessment process has determined that a person's needs are best met by them living in a specific type of accommodation for more than a short-term period (ie more than 8 weeks).

1.2. The care and support assessment process will have determined what type of accommodation will best meet the person's needs. Where this is a care home, subject to certain conditions the person will have a right to choose their preferred accommodation (such as the particular accommodation they wish to live in or the location of the accommodation they would like). The Care and Support (Choice of Accommodation) (Wales) Regulations 2015* (the "Regulations") made under section 57 (Cases where a person expresses preference for particular accommodation) of the Social Services and Well-being (Wales) Act 2014 (the "Act") and this Annex **must** be applied in meeting that preference. In doing so, local authorities **must** have regard to the following principles:

- good communication of clear information and advice to those requiring accommodation in a care home on a temporary or permanent basis so as to enable them to make well informed decisions over the choice of their home should they wish to do so;
- a consistent approach to ensure genuine choice;
- clear and transparent arrangements for meeting choice where it is expressed and any additional cost that may arise from a particular choice being expressed;
- clear understanding of potential consequences should payment of an additional cost fail, with clear exit strategies; and
- ensuring that any choice expressed which is met is suitable to meet the person's identified care and support needs.

* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017 and the Regulation and Inspection of Social Care Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018.

1.3. Local authorities **must** remember that the Act, the Regulations and this code of practice apply equally to those entering residential care for the first time, those who have already been placed by a local authority and those who have been self-funding their own residential care but who because of diminishing financial resources subsequently need local authority support.

Choice of Accommodation

2.1. Where a local authority is to meet a person's care and support needs under sections 35 to 38 (Meeting care and support needs of adults and children) of the Act, and that person's needs have been assessed as requiring accommodation in a care home on a temporary or permanent basis, the person **must** have the right to express a preference for a care home of their choosing provided that:

- the care home is suitable to meet the person's assessed needs;
- to do so would not cost the local authority more than the amount it would usually expect to pay for accommodation of that type;
- a place in the care home is available; and
- the provider of the care home is willing to enter into a contract with the local authority to provide the accommodation on the local authority's terms and conditions.

2.2. This choice **must not** be limited to those care homes or individual providers with which the local authority already contracts or operates, or those that are within that local authority's geographical boundary. It must be a genuine choice for the person across the appropriate care home accommodation available.

2.3. If a person chooses to be placed in a care home that is outside the local authority's area, the local authority **must** still arrange for their preferred accommodation provided that the conditions listed above in 2.1 are met. In connection with this local authorities **must** follow the regulations and code of practice on ordinary residence issued in connection with section 194 (Ordinary residence) of the Act.

Suitability of Accommodation

3.1. In exercising choice, a local authority **must** ensure the care home accommodation for which a person expresses a preference is suitable to meet their assessed needs and identified well-being outcomes established as part of the care and support assessment process. In doing this authorities **must** take account of any specific impairment or sensory needs a person has, so as to ensure the chosen accommodation has appropriate facilities or specialist services to meet these.

3.2. As part of the care and support assessment process, people are able to express a preference about the type of accommodation in which their needs are best met. This process considers both the person's needs and preferences. Once the type of accommodation is agreed as that in a care home the choice of accommodation is between different care homes and different locations, not different types of residential settings. A person cannot exercise the right to a choice of accommodation by choosing another type of accommodation where the care and support assessment has identified that their assessed needs are best met in a care home of a particular type.

Cost

4.1. Where a local authority is arranging for a person's needs to be met by the provision of accommodation in a care home of a particular type, whether or not a person has expressed a choice over this, it **must** take into consideration circumstances where the cost to the local authority of doing this may need to be adjusted to ensure that needs are met. For example, a person may have specific dietary requirements or sensory requirements that can only be met in specific care

homes. In all cases the local authority **must** have regard to the actual cost of good quality care in meeting a person's needs to ensure that the care home placement can genuinely meets their assessed needs. As such a local authority **must** not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect the actual needs of the person being placed.

4.2. A person **must not** be asked to pay an additional cost towards the cost of providing the type of accommodation in a care home to meet their assessed needs. To ensure they have a genuine choice over this a local authority **must** have more than one option available for a person to choose from within its standard amount for residential care. Where no suitable accommodation is available at its standard amount to meet a person's assessed needs in full, the local authority **must** arrange a placement in a suitable more expensive setting and adjust its funding accordingly to ensure that needs are met. In such circumstances, the local authority **must not** ask the person being placed or a third party to pay the additional cost. Only where a person has chosen a care home that is genuinely more expensive than a local authority would usually pay for a care home placement of that type or, where a person has requested services or facilities that do not form part of their assessed needs, can an additional cost be sought (see "additional cost" below).

Availability

5.1. In general, a local authority **must** avoid a person being forced to wait for assessed needs to be met. However, in some cases a short wait may be unavoidable, particularly when a person has chosen a particular care home that is suitable but not immediately available. This may include putting in place temporary arrangements, taking into account the person's preferences and needs, and securing their agreement to these, including placing the person on the waiting list for their preferred choice of care home. It should be remembered, however, that such arrangements can be unsettling for the person and **must** be avoided wherever possible.

5.2. In such cases, the local authority **must** ensure that in the interim appropriate care and support is provided and should set out how long the interim arrangement may last. In establishing any interim arrangements, the local authority **must** provide the person with clear information in writing on the detail of the arrangements as part of their care and support plan. As a minimum this should include the likely duration of the arrangement and information on the operation of the waiting list for their preferred care home, alongside any other information that may be relevant. If any interim arrangements exceed 12 weeks, the person **must** be reassessed to ensure that both the interim arrangement and the preferred option are still able to meet the person's needs and that remains their choice.

5.3. Where a place subsequently becomes available at a person's chosen care home they **must** be offered this without delay where it is still appropriate to meet their needs. In some cases a person may decide that they wish to remain in the interim setting, even if their preferred accommodation subsequently becomes available. If the care home where they are staying temporarily is able to accommodate the arrangement on a permanent basis this **should** be arranged and the person removed from its waiting list. Before doing so, the local authority **must** make clear the financial implications associated with the person being placed in the accommodation on a permanent basis, including any additional cost associated with the permanent placement.

Choice that cannot be met and refusal of arrangements

6.1. Whilst a local authority **must** do everything it can to meet a person's choice for a particular care home, inevitably there will be some instances where a choice cannot be met, for example if the provider does not have capacity to accommodate the person. In such cases, a local authority **must** in accordance with regulation 5 (Refusal to provide preferred accommodation) of the Regulations set out in writing that it is unable to meet that choice and provide its reason(s) for this. It **must also** offer suitable alternatives to the person so that they can decide which suitable care home they should be placed in instead.

6.2. A local authority **must** do everything it can to take into account a person's circumstances and preferences when arranging their care home placement. However, in all but a very small number of cases, such as where a person is being placed under guardianship under Section 7 of the Mental Health Act 1983, a person has a right to refuse to enter a care home whether that is on an interim or permanent basis. Where a person unreasonably refuses the arrangements, a local authority is entitled to consider that it has fulfilled its statutory duty to meet needs and may then inform the person in writing that, as a result, they need to make their own arrangements. This should be a step of last resort and local authorities **must** consider the risks posed by such an approach, for both the authority itself and the person concerned. Should the person contact the local authority again at a later date, the local authority **must** reassess their needs as necessary and consider how best these are met.

Contractual terms and conditions

7.1. In placing a person in a care home of their choice, a local authority **must not** stipulate strict or unreasonable conditions in contractual arrangements with the care home as a means to avoid or deter the arrangement and avoid meeting the person's choice of accommodation. This includes where the local authority may need to enter into a contract with a provider that it does not currently have an arrangement with. Where this occurs, it should ensure that the contractual conditions are broadly the same as those it would negotiate with any other provider whilst taking account of the individual circumstances.

An Additional Cost

8.1 In some cases, a person may choose a care home that is more expensive than the local authority would usually expect to incur for the provision of the accommodation of that type for that person. Where the person has chosen a care home that is more expensive an arrangement will need to be made as to how the difference in cost will be met. This is known as an "additional cost" and is the difference between the amount a local authority would usually pay for care home accommodation of that type for the person and the actual cost of the chosen care home. In such cases, the local authority **must** arrange for the person to be placed in their chosen accommodation, **provided** a third party, or in certain circumstances the person in need of accommodation, is willing and able to meet the additional cost. If this is not the case, then under regulation 3 (Conditions for provision of preferred accommodation) of the Regulations a local authority is able to refuse to provide the chosen accommodation.

8.2 Where a person is placed in a more expensive care home solely because the local authority has been unable to make arrangements at its usual cost for such accommodation, the local authority **must** meet the difference in cost itself. The

person would then contribute towards this according to the outcome of their financial assessment. The additional cost arrangement must **not** apply in such circumstances.

8.3. Where a person has chosen accommodation that is more expensive, the local authority **must** ensure that the person understands the full implications of this choice, remembering that people often enter residential care at a point of crisis. This understanding **must** extend to the fact that a third party, or in certain circumstances the person needing accommodation, will need to meet the additional cost of that accommodation for the full duration of the person's stay and that should the additional cost not be met, the person may need to move to an alternative care home.

8.4. The local authority **must** ensure that the person paying the additional cost is willing and able to meet this for the likely duration of the arrangement, recognising this may be for some time into the future. To confirm this it would be good practice for a local authority to ask the person who is to pay the additional cost to provide proof of their financial means to do this, such as evidence of their salary or savings.

8.5 A local authority **must** ensure the person paying the additional cost enters into a written agreement with it, agreeing to meet that cost. The agreement **must**, as a minimum, include the information required in the regulation 4 (The additional cost condition) of the Regulations. This will include information such as the amount to be paid, the frequency of payments, the effect of an increase in the amount of the payments and the consequences of non-payment.

8.6. Before entering into the agreement, the local authority **must** provide the person paying the additional cost with access to sufficient information and advice to ensure they understand the terms and conditions, including that the person may want to consider obtaining independent financial information and advice. Further detail on each of these points is set out below.

- The amount to be paid

8.7. The amount of the additional cost should be the difference between the actual cost of the preferred accommodation and the amount the local authority would usually pay to meet the person's assessed needs by the provision of accommodation in a care home of the same type. When considering the cost of care in its area, the local authority is likely to have identified a range of costs which apply to different circumstances and settings. For the purposes of agreeing an additional cost the local authority must consider what it would have paid for accommodation of the same type as that chosen at the time it is needed. It should not automatically default to the cheapest rate or to any other arbitrary figure.

- Frequency of payments

8.8 In agreeing any additional cost arrangement, the local authority **must** clearly set out how often such payments need to be made, e.g. on a weekly or monthly basis and to whom payments are made.

- Responsibility for additional cost payments and payment arrangements

8.9 A local authority is responsible for the full cost of any residential placement it makes. Consequently, when entering into a contract with a care home that is more expensive than the amount the local authority would usually pay for a placement at a home of this type, it is responsible for the total cost of that placement including

the additional cost. This means that if there is a breakdown in the arrangements for meeting the additional cost, for instance if the person making the payment ceases to make these, then the local authority is liable for the full cost of the more expensive accommodation until it makes alternative arrangements for the additional cost incurred in the future to be met, or make alternative arrangements to meet the person's accommodation needs.

8.10 In securing the funds needed to meet the total cost of the more expensive accommodation, including the additional cost payment, a local authority has two options, except where a placement is being funded by a deferred payment agreement (in which case see Annex D on deferred payment agreements). In choosing which option to take a local authority will need to consider the individual circumstances of the case, and should be able to assure itself of the security of the arrangements. Whichever option it chooses, the local authority remains responsible for the total amount. The options are:

- agree with the person paying the additional cost, and the provider of the accommodation, that payment of this will be made directly to the provider by that person with the local authority paying the remainder separately. The person whose needs are being met should be informed of this arrangement; or
- the person paying the additional cost pays this to the local authority. The local authority then pays the full amount for the accommodation to the provider.

8.11 In deciding which option to put in place for the payment of additional costs, local authorities will need to consider the practical implications for them of operating each and their ability under each to ensure payments are made. Given that authorities are ultimately liable for the full cost of any placement made in a more expensive care home, it would be good practice to monitor the payment of additional costs to ensure this is occurring and is being met at the correct level.

- Provisions for reviewing the agreement

8.12 As with any financial arrangement, an agreement to pay an additional cost must be reviewed. A local authority **must** set out in writing details of how the arrangement will be reviewed, what may trigger a review and circumstances when any party can request a review.

8.13 Local authorities **must** also consider how often it may be appropriate to review the arrangement. In doing so they should bear in mind how often they review other financial arrangements, such as deferred payment agreements. Reviews must take place at least annually and in line with wider reviews of the financial assessment.

- Consequences of ceasing to pay an additional cost

8.14 The local authority **must** make clear in writing to the person paying the additional cost the consequences should there be a breakdown in the arrangement or any default in paying the additional cost in line with the requirements of the written agreement. This **must** include stating that the local authority may seek to recover any outstanding debt from the person responsible for paying the additional cost and that if payments do not continue, and it cannot make an alternative arrangement for payment of the additional cost to be made, it may have to make arrangements to meet the person's needs in alternative accommodation. As with any change of circumstance, a local authority **must** undertake a new needs

assessment before considering this course of action, including consideration of the impact on the person's well-being that a change in accommodation may have.

- Cost increases

8.15 The level of the additional cost will need to be reviewed from time to time, for example in response to any changes in: the needs of the person whose needs are being met; in the level of the local authority's commissioning of the person's placement; in provider costs. However, these changes may not occur together and a local authority **must** set out in writing in its agreement with the person to meet the additional cost how these changes will be dealt with.

8.16 The local authority **must** also clearly set out in writing in its agreement with the person its approach to how any increased costs may be shared. This **mus**t include details of how agreement will be reached on the sharing of any cost increases. This **must** also state that there is no guarantee that these increased costs will automatically be shared evenly should the provider's costs rise more quickly than the amount the local authority would have increased its funding for the care home placement.

8.17 A local authority may wish to negotiate any future cost increases with the provider at the time of entering into a contract. This can help provide clarity to individuals and providers and help ensure additional cost remains affordable.

8.18. The local authority **must** also make clear that where the person whose needs are being met has a change in circumstances that requires a new financial assessment, and this results in a change in the level of contribution the person makes, this may not necessarily reduce the need for an additional cost to be met.

- Consequences of changes in circumstances of the person paying the additional cost

8.19 The person paying the additional cost could see an unexpected change in their financial circumstances that will impact upon their ability to continue to make payments. Where a person is unable to continue paying the additional cost, the local authority may seek to recover any outstanding debt and is able to make alternative arrangements to meet a person's needs, subject to a needs assessment. The local authority **must** set out in writing in its agreement with the person paying the additional cost how it will respond to such a change and what the responsibilities of the person are in terms of informing the local authority of any change in their circumstances.

- "First party" additional cost

8.20. The person whose needs are to be met by accommodation in a care home may themselves choose to pay an additional cost but only in the following circumstances:

- where they are subject to a 12-week property disregard (Annex A on the treatment of capital); or
- where they have a deferred payment agreement in place with the local authority. Where this is the case, the terms of the agreement should reflect this arrangement (see Annex D on deferred payment agreements).

Self-funders who ask the local authority to arrange their care

9.1 Section 35 (Duty to meet care and support needs of an adult) of the Act enables a person who can afford to pay, in full, for their own care and support to ask the local authority to arrange this on their behalf. Where this occurs the same principles on them being able to express a preference for their accommodation in a care home **must** apply. More information on this is contained in the code of practice on Part 4 of the Act (Meeting Needs).

Information and advice

10.1 Under section 17 (Provision of information, advice and assistance) of the Act a local authority **must** establish and maintain a service for providing people in its area with information and advice in relation to care and support. This **must** include information and advice about the different care providers available in the local area to enable choice, as well as information and advice to help people to understand care charges, different ways to pay and money management. Local authorities **should** also have a role in facilitating access to financial information and advice provided independent of the local authority, including regulated information and advice where appropriate, to support people in making informed financial decisions. This may be particularly appropriate when a person is considering paying an additional cost to help them understand what they would be paying the additional cost for and come to a judgment about whether it would represent good value for money for them.

Annex D – Deferred Payment Agreements

This annex covers:

- What are deferred payment agreements;
- Who to offer a deferred payment to;
- Provision of information and advice before entering into a deferred payment agreement;
- How much can be deferred and security for the agreement;
- Interest rate for the required amount and administrative costs;
- Making the agreement, responsibilities while the agreement is in place and termination of the agreement.

Definitions

1.1 Definitions used in this annex are:

- "The Act" – means the Social Services and Well-being (Wales) Act 2014;
- "Care costs" – all costs charged for a person's care home placement, including any additional cost due;
- "Required amount"– the amount of the care costs that the adult is required (or is going to be required) to pay under section 59 (Power to impose a charge) of the Act and any amount the adult is required to pay under section 57 (Cases where a person expresses a preference for particular accommodation) of the Act;
- "Additional cost" – are payments due under the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 in connection with agreeing to a person's request to be provided with more expensive accommodation than a local authority would usually provide;
- "The Regulations" – mean the Care and Support (Deferred Payment) (Wales) Regulations 2015.

Introduction

2.1 By entering into a deferred payment agreement a person, whose property is taken into account in their financial assessment, can defer or delay paying some or all of their care costs until a later date so as to not be required to sell their property immediately upon entering a care home. Deferring payment of these costs can help a person to delay the need to sell their home at a time that can be challenging (or even a crisis point) for them and their family as they make the transition into residential care.

2.2 A deferred payment agreement can provide additional flexibility for when and how a person pays their care costs. It should be stressed that payment is deferred and not written off – the care costs must still be repaid by the person (or a third party on their behalf) at a later date.

2.3 Local authorities **must** offer a deferred payment agreement to those persons entering or in a care home who meet certain criteria governing eligibility. Local authorities will need to ensure that adequate security is in place for the amount being deferred, so they can be confident that the required amount (ie the amount deferred) will be repaid in the future.

2.4 A deferred payment agreement can last for the whole period of a person's stay in a care home, or for as long as they wish. This will provide them with time and flexibility to sell their property when they choose to do so and it is up to the individual to make that decision. Further details on deferred payment agreements are set out in the sections below.

Who to offer deferred payments to

3.1 Deferred payment agreements are designed to avoid those persons who will be required to sell their home to pay their care costs from having to do this immediately and being able to do this at a time that suits them. Local authorities **must** offer a deferred payment agreement to people entering or in residential care who meet the eligibility criteria set out in regulation 3 (Local authority required to enter into a deferred payment agreement) of the Regulations. In essence this is:

(a) a person whose needs are to be met by the provision of care and support in a care home, whether this is being provided by a local authority using its duty to meet needs under section 35, or its powers to meet needs under section 36(1), both under Part 4 (Meeting Needs) of the Act;
(b) the person is or will be required to pay a charge for this under section 59 (Power to impose charges) of the Act; and
(c) the local authority has carried out a financial assessment under section 63 (Duty to carry out financial assessment) of the Act.

3.2 This requirement to offer a deferred payment agreement to those in this position **does not** apply unless the conditions listed in the Regulations are met. These include where:

(a) the local authority is satisfied the person has an interest in a property which the person occupies as their home, or which they used to occupy as their home;
(b) the value of this interest has not been disregarded for the purposes of calculating the amount of the person's capital in accordance with Part 4 (Treatment and calculation of capital) of the Care and Support (Financial Assessment) (Wales) Regulations 2015* (the Financial Assessment Regulations) and that the person's capital, not including the value of this interest, does not exceed the capital limit as set out in regulation 11 (capital limit) of the Care and Support (Charging) (Wales) Regulations 2015* (the Charging Regulations);
(c) the person's weekly assessed income (as calculated under the Charging Regulations) is insufficient to meet the full care costs for their residential accommodation in a care home;
(d) the person is in agreement with all of the terms and conditions included in the deferred payment agreement offered;
(e) the local authority has obtained consent from any other person who it considers has an interest over the property and which it considers may prevent it from realising the sale of the property or recovering any deferred amount;
(f) the local authority is able to create a charge over the property which the person has an interest in and that it takes priority over and ranking before any other interest or charge on the property.

* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017, the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 and the Care and Support (Charging) and

(Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

Ability to refuse a deferred payment agreement

4.1 While a local authority **must** offer a deferred payment agreement to a person who meets the eligibility criteria set out above, there will be situations in which a local authority may refuse a request for a deferred payment agreement where these are not met. This would occur, for example, where:

(a) a local authority is unable to secure the consent of another person with an interest in the property to placing a charge on it, or where it cannot obtain a priority or ranking first charge on the property;
(b) a person's capital, other than the value of the property, is above the capital limit, or where their weekly assessed income is sufficient to meet their care costs, so that they are able to afford the full cost of the residential accommodation without the need for an agreement;
(c) a person does not agree to the terms and conditions of the deferred payment agreement. This might be, for example, failing to meet a condition that the person insures and maintains the property in good order.

4.2 In any circumstance where any of the eligibility criteria for a deferred payment is not met, a local authority **should** consider the nature of the non-compliance with this criteria and whether in any event to exercise discretion to offer a deferred payment agreement. For example, a person's property may be uninsurable for some reason but has a high land value, in which case the local authority may choose to accept a priority charge against this land as security for the agreement instead.

Circumstances in which local authorities may stop deferring care costs

5.1 There are also circumstances where a local authority may refuse to defer any further care costs for a person who has an active deferred payment agreement in place. This refusal may be permanent or temporary depending upon whether the reason for it is a permanent or temporary change in the person's circumstances. Local authorities **cannot** demand repayment of the whole required amount deferred in these circumstances and repayment of that amount is still subject to the usual terms of termination, as set out later in paragraph 12.1 to 12.9.

5.2 The local authority **must** provide advance notice that further deferred payments will cease and **must** provide the person with an indication of how their care costs will need to be met in future. Depending on their financial circumstances, the person may be required to meet all or part of their care costs from their weekly assessed income where this is more than the appropriate minimum guarantee set out in regulation 6 (Adult's contribution) of the Regulations, or from any capital assets (not including the value of the property which is the subject of the agreement) they hold above the level of the capital limit. Local authorities exercising these powers to cease a deferred payment agreement must consider their decision to do so in the light of the person's financial circumstances and their overarching duties to meet a person's needs under Part 4 of the Act (Meetings needs).

5.3 Other circumstances in which a local authority may refuse to defer any further care costs include:

(a) when a person's total capital (including the value of the remaining equity in their property once the required amount deferred is taken into account) falls

to the level of the capital limit so that the person becomes eligible for local authority support in paying for their care costs;

(b) when the person's weekly assessed income (as calculated under the Charging Regulations) becomes sufficient to meet the full care costs for their residential accommodation in a care home;

(c) where a person no longer has need for care in a care home;

(d) if a person breaches certain predefined terms or conditions of their agreement (which must be clearly set out in the agreement) and the local authority's attempts to resolve the breach are unsuccessful (and the agreement specifies that the authority will stop deferring any further care costs in such a case); or

(e) if, under the Financial Assessment Regulations the value of the property subsequently becomes disregarded for any reason and the person consequently qualifies for local authority support in paying their care costs, including but not limited to:

- where a spouse or dependent relative (as defined in the Financial Assessment Regulations) has moved into the property after the agreement has been made;
- where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative (as defined in Financial Assessment Regulations).

Information and advice

6.1 Under section 17 (Provision of information, advice and assistance) of the Act local authorities **must** provide information and advice to people about care and support. This extends to information and advice in relation to the availability of deferred payment agreements. In order to be able to make well-informed choices, it is essential that people access appropriate information and advice before entering into a deferred payment agreement. It is also important that people are kept informed about their agreement throughout its duration and that they receive appropriate information upon it at its eventual termination.

6.2 Deferred payment agreements are often considered at a time that can be stressful for a person and their family. People may need additional support during this period, and the local authority **should** take a role in providing this together with providing information and advice that is clear and easy to understand.

6.3 If a local authority identifies a person who may benefit from or be eligible for a deferred payment agreement, or a person approaches them for information about them, the local authority **must** make this information available to them and explain how deferred payment agreements operate. This explanation should, at a minimum:

- set out the criteria governing eligibility for an agreement;
- detail the requirements that must be adhered to for the duration of the agreement;
- set out clearly which care costs would be deferred and make clear that they must still be repaid at a later date, for example through the sale of their property (including following the death of the person);
- explain the security that a local authority is prepared to accept (see the section entitled 'Obtaining Security' below);
- explain that the total amount they can defer will be governed by the level of their care costs and the value of the property the person has an interest in used for the deferred payment agreement;

- explain the implications that a deferred payment agreement may have on a person's income, their entitlement to any welfare benefit and the application of the charging regime;
- provide an overview of potential advantages and disadvantages of entering into a deferred payment agreement and explain what other options may be available to a person as a way of paying their care costs;
- explain the 12-week property disregard (as set out in the Financial Assessment Regulations), which could afford those eligible for a deferred payment additional time to consider other options for paying their care costs;
- explain the circumstances where the local authority may cease to defer further care costs (such described in paragraphs 12.1 to 12.9;
- explain whether interest would be charged on the deferred amount (ie the required amount) and if so, the level of this;
- explain whether administrative costs would be charged for establishing and maintaining the agreement and if so, the level of these;
- explain how an agreement can be terminated and what happens on termination of the agreement, including how the required amount due for repayment is to be repaid and the options for so doing;
- explain what happens if the required amount due is not repaid in full in the manner or time a local authority specifies; and
- suggest that people may want to consider taking independent financial advice prior to entering into a deferred payment agreement.

6.4 Local authorities **must** provide information in a suitable format to match the communication needs of the person. This may be in the form of a standardised information sheet with additional information, where appropriate, to cater for a person's individual circumstances.

6.5 Local authorities **should** advise people that where they have a property they have an interest in, they will need to consider how they plan to use, maintain and insure their property if they take out a deferred payment agreement; that is whether they wish to rent it out, prepare it for sale, or leave it vacant for a period. The local authority should advise if it intends to place conditions on how the property is maintained or used whilst any agreement is in place.

How much can be deferred

7.1 In principle a person should be able to defer all their care costs, subject to any contribution their financial assessment has determined they are required to pay towards this cost from their assessed income. Regulation 5 (Required amount) of the Regulations set out that a deferment can be for:

(a) 100% of the care costs due from the person, less any amount they are required to pay towards these costs by regulation 6 (Adult's contribution) of the Regulations;
(b) such lessor amount as the person requests, less any amount they are required to pay under regulation 6 of the Regulations;
(c) the amount at (a) or (b) less any amount as the local authority agrees not to defer.

7.2 The local authority will need to consider whether a person can provide adequate security for the amount of the deferment agreed (ie the required amount) (see next section entitled 'Obtaining Security').

7.3 If the person has expressed a preference for a care home that costs more than the local authority's usual rate for the care home they require, it may charge

the person in certain circumstances, or a third party, an additional cost payment for the additional cost involved (see the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 and Annex C of this code - Choice of Accommodation and Additional Costs). Where this occurs and the person requests that the additional cost forms part of the amount to be deferred (ie to be included in the required amount), the local authority **should** also consider whether the total amount being requested as a deferred payment agreement is appropriate for the value of the security to be used for the agreement.

7.4 Where a person intends to secure their deferred payment agreement against their interest in a property, local authorities **must** obtain a valuation of that property. Reasonable property valuation costs can be passed onto a person as part of the administrative costs local authorities can charge for putting an agreement in place, should they wish to do so. People may request an independent assessment of the property's value (in addition to the local authority's valuation). If an independent assessment finds a substantially differing value to the local authority's valuation, the local authority and person should discuss and agree an appropriate valuation prior to proceeding with the agreement.

Contributing to care costs from other sources

8.1 The share of their care costs that a person defers will depend on their income and whether they are require to contribution towards these costs from this.

8.2 Local authorities may require a contribution towards the care costs from a person's weekly assessed income (as calculated under the Charging Regulations), where it is above the level of the appropriate minimum guarantee as set out in regulation 6 (Adult's contribution) of the Regulations.

8.3 A person may choose to keep less of the appropriate minimum guarantee should they wish. This might be advantageous to the person as they would be contributing more towards their care costs from their income, and consequently reducing the amount they are deferring (and accruing less debt to their local authority overall). However, this **must** be entirely at the decision of the person and a local authority **must not** ask the person to retain less if they want to retain the full amount.

8.4 If a person decides to rent out their property during the course of their agreement, a local authority **should** permit the person to retain a percentage of any rental income they secure.

8.5 A person may also benefit from contributions to their care costs as a result of payments made by a third party, or from income not taken account of in a financial assessment should they wish to do so. Contributing to care costs from another source would be beneficial for a person as it would reduce the amount they are deferring (and hence reduce their overall required amount owed to the local authority). A local authority **must not** ask a person to contribute to their deferred payment from these sources.

Obtaining security

9.1 In cases where an agreement is to be secured with property, local authorities **must** seek the owner's consent (and agreement) to a charge being placed on the property. In cases where there are more than one owner, the authority must seek such consent (and agreement) from all owners. All owners will then need to be signatories to the charge agreement and where there are co-owners, they will

need to agree not to object to the sale of the property for the purpose of repaying the required amount due to the local authority (following the same procedure as in the case where a person is the sole owner of a property).

9.2 The local authority **must** obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property.

Interest and administrative costs

10.1 Deferred payment agreements are intended to operate on a cost-neutral basis, with local authorities able to recover the costs associated with deferring a person's care costs by charging interest should they wish to do so. Local authorities can also recover the administrative costs associated with agreements, including legal and the ongoing operating costs of an agreement. Such costs can be passed on to the person and added to the total required amount deferred as they accrue, although a person may request to pay these separately if they choose. The agreement **mus**t make clear that all care costs deferred, alongside any interest and administrative costs incurred must be repaid in full by the person.

10.2 Local authorities may charge interest on any amount deferred, including any administrative costs deferred. This is to cover the cost of the agreement and the financial risks to local authorities associated with lending. Where local authorities charge interest this **must not** exceed the maximum amount specified in regulation 9 (Interest) of the Regulations.

10.3 The national maximum interest rate an authority can charge is 0.15% above the "relevant rate". The relevant rate will change every six months on 1st January and 1st July to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility. The market gilts rate is currently published in the "Economic and fiscal outlook", which is usually published twice-yearly on the Office of Budget Responsibility's website: http://budgetresponsibility.org.uk/. The market gilts rate is shown near the bottom of the table entitled "Determinants of the fiscal forecast" included in each published outlook. Local authorities **must** ensure that any changes to the national maximum rate are applied to any agreements they have entered into (unless they are already charging less than the national maximum). Individual agreements must also contain adequate terms and conditions to ensure that the interest rate within any given agreement does not exceed the nationally-set maximum.

10.4 Local authorities **must** inform a person before they enter into an agreement if interest will be charged, what interest rates are currently set at, and when interest rates are likely to change. This is to enable people to make well-informed decisions about whether a deferred payment agreement is the best way for them to meet their care costs.

10.5 The interest charged and added to the deferred amount will be compound and local authorities **should** ensure when making the agreement that people understand that interest will accrue on a compound basis.

10.6 Interest can accrue on the required amount deferred up to the point where this is repaid. Hence if could still be charged after a person has died up until the point at which the required amount is repaid in full to the local authority. If for some reason the local authority cannot recover the required amount it is owed in a deferred payment agreement, and seeks to pursue this through the courts, the local authority **may** charge the County Court rate of interest in that instance.

10.7 Local authorities **must** set their administrative costs at a reasonable level and this level **must** not be more than the actual costs incurred by the local authority. Relevant costs may include (but are not limited to) the costs incurred by a local authority whilst:

- registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
- undertaking relevant postage, printing and telecommunications;
- cost of time spent by those providing the agreement;
- cost of valuation and re-valuation of the property;
- costs for removal of charges against property;
- overheads, including where appropriate (shares of) payroll, audit, management costs, legal services.

10.8 Local authorities **should** maintain a publicly-available list of administrative costs that a person may be liable to pay. It is good practice to separate charges into a fixed set-up fee for deferred payment agreements, reflective of the costs incurred by the local authority in setting up and securing a typical deferred payment agreement, and other reasonable onetime fees during the course of the agreement (reflecting actual charges incurred in the course of the agreement).

Making the agreement

11.1 Where a person chooses to enter into a deferred payment agreement, local authorities **should** aim to have the agreement finalised and in place by the end of the 12-week disregard period which is provided for in the Financial Assessment Regulations (where applicable), or within 12 weeks of the person approaching the local authority regarding an agreement in other circumstances.

11.2 Decisions on a person's care and support needs, the amount they intend to defer, the property as security they intend to use and the terms of the agreement **should** only be taken following discussion between the local authority and the person. Once agreement in principle has been reached between the local authority and the person, it is the local authority's responsibility to include the details agreed into a deferred payment agreement, taking the legal form of a contract between the local authority and the person.

11.3 The local authority **must** provide a hardcopy of the deferred payment agreement to the person, and they should be provided with reasonable time to read and consider the agreement, including time for the individual to query any clauses and discuss the agreement further with the local authority.

11.4 The agreement must clearly set out all terms, conditions and information necessary to enable the person to ascertain his or her rights and obligations under the agreement. These **must** as a minimum include:

(a) terms to explain how the interest will be calculated and that it will be compounded if it is to be added to the required amount to be deferred;
(b) information as to administrative costs the individual might be liable for;
(c) terms to explain how the person may exercise his or her right to terminate the agreement, which should explain the process for and consequences of terminating the agreement and specify what notice should be given (see the section entitled 'terminating the agreement' below);
(d) terms to explain the circumstances in which the local authority might refuse to defer further care costs;

(e) that the local authority will secure their debt either by placing a legal (Land Registry) charge against the property;
(f) a term requiring the local authority to provide the person with a written statement every six months and within 28 days of request by the person, setting out how much the person owes to the authority and the cost to them of repaying the debt;
(g) a term which explains the maximum amount which may be deferred and that this is likely to vary over time;
(h) a term which requires the person to obtain the consent of the local authority for any person to occupy the property; and
(i) an explanation that the local authority will stop deferring care costs if the person no longer receives care and support in a care home.

11.5 Local authorities should ensure at a minimum that people sign or clearly and verifiably affirm they have received adequate information on options for paying their care costs, that they understand how the agreement works and understand the agreement they are entering into; and that they have had the opportunity to ask questions about the agreement. A term reflecting this should be included in the agreement itself.

11.6 Local authorities **must** at a minimum provide people with six-monthly written updates of the amount of care costs deferred, of the interest and administrative costs accrued to date, of the total amount due and an estimate of the equity remaining in the home not covered by the required amount deferred. Local authorities **should** also provide the person with a statement on request within 28 days. Local authorities **may** provide updates on a more frequent basis at their discretion. The update should set out the required amount deferred during the previous period, alongside the total amount deferred to date, and should also include a projection of how quickly the required amount deferred would leave only the level of the capital limit equity in their property (at which point no further deferment against the value of the property could occur).

11.7 Local authorities **should** reassess the value of the chosen property used as security once the amount deferred exceeds 50% of the security (and periodically thereafter), and consider this amount against the level of the capital limit so as to ensure a person is left with at least the level of the capital limit equity in their property.

Termination of agreement

12.1 A deferred payment agreement can be terminated in three ways:

(a) at any time by the person by repaying the outstanding care costs (including any outstanding interest and administrative costs) due in full (this can happen during a person's lifetime or when the agreement is terminated through the agreement holder's death);
(b) when the property is sold and the authority is repaid; or
(c) when the person dies and the amount is repaid to the local authority from their estate.

12.2 On termination, the full required amount deferred due must be paid to the local authority.

12.3 If a person decides to sell their property, they should notify the local authority during the sale process. They will be required to pay the amount due to the local authority in full from the proceeds of the sale, and the local authority will be

required to relinquish the charge on their property.

12.4 A person may decide to repay the amount due to the local authority from another source, or a third party may elect to repay the amount due on behalf of the person. In either case, the local authority should be notified of the person's/the third party's intention in writing, and the local authority **must** relinquish the charge on the property on receipt of the full amount due.

12.5 If the deferred payment is terminated due to the person's death, the amount due to the local authority must be either paid from the estate or paid by a third party. A person's family or a third party can settle the debt to the local authority by other means of repayment if they wish, so as to avoid selling the property against which the deferred payment agreement had been secured. Where they do, the local authority **must** accept an alternative means of payment in this case, provided this payment covers the full amount due to the local authority.

12.6 The executor of the will or Administrator of the Estate can decide how the amount due is to be paid; either from the person's estate or from a third party source.

12.7 A local authority **should** wait at least two weeks following the person's death before approaching the executor with a full breakdown of the total amount deferred (but a family member or the executor can approach the local authority to resolve the outstanding amount due prior to this point). Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the will.

12.8 Interest will continue to accrue on the amount owed to the local authority after the person's death and until the amount due to the local authority is repaid in full. If terminated through a person's death, the amount owed to a local authority under a deferred payment agreement falls due 90 days after the person has died. After this 90 day period, if a local authority concludes active steps to repay the debt are not being taken, for example if the sale is not progressing and a local authority has actively sought to resolve the situation (or the local authority concludes the executor is wilfully obstructing sale of the property), the local authority may enter into legal proceedings to reclaim the amount due to it.

12.9 In whichever circumstance an agreement is terminated, the full amount due to the local authority must be repaid to cover all costs accrued under the agreement, and the person (and/or the third party where appropriate) must be provided with a full breakdown of how the amount due has been calculated. Once the amount has been paid, the local authority **should** provide the person or the appropriate third party with confirmation that the agreement has been concluded, and confirm (where appropriate) that the charge against the property has been removed.

Annex E – Review of Charging Decisions and Determinations

This annex covers:

- Reviews of a determination that a person is required to pay a charge for the care and support they receive, or of their liability as a transferee to pay an amount to a local authority where a transfer of assets has occurred to avoid charges;
- Reviews of the level of the charge or amount resulting from these.

General

1.1 The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 introduced the right for a person receiving non-residential care and support, or direct payments to secure the provision of such care and support, to request a review of a decision to impose a charge or require payment of a contribution or reimbursement for this. The principle was that where a person felt an inappropriate decision has been made, either in the level of the charge, reimbursement or contribution or in relation to the basis upon which the decision to impose this was made, the person should be able to request the local authority to review this in a consistent, clear manner. In line with the principles of dealing with a complaint, these Regulations specified that this initial review should involve the authority itself reassessing the decision made and deciding whether its original decision was correct, particularly where further information was now available.

1.2 The Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015 (the “Regulations”), made under the Social Services and Well-being (Wales) Act 2014 (the “Act”), replace the 2011 Regulations and introduce a similar review process in respect of determinations of a charge, contribution or reimbursement, and the level of these, with both non-residential and residential care and support. They also extend reviews to situations where a person has been deemed to be a liable transferee, having received an asset with the intention of avoiding or reducing charges for a person deemed to be liable for a charge. This process does not seek to replicate or replace the wider formal complaints procedure which local authorities are required to operate under Part 10 of the Act (Complaints, Representations and Advocacy Services). Instead, it is to establish a consistent review process for such decisions so that where a person wishes a determination in relation to charging, or the level of a charge, reviewed, they will be able to ask an authority to do this in a relatively straight forward way and in doing so, potentially obviate the need for a person to make a formal complaint to the authority.

1.3 It is hoped the vast majority of these requests would be satisfactorily resolved through the review process. Where, however, a person is still unhappy with an authority’s determination they will, as now, be able to make a formal complaint about this to an authority to be considered through its formal complaints procedure. This would be where they consider the authority has not made a properly considered decision in determining their review, e.g. not following its charging policy or not properly considering relevant information.

1.4 Local authorities **must** operate a review process as set out in the Regulations and this code to enable reviews to be sought of a determination of a charge, contribution or reimbursement, or the level of these, or where a person has been

deemed to be a liable transferee.

1.5 In this annex future references to “charge” should be construed to include reference to a contribution or reimbursement set for direct payments provided to a person to secure care and support they require.

Operation of the Review Process

- Making a request for a review

2.1 Regulation 3 (Persons who may request a review) of the Regulations sets out the persons who can request a review. These are:

- those upon whom a charge has been imposed for the care and support they will, or already, receive as described in section 60 of the Act (Persons upon whom charges may be imposed). Such persons will include adults whose needs are met under Part 4 of the Act (Meeting Needs), including where support is to be provided, or is already being provided, to meet an adult carer’s needs;
- those who are required to pay a contribution or make a reimbursement for the care and support they will, or already, secure through receipt of direct payments as described in section 50 to 53 of the Act (Direct payments). Such persons will include adults whose needs are met under Part 4 of the Act by the making of direct payments, including where support is provided, or is already being secured, by the receipt of direct payments to meet an adult carer’s needs;
- a liable transferee as defined in section 72 of the Act (Transfer of assets to avoid charges) who has received a transfer of an asset from a person whose needs have been or are being met by a local authority with the sole intention of avoiding charges for meeting that need.

2.2 Regulation 4 (Circumstances in which a review may be requested) of the Regulations sets out the circumstances where a review can be requested. These range from a local authority not having complied with any of the duties placed on it by relevant parts of the Act, the regulations and this code, to it not following its agreed charging policy, to it not taking into proper account relevant information connected with the determination of the charge made or the level of this. The circumstances also include certain factual disputes such as whether care and support, in respect of which a charge has been imposed, has in fact been provided or, in the case of a liable transferee, that the asset was not transferred with the intention of avoiding charges for care and support. Where a person’s financial circumstances change (such as where a change in their welfare benefits occur or where there is an annual change in the level of their benefits or state pension) it is envisaged that local authorities will re-assess the charge for which a person may be liable, or that the person may request this. Such circumstances **do not** give rise to a review request. Only where the person is unhappy with the outcome of a re-assessment are they able to seek a review under the circumstances set out in regulation 4.

2.3 Local authorities **must** have a review process in place which considers requests for a review from the individuals listed above in the circumstances listed in regulation 4. Authorities **must** consider requests for reviews made at any time after a local authority has made a determination to impose a charge, set the level of this or deem a person to be a liable transferee, and communicated that to the person to be charged.

2.4 A request **must** state which circumstance(s) in regulation 4 it is being made in accordance with and provide the reason(s) for the review being made. Local

authorities **must** consider requests for a review made both in writing and orally; see regulation 5 (Process for requesting a review) of the Regulations.

2.5 A request for a review can, in accordance with regulation 6 (Representatives) of the Regulations, be made by a representative on behalf of the person seeking the review, either for the whole of the review or for such part as the person wishes. This can be, for example, a friend or relative appointed by the person, or a formal advocate whom they wish to act for them. In either case the person **must** provide the local authority with their authorisation for this, either orally or in writing. Where the person does this orally, the local authority **must** provide a statement to the person and their representative confirming this appointment and the extent of the representative's involvement in the review, i.e. whole or part. A person appointing a representative for a review **must** be allowed to withdraw their consent for this at any time during the period of the review should they wish to do so. Notice of this **must** be able to be made either orally or in writing.

- Appointing a person to deal with a request for a review

2.6 Under regulation 7 (The appointed person) local authorities **must** appoint a suitably trained staff member to deal with a review request made but not to make the decision upon it (referred to for these purposes as the "appointed person"). The appointed person **must** be familiar with the requirements of the Act, Regulations and this code in relation to such reviews. It is good practice to include contact details for such staff in the section of a statement of a charge issued to a person in accordance with the Care and Support (Charging) (Wales) Regulations 2015 (the "Charging Regulations") so as to provide that person with this information, together with information on how to access this review process, should they subsequently wish to seek a review. It is also a requirement under regulation 10 (Acknowledgement of the request) of the Regulations for the appointed person's contact details to be included in an acknowledgement of a valid review request made.

- Withdrawing a request for a review

2.7 A person, or their representative, can withdraw a request for a review at any time while it is being considered, either orally or in writing, by informing the local authority's appointed person. Where this occurs the local authority **must** provide a statement to the person and any representative to confirm that the request has been withdrawn and that no further action on it will be taken as a result.

- Acceptance of a request for a review

2.8 Where a previous request for a review has been dealt with and a subsequent request is made by the same person in connection with the same circumstances, under regulation 9 (Acceptance of the request) of the Regulations an authority is under no duty to consider this if it believes that there has been no material change in any of the circumstances listed in regulation 4 of the Regulations that gave rise to the original request being made. Where this occurs an authority **must** send a statement to the person and any representative that the subsequent request will not be considered and provide its reason(s) for believing there has been no material change in any of the circumstances listed in regulation 4 that gave rise to the previous request and that no additional information or circumstances has been provided to justify a second review of the same circumstances.

2.9 Where a request for a review is from a person listed in regulation 3 of the Regulations (listed above in 2.1), is made in representative, and relates to one or

more of the circumstances listed in regulation 4 (outlined above in 2.2), a local authority **must** consider this request in accordance with the requirements of the Act, the Regulations and this code.

- Acknowledgement of a request for review

2.10 A local authority **must** within 5 working days of receiving a valid request for a review (which complies with requirements of regulations 3, 4 and 5), send the person making the request, or their representative, a statement of acknowledgement confirming receipt of the request and which provides key information with regard to the review. That information is set out in regulation 10 (Acknowledgement of the request) of the Regulations and covers such information as confirmation of the basis of request, what further information or documentation the authority requires to process the review, that this can be provided by means of a visit to their home or other place if they wish, how the authority will process the review and, where they have not done so already, that person can appoint a representative if they wish.

2.11 If the person making the request for a review is a liable transferee, the acknowledgement **must** also indicate if the authority intends to request information or documentation from a person other than the person requesting the review and what information or documentation will be requested, if any. Where the local authority is requesting information or documentation from another person, it **must** send that person a statement requesting this which contains the information listed at regulation 10 (3) of the Regulations.

2.12 Where a local authority considers it can make a decision on a valid review requested on the basis of the information and documentation contained within it, and can make that decision within 5 working days, the requirements of 2.10 and 2.11 do not apply.

- Payment of the charge, reimbursement or contribution during the review

2.13 The acknowledgement to be issued under regulation 10 (as set out above at 2.10 and 2.11) **must** inform the person requesting the review, or their representative, that the charge which is the subject of the review (or the part of this which is the subject of the review) does not need to be paid during the period of the review, if the person wishes.

2.14 Where a person does not wish to pay a charge (or a part of this) during the period of the review, they or their representative must confirm this to the authority orally or in writing within 5 working days of receiving the acknowledgement of their request. Where this occurs a local authority **must not** collect the charge or relevant part of this during the period of the review. However, a person's liability for these payments remains. Consequently, the acknowledgement **must** also inform the person or their representative whether or not it is the authority's policy to recover such unpaid amounts once the review has been completed should it transpire that the person is liable for them.

2.15 In the case of those who pay a contribution for direct payments so that they would normally receive direct payments net of this deduction, for the review period an authority **must** pay the direct payments gross without this deduction should the recipient elect not to pay the contribution during the period of the review. This is so that these individuals are treated in a comparable way to those who receive their care and support direct from a local authority.

- Time limit for providing further information or documentation

2.16 If a local authority reasonably requires further information or documentation to process a review request, the person requesting the review or their representative must provide this within 15 working days of the date that the request for this was made in the acknowledgment outlined in 2.10 and 2.11 above. It would be good practice before the end of this period to remind a person or their representative of the timescale for submitting the information or documentation requested, where this was yet to be provided.

2.17 Under regulation 12 (Time limit for the provision of further information or documentation) within this timescale the person or their representative can ask, either orally or in writing, for an extension of time in which to provide the required information or documentation. For example, a person may have difficulty in obtaining certain documents required or in contacting certain individuals or organisations that hold such documents or information required. This equally applies where a local authority requests information or documentation from a third person in relation to a review involving a liable transferee. The request for the extension must, therefore, explain the reason(s) for this request.

2.18 Authorities **must** grant any reasonable request for such an extension and confirm to the person, or their representative, that this has been done and the revised time to submit the information or documentation. This confirmation **must** be in writing. If for any reason an authority does not grant a request for an extension, it **must** confirm this to the person, or their representative, and provide its reason(s) for not agreeing to this extension request.

2.19 In accordance with regulation 11 (Home visit) of the Regulations the person requesting the review, or their representative, may notify the appointed person orally or in writing that they intend to comply with any request for further information or documentation referred to at 2.16 above during a home visit. Where such notification is received, an authority **must** carry out a home visit for the purposes of obtaining this further information or documentation.

2.20 Under regulation 12 (Time limit for the provision of further information or documentation) of the Regulations should a local authority not receive the requested information or documentation to process the review, or any request to extend the time for submitting this, within the 15 working days allowed for submitting this, it may treat the request for the review as if it had been withdrawn. If this occurs the local authority **must** send a statement to the person who sought the review, or their representative, containing the information required in regulation 12 (6) of the Regulations to confirm this has been done and that the charge it related to is now payable, the amount(s) due and the date by which this must be paid. This statement **must** be in writing.

2.21 In the event that a local authority does not receive information or documentation from a third person in connection with a review involving a liable transferee within the 15 working days, or a request for an extension of time during this period, the local authority **must** send a statement to that third person, the person requesting the review and any representative. This **must** include the information required in regulation 13 (3) (Provision of information or documentation by a person other than the requester) of the Regulations, confirmation that the third party has failed to provide the information or documentation requested, that the authority will make a decision on the review on the basis of the information or documentation it has available and that the failure to provide the information or documentation requested may have an adverse impact on the decision made. If the information

or documentation is provided after the time limit for providing it has expired but before a decision upon the review is made, a local authority may take that information or documentation into account when making the decision.

- Deciding a review

2.22 Under regulation 14 (Decision) of the Regulations as soon as possible, and in any event within 10 working days of receiving sufficient information or documentation to enable it to determine a review, the local authority **must** make a decision upon it and identify the action necessary to implement that decision. It **must** send a statement to the person who requested the review, and any representative, containing the information required in regulation 14 to confirm the decision, the reason(s) for that decision and whether the person's charge has been amended as a result. If the decision results in an amendment of the charge the authority **must** also send the person and any representative a statement of the amended charge issued to a person in accordance with regulation 14 (1) of the Charging Regulations.

2.23 Should a local authority only receive partial requested information or documentation to process the review (either within the 15 working days outlined above or within an extended period of time), a local authority **must** within 10 working days of the end of the later of these periods make a decision upon the review on the basis of the available information or documentation. It **must** also determine what action is necessary to implement that decision and send a statement to the person who requested the review, and any representative, containing the information required in regulation 14 of the Regulations to confirm the decision, the reason for that decision and whether the person's charge has been amended as a result. If the decision results in an amendment of the charge the authority **must** also send the person and any representative a statement of the amended charge issued to a person in accordance with regulation 14 (1) of the Charging Regulations.

2.24 Where an authority is unable to make a review decision within the 10 working days it **must** as soon as possible, but in any event within this period, provide the person who requested the review, or any representative, with a statement containing the information required under regulation 14 (3) of the Regulations to confirm this fact, the reason(s) for it and the date by which a decision will be made. It **must** also inform the person that if they wish, they can elect not to pay the charge which is the subject of the review while the review is being completed. The person, or any representative, may then do this if they wish by notifying the authority orally or in writing. A local authority **must** make it clear in this statement that charges that would have accrued during this extended period are not recoverable by the authority irrespective of the outcome of the review and local authorities **must not** seek to collect such amounts.

- Basis for a review decision

2.25 Local authorities **must** designate appropriate officers of the authority to make decisions on reviews. This could be an appropriate officer of a similar standing to the one who took the original decision which is the subject of the review, but who was not involved in the making of the original decision; or section head(s); or head of service(s); or a Director of Social Services. Whatever decision making process is used, local authorities **must** ensure that this is fair, open and impartial, supporting the principles of natural justice.

2.26 Regulation 14 (4) of the Regulations sets out the factors which those taking a

decision on a review **must** take into account. This lists the relevant legislation to consider, as well as the financial circumstances of the person who is the subject of the review and the circumstances that impact upon their ability to pay a charge.

2.27 In undertaking a decision on a review, as well as considering whether the person concerned has the financial means to pay a charge and the impact upon their independence of so doing, local authorities **must** take into account any wider "financial hardship" a person may have as a result of their impairment, medical condition or personal circumstances. This could be, for example, unpredicted household expense where the person needs to urgently spend to replace a loss, a sudden change in their income (such as being made redundant) or an unpredicted domestic crisis (such as someone being moved to a place of safety where they need to urgently buy clothing and household items).

- Payment of charges after review period

2.28 A local authority **may**, where the person who is the subject of the review has elected not to pay a charge during the review period, seek to recover any unpaid amounts following the completion of the review but it is **not** obliged to do so. The amount that can be recovered would be the amount of the charge the authority has decided is now correct as a result of the outcome of the review.

2.29 A local authority **must not** recover any amount that accrued from the time it extended the period on the review to the time the review was completed. Where an authority seeks to recover unpaid amounts it **must** have regard to the person's financial circumstances and be satisfied that the recovery of this would not cause them undue financial hardship. If it considers this to be the case, then it **must** offer the person the option of repaying the amount in periodic instalments.

2.30 Regulation 15 (Payment of the charge during and after the review) of the Regulations sets out the detail of the payment of the charge, reimbursement or contribution during and after the review period, which local authorities **must** follow in this situation.

- Provision of statements and information

2.31 Where local authorities are required to provide a statement or information to a person seeking a review, or their representative, this **must** be provided in writing and in any format appropriate to meet the communication needs of the person and their representative.

Annex F – Recovery of Debt and Deprivation of Assets

Section 1 of this annex covers:

- The principles underpinning the approach to debt recovery;
- Options for debt recovery;
- Processes around debt recovery.

Section 2 of this annex covers:

- The deprivation of assets in order to avoid or reduce charges for care and support;
- Identifying possible deprivation;
- What happens where deprivation of assets has occurred;
- Recovering charges from a third party (a transferee).

Section 1 - Recovery of Debt

General

1.1 This annex of the code applies where a person has accrued a debt in relation to charges made under section 59 (Power to impose charges) of the Social Services and Well-being (Wales) Act 2014 ("the Act") for care and support arranged or provided for that person, or support provided where that person is a carer, by a local authority.

1.2 The general provisions governing a local authority's recovery of a debt are set out in section 70 (Recovery of charges, interest etc) of the Act. In considering the recovery of debts local authorities must abide by the requirements of that section and of this annex to the code of practice.

1.3 Where a person accrues a debt the local authority **should take** all reasonable steps to ascertain the reason this has occurred and **must not** assume that the person is deliberately not meeting a charge imposed for care and support, or for support if a carer. A local authority **must** seek to establish the reason for a debt accruing and only where it is clear that it is as a result of a person's deliberate non-payment **should** they consider debt recovery.

1.4 In dealing with debts local authorities **should** bear in mind that they are bound by the public law principle of acting reasonably at all times and **must** act not only in accordance with powers they have in relation to debts under the Act but also in accordance with the principles established in the human rights legislation. However, a local authority **must,** where it is clear non-payment is deliberate and it has decided to collect the debt which has accrued, pursue all other reasonable options to do this before using their debt recovery powers under section 70 (Recovery of charges, interest, etc.) of the Act, including taking court action if this is considered appropriate in the particular case.

Recovery of Debt

2.1 When designing its system for debt recovery, local authorities **should** be aware of the client group with which they are dealing. Unlike council tax or rent arrears debt, a local authority is not dealing with a potentially healthy general population but those with a physical or sensory impairment, or potentially older frail people. All

debt recovery systems **must** therefore be designed with a full understanding of the needs and characteristics of these clients given that financial assessment and charging processes can be confusing and complex. The recovery of debt from those in this situation is therefore a sensitive issue given their potential vulnerability and a local authority's ultimate responsibility to meet needs.

2.2 Local authorities **must** bear in mind that there are a number of genuine reasons why a debt may occur and they **must** consider each case on the merits of its specific circumstances before undertaking any form of formal debt recovery. Given this, local authorities **must** where a debt occurs:

- ensure the person concerned understands the nature of the debt which has occurred and the consequences of this;
- establish why the debt has occurred and whether this is a temporary situation which could be overcome or permanent which may not;
- decide on the basis of the circumstances of the case whether it is appropriate to recover the debt and if so, whether to recover all of the debt or a reasonable proportion;
- if a debt or part of a debt is to be recovered, consider and propose a method of doing so and if possible, agree this with the person including how this would operate. Where this occurs local authorities **must** ensure repayments are affordable for the individual and do not put the person at undue financial risk of not being able to afford other reasonable living costs.

2.3 Only where these are exhausted and a solution is not found and a local authority thinks it is appropriate to continue to recover a debt, **should** it consider formal debt recovery action under section 70 of the Act, including action through the courts where appropriate.

2.4 Before pursing any debt recovery, either through a negotiated arrangement or formal action under the Act, a local authority **must** consider whether it is appropriate to recover the debt which has accrued, either in full or a proportion of it. For example, the expense in recovering a small debt, or a debt of a temporary nature, may be disproportionate to the amount that would be collected. It **should** also consider the impact on a person's financial position and/or well-being the recovery of debt may have, in line with a local authority's general duty to promote a person's well-being.

Timing of debt recovery

3.1 The point at which a debt becomes due continues to be the date at which the amount imposed becomes due to the local authority. This means that, for example, if an invoice was issued giving 30 days to pay, the payment becomes due on day 30 and a debt accrues if this is not met.

3.2 For any debts that have accrued prior to the commencement of the Act the time period for recovering that debt will continue to be three years as set out under section 56 of the National Assistance Act 1948. For debts that occur after the commencement of the Act, the time period to recover these will now be six years from the date when the amount imposed became due to the local authority but was not paid. Where a debt takes time to be recovered, provided legal proceedings have commenced within this six year limitation period, recovery can continue. If it has not, and this period is reached, the debt **must** be written off.

Options to recover debt

4.1 Where a debt is to be collected local authorities **should** explore the full range of options available to recover this. This is to ensure that the appropriate method is chosen without undue expense on the authority or undue impact on the person concerned. This is particularly important should a debt ultimately become subject to court proceedings as the court will want to consider what alternatives have been taken by the local authority to resolve the issue before court action was sought. If no effort has been made to reach an agreement first, not only may this result in an authority prematurely taking court action but may also be held by the court against the local authority when considering its judgement.

4.2 The greater the person's care needs, the more effort should be made to resolve the issue positively through the use of effective social work skills. Options may include negotiation, mediation and arbitration with court action only being taken as a last resort.

4.3 Local authorities **must** not send threatening letters demanding payment to those accruing debts and **should** always engage with those in this position to establish a dialogue. As a first step, a local authority **should** contact the person concerned to alert them to the situation, to ascertain why a debt has occurred and to establish whether the debt is to be met and if so, agree how this is to occur. This **should** be through personal contact with the person, which could be by telephone or by a visit, as an authority considers appropriate. Where this does not resolve the situation and the debt remains, a local authority **should** consider a number of alternative options to resolve the situation which include, but is not limited to, the following:

- Negotiating an agreement - an agreement on repayment of the debt could be negotiated by the local authority either directly with the person concerned or through a third party, such as an advocate to assist the person to understand the options available as regards repayment;
- Mediation – an agreement on repayment could be reached through an independent third party who assists the local authority and the person concerned to reach agreement. This could be carried out by a professional mediation service, or a person or organisation not involved in the case, such as an independent social worker or a local voluntary organisation. In these circumstances the local authority and the person must ultimately agree the course of action and not the mediator;
- Arbitration – a resolution could be reached which involves an independent arbitrator hearing both sides of the case and making a decision on behalf of the parties. If this option is chosen local authorities need to be aware that arbitration is usually binding on both sides and therefore, if it were not happy with an outcome it could not usually subsequently take a case to court.

4.4 In many cases the situation will be resolved through one of the above approaches or similar action, with an agreed repayment of the debt. Only where this does not occur **should** an authority consider whether to pursue recovery of the debt further.

Recovering debt where a person has a legal interest in property

5.1 Where a debt has accrued in relation to a person who is in receipt of care and support in a care home, and a financial assessment has determined that they have an interest in an eligible property, they **must** be offered the choice of meeting this debt through a deferred payment agreement (DPA) where they are eligible for an agreement. The operation of DPAs, and eligibility for them, is set out in the Care

and Support (Deferred Payment) (Wales) Regulations 2015 (the "Deferred Payment Regulations") and Annex D of this code. Where a person has accrued a debt and meets the eligibility criteria for a DPA, they **must** be offered the choice of entering into a DPA as a means of repaying this.

5.2 This option could be attractive to a person as it is a relatively simple way of meeting the debt without causing them immediate financial problems. It is also attractive as the interest rate that can be applied to a DPA is set by the Deferred Payment Regulations and is lower than the maximum amount a court can apply should an authority ultimately seek recovery of the debt through the courts. A local authority might also consider this option more viable as it will ensure the debt is secured, is at less risk of default and is likely to be quicker to secure than taking court action should that be ultimately required.

Creation of a charge over an interest in property

6.1 Where a person who has accrued a debt under Part 5 of the Act has an interest in a property, and declines the option of a DPA, or does not meet the eligibility criteria for a DPA, a local authority can, if it considers it appropriate, create a charge over that property under section 71 (Creation of a charge over an interest in land) of the Act to secure payment of the debt. Section 71 sets out the requirements where an authority wishes to pursue the recovery of a debt through this method and **must** be followed in all such circumstances.

Recovery of a debt through the courts

7.1 Only where a local authority has exhausted all reasonable options to recover a debt which it considers appropriate to recover, should it consider taking action through the courts. Where such action is ultimately considered, the HM Courts and Tribunals Service has developed a number of leaflets to help guide those taking action through the court process. These can be found at: http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do

Section 2 - Deprivation of Assets

General

8.1 This section of the code applies where a local authority believes that a person has deliberately deprived themselves of assets to avoid or reduce charges made under section 59 (Power to impose charges) of the Act for care and support arranged or provided for that person, or support provided where that person is a carer, by a local authority.

8.2 The general provisions governing such circumstances are set out in section 70 (Recovery of charges, interest, etc) in relation to a person and section 72 (Transfer of assets to avoid charges) of the Act in relation to a third party (a transferee). In considering how to deal with such circumstances local authorities **must** abide by the requirements of these sections and of this annex of the code of practice.

8.3 For the purposes of this section of the code "assets" means capital and/or income.

Identify possible deprivation

9.1 When undertaking or reviewing a financial assessment, or determining or reviewing a person's charge a local authority may identify circumstances that

suggest that a person may have deliberately deprived themselves of assets in order to reduce, or avoid, the financial contribution they are required to make towards the cost of their care and support.

9.2 Where a local authority believes that derivation may have occurred it **should take** all reasonable steps to ascertain if this has occurred and if so, the reason for this. It **must not** assume that the person is deliberating depriving themselves of the relevant assets to reduce or avoid a charge which has been imposed for their care and support, or for support if a carer. A local authority **must** seek to establish the reason for the deprivation where it has occurred and only where it is clear that it is as a result of a person's deliberate action should they consider further action.

9.3 In dealing with such cases local authorities **should** bear in mind that they are bound by the public law principle of acting reasonably at all times and **must** act not only in accordance with powers they have in relation to deprivation of assets in the Act but also in accordance with the principles established in the human rights legislation. Given this a local authority **must,** where it is clear deprivation has occurred and it has decided to collect the debt which results from this, pursue all other reasonable options to collect this before using their deprivation powers under sections 70 or section 72 of the Act, including taking court action if this is considered appropriate in the particular case.

9.4 Local authorities **should** be aware of the client group with which they are dealing. Unlike council tax or rent arrears debt, a local authority is not dealing with a potentially healthy general population but those with a physical or sensory impairment, or potentially older frail people. Hence in considering potential cases of deprivation local authorities should bear in mind the needs and characteristics of these clients given that financial assessment and charging processes can be confusing and complex. The recovery of a resultant debt from those in this situation is therefore a sensitive issue given their potential vulnerability and a local authority's ultimate responsibility to meet needs.

9.5 Local authorities **must** bear in mind that there are a number of genuine reasons why apparent deprivation may have occurred and **must** consider each case on the merits of its specific circumstances before undertaking any form of formal debt recovery. Given this, local authorities **must** where it believes deprivation may have occurred follow a similar set of actions to those described in paragraph 2.2 in relation to debts, to alert the person to the fact that deprivation may have occurred, to establish what the deprivation has entailed, the reason for this and if possible where deprivation has occurred, to agree a solution.

What is meant by deprivation of assets

10.1 Deprivation of assets has occurred where a person has intentionally deprived or decreased their overall assets in order to reduce or remove any charge impose for their care and support, or support if a carer. This means that they must have made a conscious decision to do this in the knowledge that to do so would have such an effect on their charge.

10.2 Where an asset has been used by a person to meet any debt that would otherwise remain, even if that is not immediately due, this **must not** be considered as deprivation but as a normal use of financial resources by a person to meet expenses.

Has deprivation of capital occurred

11.1 It is up to the person to prove to the local authority that they no longer own a capital asset. If they are not able to, the local authority may assess them as if they still had the asset. For capital assets, acceptable evidence of their disposal would be:

(a) A trust deed;
(b) Deed of gift;
(c) Receipts for expenditure;
(d) Proof debts have been repaid.

11.2 A person can deprive themselves of capital in many ways, but common approaches may be:

(a) A lump-sum payment to someone else, for example as a gift;
(b) Substantial expenditure has been incurred suddenly and is out of character with previous spending;
(c) The title deeds of a property have been transferred to another person;
(d) Assets have been put in to a trust that cannot be revoked;
(e) Assets have been converted into another form that would be subject to a disregard under a financial assessment, for example personal possessions;
(f) Assets have been reduced by living extravagantly, for example buying an expensive sports car;
(g) Assets have been used to purchase an investment bond with life insurance.

11.3 Apparent deprivation will not be deliberate in all cases. Questions of deprivation therefore should only be considered where the person ceases to possess assets that would have otherwise been taken into account for the purposes of a financial assessment or has turned the asset into one that is now disregarded in an assessment.

11.4 As there are many reasons for a person depriving themselves of an asset, a local authority **should** consider the following before deciding whether deprivation has deliberately occurred and whether, as a result, it wishes to pursue any resultant lost income:

(a) Whether avoiding or reducing a charge was a significant motivation;
(b) The timing of the disposal of the asset. At the point the capital was disposed of could the person have had a reasonable expectation of the need for care and support, even if at this point they were not yet receiving this; and
(c) Would the person have had a reasonable expectation of needing to contribute towards the cost of this either now or at some future point.

11.5 It would be unreasonable to decide that deprivation had occurred where if at the time the disposal took place they were fit and healthy and could not have foreseen any need for care and support in the foreseeable future.

Has deprivation of income occurred

12.1 It is also possible for a person to deliberately deprive themselves of income. For example, they could give away or sell the right to an income from an occupational pension.

12.2 It is up to the person to prove to the local authority that they no longer have the income. Where a local authority considers that a person may have deprived

themselves of income, they may treat them as possessing notional income for the purposes of a financial assessment.

12.3 The local authority will need to determine whether deliberate deprivation of income has occurred and if so, what action to take as a result of this. In doing so it should consider:

(a) Was it the person's income;
(b) What was the purpose of the disposal of the income;
(c) The timing of the disposal of the income. At the point the income was disposed of could the person have had a reasonable expectation of the need for care and support, either now or at some point in the future.

12.4 In some circumstances the income may have been converted into capital. The local authority should consider the level of the capital limit and whether the subsequent change made a material change to the charge which was imposed for the person's care and support, or support if a carer.

Local authority investigations

13.1 In some cases a local authority may wish to conduct its own investigations into whether deprivation of assets has occurred rather than relying solely on the declaration of the person. There is separate guidance under the Regulation of Investigatory Powers Act 2000 which sets out the limits to a local authority's powers to investigate. Local authorities **must** have regard to that Act in any investigations it undertakes.

What happens where deprivation of assets has occurred

14.1 If a local authority decides a person has deliberately deprived themselves of assets to avoid or reduce a charge for care and support, they will first need to decide whether to pursue this and treat the person as if they still had the asset for the purposes of their financial assessment.

14.2 If an authority decides to do so it **should** treat the asset as notional capital or notional income, as appropriate, in the person's financial assessment as if the deprivation had not occurred.

14.3 If the person in depriving themselves of an actual resource so as to reduce the remaining value of their capital or income, then for the purposes of the person's financial assessment they should be treated as notionally possessing the difference between the value of their current resources and the resources which they use to hold.

Recovering charges from a third party (a transferee)

15.1 Where the person has transferred the asset to a third party (a transferee) to deliberately reduce or avoid a charge, the transferee is liable to pay the local authority the difference between what it would have collected and what it did collect as a consequent of the transfer. However, the transferee is not liable to pay anything which exceeds the benefit they have received as a result of the transfer.

15.2 If the person has transferred assets to more than one transferee, each of those people is liable to pay the local authority the difference between what it would have collected and what it did collect in charges as a result of the transfer, in

proportion to the amount they received.

15.3 As with any other debt, the local authority can ultimately use the courts to recover debts should they wish, but this **should only** be used after other avenues of securing the debt have been exhausted. When pursing the recovery a local authority **should** do so in accordance with the first section of this annex on debt recovery.

Other recovery routes

16.1 Local authorities may also want to consider other options that may be available to them in the recovery of debts. For example, Section 423 of the Insolvency Act 1986 provides additional routes to recover debts where a person may has transferred or sold their assets to a third party at a price that is lower than the market value. This is with the intention of putting those assets out of reach of, or prejudicing the interests of, someone who may wish to bring a claim against that person. In considering such options, a local authority **should** obtain its own legal advice.

Explanatory Memorandum to the revised code of practice on the exercise of social services functions in relation to charging and financial assessment under part 4 (direct payments and choice of accommodation) and part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014.

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above code of practice and in accordance with Standing Order 27.14.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the revised code of practice on the exercise of social services functions in relation to charging and financial assessment under part 4 and part 5 of the Social Services and Well-being (Wales) Act 2014.

Julie Morgan AM
Deputy Minister for Health and Social Services
13 February 2019

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (the "Act") brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the foundation, along with regulations and codes of practice made under it, to a statutory framework for the delivery of social care in Wales to support people of all ages as part of their families and communities.

Under the Act local authorities have discretion to charge for the care and support they provide or arrange for a person, or the support they provide or arrange for a carer. They also have discretion to set a contribution or reimbursement for direct payments they provide to a person to enable them to arrange their care and support themselves. This applies to care and support in a person's own home, within the community, or in residential care. Where an authority wishes to apply this discretion to set a charge, contribution or reimbursement, regulations made under the Act govern the arrangements applicable to this.

Regulations governing local authorities discharging their discretion to set a charge, contribution or reimbursement were made under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016. A code of practice on financial assessment and charging to accompany these regulations was also made under the Act and came into effect on 6 April 2016.

To introduce a number of policy changes since the regulations came into effect, several amendments were applied through regulations which came into force on 10 April 2017 and 9 April 2018 respectively. These were necessary to update several sets of regulations made under Parts 4 and 5 of the Act. Revisions to the code of practice were also put in place to reflect the changes made by the regulations which also came into force on 10 April 2017 and on 9 April 2018 respectively.

A number of new changes are now proposed to two sets of regulations made under the Act; The Care and Support (Charging) (Wales) Regulations 2015 and the Care and Support (Financial Assessment) (Wales) Regulations 2015. These are to come into force on 8 April 2019. Most of these do not of themselves make any consequential changes to the revised code of practice. However, an amendment to be applied to the Financial Assessment Regulations does require a consequential change to the code. In addition, there is a need to amend the revised code from that date to reflect changes made by the UK Government to the Income Support (General) Regulations 1987 to introduce new compensation schemes and trusts. Lastly, there is also a need to amend the revised code to make reference to guidance relevant when placing a person in residential care after being discharged from hospital. These amendments to the revised code of practice are the subject of this Explanatory Memorandum.

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

Section 146 of the Act lays down the procedure to be followed before issuing and approving this revised code of practice. This final version of the revised code of practice

will be laid before the National Assembly for 40 days after which time, if no resolutions are made, Welsh Ministers must issue it.

There are no other matters the Minister wishes to bring to the Committee's attention.

3. Legislative background

The powers enabling the making of this code are contained in Sections 145 and 146 of the Act. Section 145 of the Act permits Welsh Ministers to issue, and from time to time revise, one or more codes on the exercise of social services functions. Section 146 of the Act lays down the procedure to be followed when issuing or revising a code under section 145. It is proposed that the further revised code comes into force on 8 April 2019. .

4. Purpose & intended effect of the legislation

This revised code of practice has been amended to introduce a small number of technical changes. A list is attached. These include:

- an addition to the list of forms of capital and income that should be fully disregarded when capital or income are taken into account in a financial assessment for charging for any form of social care and support. This is to add reference to an approved blood scheme or trust established to provide compensation in respect of a person having been infected from contaminated blood products. These schemes and trusts have already been added by the UK Government to the Income Support (General) Regulations 1987 and as a consequence, to the Financial Assessment Regulations made under the Social Services and Well-being (Wales) Act 2014. This is because these regulations directly read across to the Income Support Regulations.

- a further addition to the list of capital that should be fully disregarded when capital is taken into account in a financial assessment of any payment made under or by a trust established for the purpose of giving relief and assistance to disabled people whose disabilities were caused by their mother during their pregnancy taking a preparation containing the drug known as "Thalidomide", which is approved by the Secretary of State for Work and Pensions (the Thalidomide Trust);

- an addition to the part of the revised code dealing with choice of residential accommodation to ensure that part of the code is read in conjunction with the current guidance on procedures when discharging patients from hospital to a care setting;

- additions in appropriate parts of the revised code to reference the regulations coming into force in April 2019. These are "The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019" This is for completeness as the new regulations amend previous regulations referred to in the revised code of practice;

5. Consultation

No consultation has been undertaken in this instance. This is due to the technical nature of these amendments to the revised code, changes made by the UK

Government to compensation schemes, and a need to ensure the revised code accurately refers to regulations previously made.

Part 2 - REGULATORY IMPACT ASSESSMENT

The amendments to this revised code of practice are to reflect a change applied through regulations to be introduced on 9 April 2019, changes already applied by the UK Government to compensation schemes and a need to ensure the revised code includes a reference to relevant guidance and accurately refers to regulations previously made. As such the amendments do not introduce any new legal or financial requirements on the public, private or voluntary sectors, nor on care and support recipients. On this basis a detail Regulatory Impact Assessment has not been prepared.

Annex

Amendments to the Revised Code of Practice on Charging and Financial Assessment

Chapter 5 - Common issues for charging
Addition at 5.1 to reference to the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

Chapter 10 - Choice of accommodation
An addition to apply a new 10.1. This is to ensure this part of the code is read in conjunction with the current guidance on procedures when discharging patients from hospital to a care setting, where this occurs.

Annex A - Treatment of Capital
Addition at 1.2 and 2.22 to reference the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

Addition at 2.28(g) to the list of forms of capital which must be disregarded where capital is taken into account in a financial assessment for charging for any form of social care and support as:

"(xiii) An approved blood scheme, that is a scheme established or approved by the Secretary of State for Work and Pensions, or a trust established with funds provided by the Secretary of State, to provide compensation in respect of a person having been infected from contaminated blood products;

(xvi) Any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled people whose disabilities were caused by their mother during their pregnancy taking a preparation containing the drug known as "Thalidomide", which is approved by the Secretary of State for Work and Pensions (the Thalidomide Trust)"

[It should be noted that this provision has been added to the Care and Support (Financial Assessment) (Wales) Regulations 2015 at Schedule 2 paragraph 35 by the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019].

Annex B - Treatment of Income
Addition at 1.2 to reference the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

Addition at 2.28 to the list of forms of income which must be disregarded where capital is taken into account in a financial assessment for charging for any form of social care and support. this is to add:

"(xiv) An approved blood scheme, that is a scheme established or approved by the Secretary of State for Work and Pensions, or a trust established with funds provided by the Secretary of State, to provide compensation in respect of a person having been infected from contaminated blood products".

Annex D - Deferred Payment Agreements

Addition at 3.2 (f) to reference the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/VG/0155/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

14 February 2019

Dear Mick,

This letter is to inform you that I have laid two Statutory Instrument Consent Memoranda in the National Assembly for Wales in respect of:

- **The Social Security Coordination (Benefits in Kind etc) (Amendment etc) (EU Exit) Regulations 2019 and;**

- **The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019**

as required by Standing Order 30A (SO30A).

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

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

Yours sincerely,

Vaughan Gething

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019**
DATE	**14 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

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

Policy Overview of the SI
The Regulations provide for the 'switching off' in the UK of current reciprocal healthcare arrangements relating to the right to purchase healthcare overseas and apply for reimbursement. This will ensure that, post-EU exit, the UK will not be unilaterally committed to continue to continue to satisfy its current obligations. However, the Regulations also provide that current reciprocal arrangements may continue until December 2020 where reciprocal agreements have been reached between the UK and other countries.

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

The Directive is not widely utilised in Wales; only 27 reimbursements were made to Welsh patients in 2017. Anecdotal evidence from Local Health Boards suggests that the Directive is more accessible to patients with in depth knowledge of the system and the necessary financial status to pay up front for healthcare costs. There would be financial risks to Local Health Boards should the Directive not be switched off in Wales.

The retained EU law which is being amended

- The Health and Social Security Act 1984
- The National Health Service Act 2006
- The National Health Service (Wales) Act 2006
- The Health and Social Care Act 2012
- The Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998
- The National Assembly for Wales (Transfer of Functions) Order 1999
- The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) Regulations 2004

- The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Wales) Regulations 2004
- The National Health Service (Cross-Border Healthcare) Regulations 2013
- The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013
- 2011/890/EU: Commission Implementing Decision
- 2013/329/EU: Commission Implementing Decision
-

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

The Cross-Border SI will remove sections 6A to 6BB of the NHS (Wales) Act 2006 which provide that the Welsh Ministers will reimburse costs to Welsh residents for pre-planned treatment in an EEA State. Section 131((a)(ii) is also removed which provides the Welsh Ministers with a regulation making power to provide for the payment by the Welsh Ministers of travelling expenses incurred for the purpose of obtaining pre-planned cross-border healthcare.

The Cross-Border SI will also remove section 10 of the Health and Social Security Act 1984 which provides the Welsh Ministers with a power to reimburse the cost of medical and maternity treatment in members' states of European Economic Community.

The Welsh Ministers have the function of designating a body as the National Contact Point (NCP) under the 2013 Regulations. The Cross-Border SI will remove this function. The Welsh Ambulance Services NHS Trust is no longer the designated NCP for Wales.

The Cross-Border SI does not involve the transfer of any functions. The only new function being conferred on the Secretary of State is that of maintaining and publishing a list of the 3rd countries with which the UK agrees a short bilateral agreement for the provision reciprocal healthcare (and the entry into force and expiry dates of that agreement).

The purpose of the amendments

The purpose of the amendments is to correct deficiencies arising from the UK leaving the European Union on the application of patients' rights in cross-border healthcare. The Cross-Border Healthcare Directive (Directive 2011/24/EU) clarifies patients' rights to obtain qualifying treatments in another European Economic Area Member State and to receive reimbursement from their home healthcare system. The Directive was implemented in England and Wales via the National Health Service (Cross-Border Healthcare) Regulations 2013 ("the 2013 Regulations"). The Cross-Border SI will make corrections for reciprocity; revoking the Directive implementing legislation so that it no longer operates after Exit Day whilst also putting transitional arrangements in place to allow the effect of the Directive to continue to operate until December 2020 for countries who have entered into an appropriate reciprocal agreement with the UK Government. The Cross-Border SI also makes saving provisions in relation to pending applications.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://beta.parliament.uk/work-packages/dP0mXn4e

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. Although healthcare is devolved, the scope for Wales to implement different policy is limited by a requirement to meet any international obligations entered into by the UK. These would include international healthcare agreements. The Directive was originally transposed on an England and Wales basis. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to an England and Wales wide SI ensures that there is a single legislative framework across England and Wales which promotes clarity and accessibility for patients and providers. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to the NHS (Wales) Act 2006

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019

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

2. The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019 was laid before Parliament on 11 February 2019 and is now being laid before the Assembly. The order can be found at:

https://beta.parliament.uk/work-packages/dP0mXn4e

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the application of patients' rights in cross-border healthcare.

4. This Cross-Border Directive (Directive 2001/24/EU) ("the Directive") clarifies patients' right to obtain qualifying treatments in another European Economic Area Member State and to receive reimbursement from their home healthcare system. The Directive was implemented in England and Wales via the National Health Service (Cross-Border Healthcare) Regulations 2013. The SI will make corrections for reciprocity; revoking the Directive implementing legislation so that it no longer operates after Exit Day whilst also putting transitional arrangements in place to allow the effect of the Directive to continue to operate until December 2020 for countries who have entered into an appropriate reciprocal agreement with the UK Government. The SI also makes savings provisions in relation to pending applications.

Relevant provision to be made by the SI

5. The SI amend the NHS (Wales) Act 2006. The SI will remove those sections (6A to 6BB) which provide that the Welsh Ministers will reimburse costs to Welsh residents for pre-planned treatment in an EEA state together with section 131(a)(ii) which provides the Welsh Ministers with a regulation making power to provide for the payment by the Welsh Ministers of travelling expenses incurred for the purpose of obtaining pre-planned treatment in an EEA state.

6. The SI also removes section 10 of the Health and Social Security Act 1984 which provides the Welsh Ministers with a power to reimburse the cost of medical and maternity treatment in members' states of European Economic Community. .

7. It is the view of the Welsh Government that the provisions described in paragraph 5 above fall within the legislative competence of the National Assembly for Wales in so far as they relate to the provision of healthcare.

Why it is appropriate for the SI to make this provision

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

Vaughan Gething AM
Minister for Health and Social Services

14 February 2019

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

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. 0000

EXITING THE EUROPEAN UNION

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

CONSTITUTIONAL LAW

DEVOLUTION, WALES

LOCAL GOVERNMENT, ENGLAND

SOCIAL SECURITY

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

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

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

(**a**) 2018 c.16.

PART 1

Preliminary

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 and come into force on exit day(**a**).

(2) In these Regulations—

"the NHS Act 2006" means the National Health Service Act 2006(**b**);

"the NHS (Wales) Act" means the National Health Service (Wales) Act 2006(**c**);

"the 2013 Regulations" means the National Health Service (Cross-Border Healthcare) Regulations 2013(**d**);

"the NHS Functions Regulations" means the National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013(**e**).

(3) An amendment, repeal or revocation made by these Regulations has the same extent and application as the provision being amended, repealed or revoked.

(4) The amendments, repeals and revocations made by Parts 2 and 3 take effect subject to the provisions made by Part 5 of these Regulations.

PART 2

Amendments to primary legislation

The Health and Social Security Act 1984

2.—(1) The Health and Social Security Act 1984(**f**) is amended as follows.

(2) Omit section 10 (reimbursement of cost of medical and maternity treatment in member States of European Economic Community).

(3) In section 26(4) (extent) omit "section 10".

The National Health Service Act 2006

3. In the NHS Act 2006 omit the following provisions—

(a) section 6A (reimbursement of cost of services provided in another EEA state)(**g**);

(b) section 6B (prior authorisation for the purposes of section 6A)(**h**);

(c) section 6BA (reimbursement of cost of services provided in another EEA state where expenditure incurred on or after 25 October 2013)(**i**);

(d) section 6BB (prior authorisation for the purposes of section 6BA)(**j**);

(**a**) Section 20(1) of the European Union (Withdrawal) Act 2018 defines "exit day".
(**b**) 2006 c.41.
(**c**) 2006 c.42.
(**d**) S.I. 2013/2269; as amended by S.I. 2015/139 and 238.
(**e**) S.I. 2013/261; amended by S.I. 2013/2269; there are other amending instruments but none is relevant.
(**f**) 1984 c.48. Functions under section 10 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, S.I. 1999/672; those functions are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).
(**g**) Section 6A was inserted by S.I. 2010/915 and amended by paragraph 3 of Schedule 4 to the Health and Social Care Act 2012 (c.7) ("the 2012 Act") and S.I. 2013/2269.
(**h**) Section 6B was inserted by S.I. 2010/915 and amended by paragraph 4 of Schedule 4 to the 2012 Act.
(**i**) Section 6BA was inserted by S.I. 2013/2269.
(**j**) Section 6BB was inserted by S.I. 2013/2269.

(e) section 6D (regulations relating to EU obligations)(**a**);

(f) section 6E(7)(b) (regulations as to the exercise of functions by the Board or clinical commissioning groups)(**b**);

(g) section 183(a)(ii) (payment of travelling expenses)(**c**);

(h) the definition of "Regulation (EC) No. 883/2004" in section 275(1) (interpretation)(**d**) except in so far as it relates to section 183(a)(iii).

The National Health Service (Wales) Act 2006

4.—(1) The NHS (Wales) Act is amended as follows.

(2) In section 46 (GMS contracts: prescription of drugs, etc)—

(a) in subsection (3), for "Community marketing authorization or United Kingdom" substitute "UK";

(b) for subsection (4) substitute—

"(4) "UK marketing authorisation" has the meaning given by regulation 8(1) of the Human Medicines Regulations 2012 (S.I. 2012/1916).".

(3) Omit the following provisions—

(a) section 6A (reimbursement of cost of services provided in another EEA state)(**e**);

(b) section 6B (prior authorisation for the purposes of section 6A)(**f**);

(c) section 6BA (reimbursement of cost of services provided in another EEA state where expenditure incurred on or after 25 October 2013)(**g**);

(d) section 6BB (prior authorisation for the purposes of section 6BA)(**h**);

(e) section 131(a)(ii) (payment of travelling expenses)(**i**);

(f) the definition of "Regulation (EC) No. 883/2004" in section 206(1) (interpretation)(**j**) except in so far as it relates to section 131(a)(iii).

The Health and Social Care Act 2012

5. In the Health and Social Care Act 2012(**k**) omit the following provisions—

(a) section 124(9) (local modifications of prices: agreements);

(b) section 125(9) (local modifications of prices: applications).

The Cities and Local Government Devolution Act 2016

6. In the Cities and Local Government Devolution Act 2016(**l**) omit section 18(2)(b) (devolving health service functions).

(**a**) Section 6D was inserted by section 19 of the 2012 Act.
(**b**) Section 6E was inserted by section 20 of the 2012 Act.
(**c**) Section 183(a) was substituted by S.I. 2010/915 and amended by paragraph 98 of Schedule 4 to the 2012 Act and by S.I. 2013/2269.
(**d**) The definition was inserted by S.I. 2010/915.
(**e**) Section 6A was inserted by S.I. 2010/915 and amended by S.I. 2013/2269.
(**f**) Section 6B was inserted by S.I. 2010/915 and amended by S.I. 2013/2269.
(**g**) Section 6BA was inserted by S.I. 2013/2269.
(**h**) Section 6BB was inserted by S.I. 2013/2269.
(**i**) Section 131(a) was substituted by S.I. 2010/915 and amended by S.I. 2013/2269.
(**j**) The definition was inserted by S.I. 2010/915.
(**k**) 2012 c.7.
(**l**) 2016 c.1.

PART 3

Amendments to secondary legislation

The Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998

7. The Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998(**a**) is amended as follows—

(a) in article 1(2) (interpretation), omit the definitions of "Directive 2011/24/EU" and "National Contact Point";

(b) omit article 3(2)(d) (nature and functions of the trust) but not the "and" after it.

The National Assembly for Wales (Transfer of Functions) Order 1999

8. In Schedule 1 (enactments conferring functions transferred by article 2) to the National Assembly for Wales (Transfer of Functions) Order 1999(**b**) omit the entry relating to the Health and Social Security Act 1984.

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

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

(2) In Schedule 2 (drugs, medicines and other substances that may be ordered only in certain circumstances)—

(a) in the entry in column 2 of the table that corresponds to the entry in column 1 relating to drugs for the treatment of erectile dysfunction—

(i) in paragraph (b), before "by virtue of any other enforceable EU right" insert "who immediately before exit day was entitled to treatment";

(ii) in paragraph (c), for "who has an enforceable EU right" substitute "who immediately before exit day had an enforceable EU right".

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

10.—(1) The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) Regulations 2004(**d**) are amended as follows.

(2) In Schedule 2 (drugs, medicines and other substances that may be ordered only in certain circumstances)—

(a) in the entry in column 2 of the table that corresponds to the entry in column 1 relating to drugs for the treatment of erectile dysfunction—

(i) in paragraph (b), before "by virtue of any other enforceable EU right" insert "who immediately before exit day was entitled to treatment";

(ii) in paragraph (c), for "who has an enforceable EU right" substitute "who immediately before exit day had an enforceable EU right".

The National Health Service (Cross-Border Healthcare) Regulations 2013

11. The 2013 Regulations are revoked.

(**a**) S.I. 1998/678; relevant amendments were made by S.I. 2013/2729.
(**b**) S.I. 1999/672; to which there are amendments not relevant to these Regulations.
(**c**) S.I. 2004/629; relevant amendments were made by S.I. 2011/1043, 2013/2194 and 2014/1625.
(**d**) S.I. 2004/1022 (W.119); relevant amendments were made by S.I 2011/1043 and 2014/109.

The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013

12.—(1) The NHS Functions Regulations(**a**) are amended as follows.

(2) Omit the following provisions—

(a) regulation 3(a) (exercise of functions);

(b) regulation 4(1)(a) and (b) (procedure for applications);

(c) regulation 6(2)(a) and (b) (form and content of determination);

(d) regulation 7(3) and (4) (CCGs);

(e) regulation 8 (applications made before 1st April 2013).

(3) For regulation 4(3)(a) substitute—

"(a) information about the procedures the Board has in place for prior authorisation pursuant to Article 20 or Article 27(3);"

PART 4

Revocation of retained direct EU legislation

2011/890/EU: Commission Implementing Decision

13. 2011/890/EU: Commission Implementing Decision of 22 December 2011 providing the rules for the establishment, the management and the functioning of the network of national responsible authorities on eHealth is revoked.

2013/329/EU: Commission Implementing Decision

14. 2013/329/EU: Commission Implementing Decision of 26 June 2013 providing the rules for the establishment, management and transparent functioning of the Network of national authorities or bodies responsible for health technology assessment is revoked.

PART 5

Savings and Transitional Provision

Cross-border cases arising before exit day

15.—(1) The legislation referred to in Parts 2 and 3, except for regulations 2, 4(2), 8, 9 and 10 is to continue to apply on and after exit day without the amendments, repeals and revocations made by those Parts, and with the modifications made by Schedule 1 in a case where any of paragraphs (2) to (5) apply.

(2) This paragraph applies where a service that satisfied the condition in section 6A(3) or (4) or 6BA(4) or (7) of the NHS Act 2006 or the NHS (Wales) Act was provided, or began to be provided, before exit day.

(3) This paragraph applies where an application for authorisation under section 6B or 6BB of the NHS Act 2006 or the NHS (Wales) Act has been made, but not determined, before exit day.

(4) This paragraph applies where authorisation has been given under section 6B or 6BB of the NHS Act 2006 or the NHS (Wales) Act before exit day.

(**a**) S.I. 2013/261; relevant amendments were made by S.I. 2013/2269; there are other amending instruments but none are relevant.

(5) This paragraph applies where a cross-border healthcare service was provided or began to be provided to a visiting patient before exit day.

(6) Nothing in this regulation—

(a) requires reimbursement in respect of a service which was provided after the later of—

(i) the end of the period of one year beginning with the day after the day on which exit day falls, or

(ii) in a case where the authorisation for the service authorises the service to be provided within a specified period, the end of the specified period;

(b) imposes an obligation in relation to a charge to a visiting patient for a service which was provided after the end of the period of one year beginning with the day after the day on which exit day falls.

(7) In this regulation—

"cross-border healthcare service" and "visiting patient" have the same meaning as in the 2013 Regulations;

"service" is to be construed in accordance with section 6A or section 6BA of the NHS Act 2006 or, as the case may be, of the NHS (Wales) Act.

Cases arising during cross-border arrangements

16.—(1) The legislation referred to in Parts 2 and 3, except for regulations 2, 4(2), 8, 9 and 10, is to continue to apply on and after exit day without the amendments, repeals and revocations made by those Parts, and with the modifications made by Schedule 2, so far as relating to—

(a) reimbursement of qualifying EEA expenditure;

(b) authorisation in relation to the provision of a service in an EEA State;

(c) the charge to a visiting patient for the provision of a cross-border healthcare service;

(d) functions relating to National Contact Points.

(2) The legislation applied by paragraph (1) has effect so as to impose an obligation relating to—

(a) reimbursement of qualifying EEA expenditure,

(b) authorisation in relation to the provision of a service in an EEA State, or

(c) the charge to a visiting patient for the provision of a cross-border healthcare service,

only if, and only during the period when, cross-border arrangements have effect between the United Kingdom and the EEA State in question or, in the case of sub-paragraph (c), the member State which is the visiting patient's member State of affiliation within the meaning of Article 3(c) of the Directive.

(3) For the purposes of this regulation—

(a) arrangements between the United Kingdom and an EEA State concerning cross-border healthcare are cross-border arrangements if and only if the EEA State is included in the list maintained by the Secretary of State under paragraph (4);

(b) cross-border arrangements between the United Kingdom and an EEA State are to be treated as beginning and ceasing to have effect at the times specified in the list maintained by the Secretary of State under paragraph (4).

(4) The Secretary of State must maintain a list for the purposes of paragraph (3).

(5) The list must specify in relation to each EEA State listed in it—

(a) when cross-border arrangements between the EEA State and the United Kingdom are to be treated as beginning to have effect;

(b) when cross-border arrangements between the EEA State and the United Kingdom are to be treated as ceasing to have effect.

(6) The time specified in the list as the time when cross-border arrangements are to be treated as beginning to have effect may not be before exit day.

(7) The time specified in the list as the time when cross-border arrangements are to be treated as ceasing to have effect may not be after 31 December 2020.

(8) The Secretary of State may remove an EEA State from the list before the time specified in the list as the time when the EEA State's cross-border arrangements are to be treated as beginning to have effect.

(9) The Secretary of State may change a time specified in the list (but not after the time specified).

(10) The Secretary of State must publish the list and keep it up to date.

(11) This regulation is without prejudice to regulation 15.

(12) In this regulation—

"cross-border healthcare service", "healthcare", "National Contact Point" and "visiting patient" have the same meaning as in the 2013 Regulations;

"cross-border healthcare", except in the phrase "cross-border healthcare service", means—

(a) healthcare provided in an EEA State, payments in respect of which may be made by the government of the United Kingdom; or

(b) healthcare provided in the United Kingdom, payments in respect of which may be made by an EEA State;

"the Directive" means Directive 2011/24/EU of the European Parliament and of the Council of 9th March 2011 on the application of patients' rights in cross-border healthcare;

"qualifying EEA expenditure" has the same meaning as in section 6BA(3) of the NHS Act 2006 or, as the case may be, of the NHS (Wales) Act;

"service" is to be construed in accordance with section 6BA of the NHS Act 2006 or, as the case may be, the NHS (Wales) Act.

Savings provision for cases arising during cross-border arrangements

17.—(1) The legislation referred to in Parts 2 and 3, except for regulations 2, 4(2), 8, 9 and 10, is to continue to apply on and after exit day (and despite any cross-border arrangements ceasing to have effect), without the amendments, repeals and revocations made by those Parts and with the modifications made by Schedule 3, in a case where any of paragraphs (2) to (5) apply.

(2) This paragraph applies where a service that satisfies the condition in section 6BA(4) or (7) of the NHS Act 2006 or the NHS (Wales) Act is provided, or began to be provided, in an EEA State during the relevant period in relation to that State.

(3) This paragraph applies where, during the relevant period in relation to an EEA State, an application under section 6BB of the NHS Act 2006 or the NHS (Wales) Act for authorisation in relation to the provision of a service in that State was made, but not determined.

(4) This paragraph applies where, during the relevant period in relation to an EEA State, authorisation is given under section 6BB of the NHS Act 2006 or the NHS (Wales) Act in relation to the provision of a service in that State.

(5) This paragraph applies where a cross-border healthcare service was provided, or began to be provided, to a visiting patient during the relevant period in relation to the patient's member State of affiliation within the meaning of Article 3(c) of the Directive.

(6) Nothing in this regulation—

(a) requires reimbursement of qualifying EEA expenditure incurred on a service which was provided in an EEA State after the later of—

(i) the end of the period of one year beginning with the day after the end of the relevant period in relation to that State, or

(ii) in a case where the authorisation for the service authorises the service to be provided within a specified period, the end of the specified period;

(b) imposes an obligation in relation to a charge to a visiting patient for a service which was provided after the end of the period of one year beginning with the day after the end of the relevant period in relation to the member State which was the visiting patient's member State of affiliation within the meaning of Article 3(c) of the Directive.

(7) This regulation does not have effect in a case to which regulation 15 applies.

(8) In this regulation—

"cross-border arrangements" is to be construed in accordance with regulation 16;

"cross-border healthcare service" and "visiting patient" have the same meaning as in the 2013 Regulations;

"the Directive" has the same meaning as in regulation 16;

"qualifying EEA expenditure" has the same meaning as in section 6BA(3) of the NHS Act 2006;

"the relevant period" means, in relation to an EEA State, the period during which cross-border arrangements between the United Kingdom and that State have effect;

"service" is to be construed in accordance with section 6BA of the NHS Act 2006 or, as the case may be, the NHS (Wales) Act.

PART 6

Rights etc deriving from the Treaties

EU-derived rights

18. Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised and available in domestic law(**a**) by virtue of section 4 of the European Union (Withdrawal) Act 2018 (including as they are modified by domestic law from time to time) cease to be recognised and available in domestic law so far as they are inconsistent with, or are otherwise capable of affecting the interpretation, application or operation of, provision made by these Regulations.

Signed by authority of the Secretary of State for Health and Social Care.

Name
Minister of State,
Date Department of Health and Social Care

(**a**) "Domestic law" is defined in section 20 of the European Union (Withdrawal) Act 2018.

SCHEDULE 1

Regulation 15

Cross-border cases arising before exit day

PART 1

Modifications to primary legislation

Modifications to the NHS Act 2006

1. The NHS Act 2006 is to be read as if—

(a) in the headings to sections 6A and 6BA (reimbursement of cost of services provided in an EEA state), for references to "another EEA state" there were substituted "an EEA state";

(b) in those sections, for references to "an EEA state other than the United Kingdom" there were substituted "an EEA state";

(c) in section 6D (regulations relating to EU obligations) and the heading to that section, for references to "EU obligations" there were substituted "retained EU obligations";

(d) in section 6E(7)(b) (regulations as to exercise of functions by the Board or clinical commissioning groups), for the reference to "EU obligations" there were substituted "retained EU obligations";

(e) in section 275(1) (interpretation), in the definition of "Regulation (EC) No. 883/2004" at the end there were inserted "as continued by regulation 17 of, and Schedule 5 to, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019".

Modifications to the NHS (Wales) Act

2. The NHS (Wales) Act is to be read as if—

(a) in the headings to sections 6A and 6BA (reimbursement of cost of services provided in an EEA state), for references to "another EEA state" there were substituted "an EEA state";

(b) in those sections, for references to "an EEA state other than the United Kingdom" there were substituted "an EEA state";

(c) in section 206(1) (interpretation), in the definition of "Regulation (EC) No. 883/2004" at the end there were inserted "as continued by regulation 17 of, and Schedule 5 to, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019".

Modifications to the Health and Social Care Act 2012

3. The Health and Social Care Act 2012 is to be read as if—

(a) in section 124(9) (local modifications of prices: agreements), for "an EU obligation" there were substituted "a retained EU obligation";

(b) in section 125(9) (local modifications of prices: applications), for "an EU obligation" there were substituted "a retained EU obligation".

Modification to the Cities and Local Government Devolution Act 2016

4. The Cities and Local Government Devolution Act 2016 is to be read as if for section 18(2)(b) (devolving health service functions) there were substituted—

"(b) sections 6BA and 6BB of that Act (duties regarding the reimbursement of costs of services provided in an EEA state),".

PART 2

Modifications to secondary legislation

Modifications to the 2013 Regulations

5. The 2013 Regulations are to be read as if—

(a) in regulation 1(3) (interpretation)—

(i) in the definition of "resident patient", for the reference to "the United Kingdom is" there were substituted "immediately before exit day the United Kingdom was";

(ii) in the definition of "visiting patient", for the reference to "a member State other than the United Kingdom is" there were substituted "immediately before exit day a member State other than the United Kingdom was";

(b) in regulation 2 (national contact point: designation), for references to "must" there were substituted "may";

(c) in regulation 3 (NCP: information about treatment in England and Wales)—

(i) in paragraph (1), before "ensure" there were inserted "make reasonable efforts to";

(ii) in paragraph (2), before "ensure" there were inserted "make reasonable efforts to";

(d) in the heading to regulation 4 (NCP: information about treatment in a member State), for the reference to "another member State" there were substituted "a member State";

(e) in regulation 4(1)—

(i) before "ensure" there were inserted "make reasonable efforts to";

(ii) for references to "other member States" there were substituted "member States";

(iii) for the reference to "another member State" there were substituted "a member State";

(f) regulation 4A (NCP: information about prescriptions) were omitted;

(g) in regulation 5 (NCP: cross-border co-operation)—

(i) for paragraph (1) there were substituted—

"(1) In so far as it considers it is appropriate for the purposes of giving effect to regulation 15 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019, the NCP must make reasonable efforts to co-operate with the national contact points in member States and any other national contact points in the United Kingdom.";

(ii) in paragraph (2), after "must" there were inserted "so far as the NCP considers appropriate;

(h) regulation 6 (NCP: duty to consult) were omitted;

(i) in regulation 9(1) (information on rights and entitlements), after "must" there were inserted "make reasonable efforts to";

(j) in regulation 12(1) (information on rights and entitlements), after "must" there were inserted "make reasonable efforts to";

(k) in the heading to regulation 14 (exemption from NHS charges), for the reference to "another member State" there were substituted "a member State";

(l) in regulation 14—

(i) in paragraph (2), for the reference to "P is" there were substituted "immediately before exit day P was";

(ii) in paragraph (2)(a), for the reference to "is resident" there were substituted "was resident";

(iii) in paragraph (2)(b), for the reference to "is the competent member State" there were substituted "was the competent member State";

(iv) in paragraph (3)(b), after the reference to "it is not provided" there were inserted "or, had it been provided immediately before exit day, it would not be provided";

(v) in paragraph (4)(b), at the end there were inserted "as continued by regulation 17 of, and Schedule 5 to, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019";

(m) in regulation 16 (review), after paragraph (5) there were inserted—

"(6) No review may be carried out after 31 December 2020."

(n) the Schedule (elements that must be included in prescriptions) were omitted.

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

6. The NHS Functions Regulations are to be read as if, in regulation 3(a) (exercise of functions), for references to "another EEA state" there were substituted "an EEA state".

SCHEDULE 2

Regulation 16

Cases arising during cross-border arrangements

PART 1

Modifications to primary legislation

Modifications to the NHS Act 2006

1. The NHS Act 2006 is to be read as if—

(a) sections 6A (reimbursement of cost of services provided in another EEA State) and 6B (prior authorisation for the purposes of section 6A) were omitted;

(b) in the heading to section 6BA (reimbursement of cost of services provided in another EEA state), for the reference to "another EEA state" there were substituted "an EEA state";

(c) in section 6BA(3), for the reference to "an EEA state other than the United Kingdom" there were substituted "an EEA state";

(d) for section 6BA(15) there were substituted—

"(15) In this section and section 6BB—

"authorised provider" in relation to any service provided in an EEA state means a person who is lawfully providing that service;

"NHS charge" means a charge payable under regulations made under section 172(1), 176(1) or 179(1);

"responsible authority" means, in relation to a patient, a local authority or clinical commissioning group responsible under or by virtue of this Act for providing or arranging for the provision of services for the benefit of the patient;

"service" includes any goods, including drugs, medicines and appliances, which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.";

(e) in section 6D (regulations relating to EU obligations) and the heading to that section, for references to "EU obligations" there were substituted "retained EU obligations";

(f) in section 6E(7)(b) (regulations as to exercise of functions by the Board or clinical commissioning groups), for the reference to "EU obligations" there were substituted "retained EU obligations";

(g) in section 183(a)(ii) (payment of travelling expenses) for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(h) in section 275(1) (interpretation), in the definition of "Regulation (EC) No. 883/2004" at the end there were inserted "as continued by regulation 17 of, and Schedule 5 to, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019".

Modifications to the NHS (Wales) Act

2. The NHS (Wales) Act is to be read as if—

(a) sections 6A (reimbursement of cost of services provided in another EEA State) and 6B (prior authorisation for the purposes of section 6A) were omitted;

(b) in the heading to section 6BA (reimbursement of cost of services provided in another EEA state), for the reference to "another EEA state" there were substituted "an EEA state";

(c) in section 6BA(3), for the reference to "an EEA state other than the United Kingdom" there were substituted "an EEA state";

(d) for section 6BA(15) there were substituted—

"(15) In this section and section 6BB—

"authorised provider", in relation to any service provided in an EEA state, means a person who is lawfully providing that service;

"NHS charge" means a charge payable under regulations made under section 121(1), 125(1) or 128(1);

"service" includes any goods, including drugs, medicines and appliances, which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.";

(e) in section 131(a)(ii) (payment of travelling expenses) for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(f) in section 206(1) (interpretation), in the definition of "Regulation (EC) No. 883/2004" at the end there were inserted "as continued by regulation 17 of, and Schedule 5 to, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019".

Modifications to the Health and Social Care Act 2012

3. The Health and Social Care Act 2012 is to be read as if—

(a) in section 124(9) (local modifications of prices: agreements), for "an EU obligation" there were substituted "a retained EU obligation";

(b) in section 125(9) (local modifications of prices: applications), for "an EU obligation" there were substituted "a retained EU obligation".

Modification to the Cities and Local Government Devolution Act 2016

4. The Cities and Local Government Devolution Act 2016 is to be read as if for section 18(2)(b) (devolving health service functions) there were substituted—

"(b) sections 6BA and 6BB of that Act (duties regarding the reimbursement of costs of services provided in an EEA state),".

PART 2

Modifications to secondary legislation

Modifications to the Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998

5. The Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998 is to be read as if—

(a) in article 1(2) (interpretation)—

(i) the definition of "Directive 2011/24/EU" were omitted;

(ii) for the definition of "National Contact Point" there were substituted—

""National Contact Point" means the National Contact Point that may be designated in relation to Wales under regulation 2 of the National Health Service (Cross-Border Healthcare) Regulations 2013;"

(b) in article 3(2)(d) (nature and functions of the trust), the reference to "for the purposes of Directive 2011/24/EU" were omitted.

Modifications to the 2013 Regulations

6. The 2013 Regulations are to be read as if—

(a) in regulation 1(3) (interpretation)—

(i) after the definition of "clinical commissioning group" there were inserted—

""cross-border arrangements" is to be construed in accordance with regulation 16 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019;"

(ii) in the definition of "healthcare provider" for "member State" there were substituted "relevant member State";

(iii) for the definition of "prescription", there were substituted—

"prescription" means a prescription for a medicinal product issued by a person who is practising in a profession included in the list published under regulation 214(6A)(**a**) of the Human Medicines Regulations 2012(**b**) in a member State that is included in that list in relation to that profession;"

(iv) after the definition of "prescription" there were inserted—

""relevant member State" means a member State which is included in a list maintained under regulation 16 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019;";

(v) for the definition of "resident patient" there were substituted—

""resident patient" means an individual who is ordinarily resident in England or Wales; ";

(vi) in the definition of ""visiting patient" for "a member State other than the United Kingdom" there were substituted "a relevant member State"";

(b) in regulation 2 (national contact point: designation)—

(i) for references to "must" there were substituted "may";

(ii) for references to "the Directive" there were substituted "cross-border arrangements";

(c) in regulation 3 (NCP: information about treatment in England and Wales)—

(**a**) Paragraph (6A) is inserted into the Human Medicines Regulations 2012 by the Human Medicines (Amendment etc.)(EU Exit) Regulations 2019.

(**b**) S.I. 2012/1916.

(i) in paragraph (1), before "ensure" there were inserted "make reasonable efforts to";

(ii) in paragraph (2), before "ensure" there were inserted "make reasonable efforts to";

(d) in the heading to regulation 4 (NCP: information about treatment in a member State), for the reference to "another member State" there were substituted "a relevant member State";

(e) in regulation 4(1)—

(i) for references to "other member States" there were substituted "relevant member States";

(ii) before "ensure" there were inserted "make reasonable efforts to";

(iii) for the reference to "another member State" there were substituted "a relevant member State";

(f) in the heading to regulation 4A (NCP: information about prescriptions), for the reference to "another member State" there were substituted "the United Kingdom";

(g) for regulation 4A there were substituted—

"(4A) The NCP must make reasonable efforts to make available to patients information about the elements, specified in the Schedule, to be included in a prescription which is—

(a) issued in a member State included in the list published under regulation 214(6A) of the Human Medicines Regulations 2012(**a**), and

(b) intended to be used in the United Kingdom.";

(h) in regulation 5 (NCP: cross-border co-operation) —

(i) for paragraph (1) there were substituted—

"(1) In so far as it considers it is appropriate for the purposes of giving effect to cross-border arrangements, the NCP must make reasonable efforts to co-operate with the national contact points in relevant member States and any other national contact points in the United Kingdom.";

(ii) in paragraph (2), after "must" there were inserted "so far as the NCP considers appropriate;

(i) in regulation 6 (NCP: duty to consult), for the words from "the Directive", in the first place, to "in these Regulations)", there were substituted "cross-border arrangements";

(j) for regulation 9(1) (information on rights and entitlements) there were substituted—

"(1) The Board or a clinical commissioning group must make reasonable efforts to ensure that information on their rights and entitlements under sections 6BA and 6BB of the NHS Act is provided to resident patients for whom the Board or the clinical commissioning group is responsible for making services available under that Act.";

(k) for regulation 12(1) (information on rights and entitlements) there were substituted—

"(1) A Local Health Board must make reasonable efforts to ensure that information on their rights and entitlements under sections 6BA and 6BB of the NHS (Wales) Act is provided to resident patients for whom it is responsible for making services available under that Act.";

(l) in regulation 13(2) (NHS charges)—

(i) in paragraph (a) of the definition of "cross-border healthcare service", for the reference to "that patient exercising their rights in relation to access to healthcare under the Directive" there were substituted "cross-border arrangements";

(ii) in the definition of "responsible authority", for the reference to "section 6A(11)" there were substituted "section 6BA(15)";

(**a**) Paragraph (6A) of regulation 214 is inserted by the Human Medicines (Amendment etc.)(EU Exit) Regulations 2019.

(m) in the heading to regulation 14 (exemption from NHS charges), for the reference to "another member State" there were substituted "a relevant member State";

(n) in regulation 14—

(i) in paragraph (2)(a), for the reference to "a member State other than the United Kingdom" there were substituted "a relevant member State";

(ii) in paragraph (3)(b), after the reference to "it is not provided" there were inserted "or, had it been provided immediately before exit day, it would not be provided";

(iii) in paragraph (4)(b), at the end there were inserted "as continued by regulation 17 of, and Schedule 5 to, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019";

(o) in regulation 16 (review), after paragraph (5) there were inserted—

"(6) No review may be carried out after 31 December 2020.";

(p) in the heading to the Schedule (elements that must be included in prescriptions)(**a**) for the reference to "ANOTHER MEMBER STATE" there were substituted "THE UNITED KINGDOM";

(q) in the Schedule—

(i) in paragraph 4(a), for "Article 1" to the end there were substituted "regulation 8(1) of the Human Medicines Regulations 2012";

(ii) in paragraph 4(b)(i), at the end there were inserted "as modified by Schedule 8B to the Human Medicines Regulations 2012";

(iii) in paragraph 4(e), the reference to "as defined in Article 1 of Directive 2001/83/EC" were omitted.

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

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

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

(i) the reference to "sections 6A and 6B of the 2006 Act (prior authorisation of and reimbursement of costs of services provided in another EEA state) or" were omitted;

(ii) for the second reference to "another EEA state" there were substituted "an EEA state";

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

(i) in paragraph (1)(a), for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(ii) in paragraph (1)(b), for the reference to "section 6B or 6BB" there were substituted "section 6BB";

(iii) in paragraph (3)(a) for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(iv) in that paragraph, for the reference to "section 6B or 6BB" there were substituted "section 6BB";

(c) in regulation 6 (form and content of determination)—

(i) in paragraph (2)(a), for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(ii) in paragraph (2)(b), for the reference to "section 6B or 6BB" there were substituted "section 6BB";

(**a**) The Schedule was inserted by S.I. 2015/139.

(d) in regulation 7(3)(a) (CCGs), for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(e) regulation 8 (applications made before 1st April 2013) were omitted.

SCHEDULE 3

Regulation 17

Savings provision for cases arising during cross-border arrangements

PART 1

Modifications to primary legislation

Modifications to the NHS Act 2006

1. The NHS Act 2006 is to be read as if—

(a) sections 6A (reimbursement of cost of services provided in an EEA State) and 6B (prior authorisation for the purposes of section 6A) were omitted;

(b) in the heading to section 6BA (reimbursement of cost of services provided in an EEA state), for the reference to "another EEA state" there were substituted "an EEA state";

(c) in section 6BA(3), for the reference to "an EEA state other than the United Kingdom" there were substituted "an EEA state";

(d) for section 6BA(15) there were substituted—

"(15) In this section and section 6BB—

"authorised provider" in relation to any service provided in an EEA state means a person who is lawfully providing that service;

"NHS charge" means a charge payable under regulations made under section 172(1), 176(1) or 179(1);

"responsible authority" means, in relation to a patient, a local authority or clinical commissioning group responsible under or by virtue of this Act for providing or arranging for the provision of services for the benefit of the patient;

"service" includes any goods, including drugs, medicines and appliances, which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.";

(e) in section 6D (regulations relating to EU obligations) and the heading to that section, for references to "EU obligations" there were substituted "retained EU obligations";

(f) in section 6E(7)(b) (regulations as to exercise of functions by the Board or clinical commissioning groups), for the reference to "EU obligations" there were substituted "retained EU obligations";

(g) in section 183(a)(ii) (payment of travelling expenses) for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(h) in section 275(1) (interpretation), in the definition of "Regulation (EC) No. 883/2004" at the end there were inserted "as continued by regulation 17 of, and Schedule 5 to, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019".

Modifications to the NHS (Wales) Act

2. The NHS (Wales) Act is to be read as if—

(a) sections 6A (reimbursement of cost of services provided in an EEA State) and 6B (prior authorisation for the purposes of section 6A) were omitted;

(b) in the heading to section 6BA (reimbursement of cost of services provided in an EEA state), for the reference to "another EEA state" there were substituted "an EEA state";

(c) in section 6BA(3), for the reference to "an EEA state other than the United Kingdom" there were substituted "an EEA state";

(d) for section 6BA(15) there were substituted—

"(15) In this section and section 6BB—

"authorised provider", in relation to any service provided in an EEA state, means a person who is lawfully providing that service;

"NHS charge" means a charge payable under regulations made under section 121(1), 125(1) or 128(1);

"service" includes any goods, including drugs, medicines and appliances, which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.";

(e) in section 131(a)(ii) (payment of travelling expenses) for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(f) in section 206(1) (interpretation), in the definition of "Regulation (EC) No. 883/2004" at the end there were inserted "as continued by regulation 17 of, and Schedule 5 to, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019".

Modifications to the Health and Social Care Act 2012

3. The Health and Social Care Act 2012 is to be read as if—

(a) in section 124(9) (local modifications of prices: agreements), for "an EU obligation" there were substituted "a retained EU obligation";

(b) in section 125(9) (local modifications of prices: applications), for "an EU obligation" there were substituted "a retained EU obligation".

Modification to the Cities and Local Government Devolution Act 2016

4. The Cities and Local Government Devolution Act 2016 is to be read as if for section 18(2)(b) (devolving health service functions) there were substituted—

"(b) sections 6BA and 6BB of that Act (duties regarding the reimbursement of costs of services provided in an EEA state),".

PART 2

Modifications to secondary legislation

Modifications to the Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998

5. The Welsh Ambulance Services National Health Service Trust (Establishment) Order 1998 is to be read as if—

(a) in article 1(2) (interpretation)—

(i) the definition of "Directive 2011/24/EU" were omitted;

(ii) for the definition of "National Contact Point" there were substituted—

""National Contact Point" means the National Contact Point that may be designated in relation to Wales under regulation 2 of the National Health Service (Cross-Border Healthcare) Regulations 2013";

(b) in article 3(2)(d) (nature and functions of the trust), the reference to "for the purposes of Directive 2011/24/EU" were omitted.

Modifications to the 2013 Regulations

6. The 2013 Regulations are to be read as if—

(a) in regulation 1(3) (interpretation)—

(i) after the definition of "clinical commissioning group" there were inserted—

""cross-border arrangements" is to be construed in accordance with regulation 16 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019;";

(ii) in the definition of "healthcare provider" for "member State" there were substituted "relevant member State";

(iii) for the definition of "prescription", there were substituted—

""prescription" means a prescription for a medicinal product issued by a person who is practising in a profession included in the list published under regulation 214(6A)(**a**) of the Human Medicines Regulations 2012(**b**) in a member State that is included in that list in relation to that profession;";

(iv) after the definition of "prescription" there were inserted—

""relevant member State" means a member State which is included in a list maintained under regulation 16 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019;

"the relevant period" in relation to a member State, has the same meaning as in regulation 17 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019;";

(v) for the definition of "resident patient", there were substituted—

""resident patient" means an individual who is ordinarily resident in England or Wales; ";

(vi) for the definition of "visiting patient", there were substituted—

""visiting patient" means an individual for whom a relevant member State was the member State of affiliation within the meaning of Article 3(c) of the Directive during the relevant period in relation to that State;";

(b) in regulation 2 (national contact point: designation)—

(i) for references to "must" there were substituted "may";

(ii) for references to "the Directive" there were substituted "cross-border arrangements";

(c) in regulation 3 (NCP: information about treatment in England and Wales)—

(i) in paragraph (1), before "ensure" there were inserted "make reasonable efforts to";

(ii) in paragraph (2), before "ensure" there were inserted "make reasonable efforts to";

(d) in the heading to regulation 4 (NCP: information about treatment in a member State), for the reference to "another member State" there were substituted "a relevant member State";

(e) in regulation 4(1)—

(**a**) Paragraph (6A) of regulation 214 is inserted by the Human Medicines (Amendment etc.)(EU Exit) Regulations 2019.
(**b**) S.I. 2012/1916.

(i) for references to "other member States" there were substituted "relevant member States";

(ii) before "ensure" there were inserted "make reasonable efforts to";

(iii) for the reference to "another member State" there were substituted "a relevant member State";

(f) regulation 4A (NCP: information about prescriptions) were omitted;

(g) in regulation 5(1) (NCP: cross-border co-operation)—

(i) for paragraph (1) there were substituted—

"(1) In so far as it considers it is appropriate for the purposes of giving effect to regulation 17 of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019, the NCP must make reasonable efforts to co-operate with the national contact points in relevant member States and any other national contact points in the United Kingdom.";

(ii) in paragraph (2), after "must" there were inserted "so far as the NCP considers appropriate;

(h) regulation 6 (NCP: duty to consult) were omitted;

(i) for regulation 9(1) (information on rights and entitlements) there were substituted—

"(1) The Board or a clinical commissioning group must make reasonable efforts to ensure that information on their rights and entitlements under sections 6BA and 6BB of the NHS Act is provided to resident patients for whom the Board or the clinical commissioning group is responsible for making services available under that Act.";

(j) for regulation 12(1) (information on rights and entitlements) there were substituted—

"(1) A Local Health Board must make reasonable efforts to ensure that information on their rights and entitlements under sections 6BA and 6BB of the NHS (Wales) Act is provided to resident patients for whom it is responsible for making services available under that Act.";

(k) in regulation 13(2) (NHS charges)—

(i) in paragraph (a) of the definition of "cross-border healthcare service", for the reference to "that patient exercising their rights in relation to access to healthcare under the Directive" there were substituted "cross-border arrangements";

(ii) in the definition of "responsible authority", for the reference to "section 6A(11)" there were substituted "section 6BA(15)";

(l) in the heading to regulation 14 (exemption from NHS charges), for the reference to "another member State" there were substituted "a relevant member State";

(m) in regulation 14—

(i) in paragraph (2)(a), for the reference to "a member State other than the United Kingdom" there were substituted "a relevant member State";

(ii) in paragraph (3)(b), after the reference to "it is not provided" there were inserted "or, had it been provided immediately before exit day, it would not be provided";

(iii) in paragraph (4)(b), at the end there were inserted "as continued by regulation 17 of, and Schedule 5 to, the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019";

(n) in regulation 16 (review), after paragraph (5) there were inserted—

"(6) No review may be carried out after 31 December 2020.";

(o) the Schedule (elements that must be included in prescriptions)(**a**) were omitted.

(**a**) The Schedule was inserted by S.I. 2015/139.

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

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

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

(i) the reference to "sections 6A and 6B of the 2006 Act (prior authorisation of and reimbursement of costs of services provided in another EEA state) or" were omitted;

(ii) for the second reference to "another EEA state" there were substituted "an EEA state";

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

(i) in paragraph (1)(a), for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(ii) in paragraph (1)(b), for the reference to "section 6B or 6BB" there were substituted "section 6BB";

(iii) in paragraph (3)(a), for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(iv) in that paragraph, for the reference to "section 6B or 6BB" there were substituted "section 6BB";

(c) in regulation 6 (form and content of determination)—

(i) in paragraph (2)(a), for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(ii) in paragraph (2)(b), for the reference to "section 6B or 6BB" there were substituted "section 6BB";

(d) in regulation 7(3)(a) (CCGs), for the reference to "section 6A or 6BA" there were substituted "section 6BA";

(e) regulation 8 (applications made before 1st April 2013) were omitted.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (c), (d), (e) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

Part 2 amends primary legislation, Part 3 amends secondary legislation, Part 4 revokes retained direct EU legislation, Part 5 contains savings and transitional provisions and Part 6 relates to rights and other matters which become part of domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018.

An impact assessment has been prepared in relation to these Regulations and copies can be obtained from the Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU.

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EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CROSS-BORDER HEALTHCARE AND MISCELLANEOUS AMENDMENTS ETC) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument remedies deficiencies in retained EU law relating to cross-border healthcare, which would arise from the withdrawal of the United Kingdom (UK) from the European Union (EU) in the event of no deal. The purpose of this instrument is to ensure that there will continue to be a functioning statute book on exit day and an effective mechanism to maintain cross-border healthcare arrangements in appropriate circumstances if the UK leaves the EU without a deal.

Explanations

What did any relevant EU law do before exit day?

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

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

2.4 The 'Directive rights' are separate from reciprocal healthcare arrangements under the social security coordination regulations (Regulations 883/2004 and 987/2009). Reimbursement rights under the Directive relate to the fundamental EU principle of the freedom to provide and avail of services, whereas the rights under the social security coordination regulations relate to the free movement of people. Payments for reciprocal healthcare under the social security coordination regulations are normally made state-to-state, whereas reimbursements under the 'directive route' are made to the individual.

2.5 In 2013, the UK Government and Devolved Administrations transposed the Directive into domestic legislation. The National Health Service (Cross-Border Healthcare)

Regulations 2013 implemented the majority of the Directive's provisions in England and Wales. Those implementing regulations made amendments to National Health Service Act 2006 and the National Health Service (Wales) Act 2006, as well as secondary legislation. Scotland and Northern Ireland each made equivalent implementing regulations. Gibraltar also made its own arrangements to transpose the Directive.

2.6 Commission Implementing Decisions 2011/890/EU and 2013/329/EU provide the rules for the establishment, management and functioning of the networks of national authorities or bodies responsible for eHealth and health technology assessment.

Why is it being changed?

2.7 As a responsible government, the UK Government will continue to proportionately prepare for all scenarios, including the outcome that we leave the EU without any deal in March 2019. This Statutory Instrument is intended to support other preparations the UK Government is making with regard to access to healthcare abroad.

2.8 Intervention is required to provide a suitable legislative framework for the Directive's arrangements after we leave the EU in a no deal scenario. This instrument is intended to remedy deficiencies in retained EU law relating to the Directive in the event that the UK leaves the EU without a deal.

2.9 This Statutory Instrument provides a mechanism for ensuring there is no interruption to healthcare arrangements for people accessing healthcare through the Directive after exit day in those Member States that agree to maintain the current arrangements in place with the UK for a transitional period until 31 December 2020. The arrangements would not apply to Member States who do not agree to maintain the current reciprocal arrangements with the UK.

2.10 Commission Implementing Decisions 2011/890/EU and 2013/329/EU are being revoked because UK authorities and bodies will no longer be members of these EU networks when the UK is no longer a Member State.

What will it now do?

2.11 In a no deal scenario, the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments) (EU Exit) Regulations 2019 will remedy deficiencies in domestic legislation implementing the Directive in England and Wales, which arise from the UK's withdrawal from the EU. The instrument will retire current cross-border healthcare rights under domestic legislation, while at the same time, so far as possible acting unilaterally, protecting patients in a transitional position and enabling transitional continuation (up to 31 December 2020) of cross-border healthcare arrangements with those countries with whom we have established continued reciprocity.

2.12 These regulations thus enable England and Wales to continue facilitating people resident in England and Wales to access cross-border healthcare in "listed" countries. The Secretary of State will maintain a list of countries that reach agreement with the UK to continue cross-border healthcare arrangements. However, the regulations extinguish access to healthcare in countries where there is no reciprocity, as maintaining effective access to cross-border healthcare abroad requires basic reciprocity.

2.13 This instrument also seeks to protect, so far as possible, key groups of patients in a transitional situation on exit day, irrespective of any reciprocity in place. This covers for example those individuals who obtained authorisation for planned treatment before exit day, but have not yet obtained the treatment and those who accessed healthcare abroad prior to exit day, but have not yet completed the treatment or sought reimbursement. This time-limited measure aims to prevent, so far as is possible without reciprocity, a sudden loss of overseas healthcare rights for residents in England and Wales.

2.14 Lastly, the instrument makes miscellaneous amendments to fix deficiencies in retained EU law relating to healthcare arising from EU Exit, such as revoking European Commission Implementing Decisions relating to European Health Networks and omitting references in domestic legislation to EU concepts that will no longer be appropriate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

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

3.2 The instrument contains provisions which anticipate prospective changes to be made by the Human Medicines (Amendment etc.) (EU Exit) Regulations 2019, as well as the Social Security Coordination (Reciprocal Healthcare) (Amendment) (EU Exit) Regulations 2019 which are laid in draft alongside this instrument. Footnotes in the instrument indicate where this is the case. Both instruments will be made at the same time to come into force on exit day.

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

3.3 The territorial application of this instrument varies between provisions.

3.4 The territorial application of Parts 2, 3 and 6 of this instrument is the same as the territorial application of each enactment being amended. The territorial application of Part 4 is all of the UK. The territorial application of Part 5 is England and Wales only but the application of the Schedules is the same as the territorial application of each enactment being modified.

4. Extent and Territorial Application

4.1 The territorial extent and application of Parts 2, 3 and 6 of this instrument is the same as the territorial extent and application of each enactment being amended.

4.2 The territorial extent and application of Part 4 of this instrument is all of the UK.

4.3 The territorial extent and application of Part 5 is England and Wales only but the extent and application of the Schedules is the same as the territorial extent and application of each enactment being modified.

5. European Convention on Human Rights

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

"In my view the provisions of the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The National Health Service (Cross-Border Healthcare) Regulations 2013 were made under section 2(2) of the European Communities Act 1972 to implement the main elements of the Directive in England and Wales.

6.2 The European Communities Act 1972 will be repealed by the EU (Withdrawal) Act 2018 but section 2 of the European Union (Withdrawal) Act 2018 provides for EU-derived domestic legislation to be saved so that it continues to have effect in UK domestic law after exit day. The National Health Service (Cross-Border Healthcare) Regulations 2013 and the amendments they made to other legislation, including the NHS Act 2006 and the NHS (Wales) Act 2006, will therefore be preserved but will require amendment in order to function effectively after exit day.

6.3 This instrument also revokes two Commission implementing decisions adopted by the European Commission in relation to the Directive. Those decisions will by virtue of section 3 of the European Union (Withdrawal) Act 2018 form part of UK domestic law after exit day.

6.4 Section 8 of the European Union (Withdrawal) Act 2018 provides a power to prevent, remedy or mitigate deficiencies in the EU law retained under that Act that arise from the UK's withdrawal from the EU. This statutory instrument is being made under section 8 to address deficiencies in retained EU law relating to cross-border healthcare. The amendments made by this instrument will ensure that legislation relating to cross-border healthcare will continue to function effectively in the event that the UK leaves the EU without a deal in place.

6.5 A separate instrument, The Health Services (Cross Border Healthcare) (EU Exit) (Amendment) Regulations Northern Ireland 2019, is being laid under section 8 of the European (Withdrawal) Act 2018 to address deficiencies in the retained EU law that will apply to Northern Ireland.

6.6 The Healthcare (International Arrangements) Bill, currently before Parliament, will provide the necessary powers to implement any future longer-term reciprocal healthcare arrangements with the EU, individual Member States or countries outside the EU.

7. Policy background

What is being done and why?

7.1 In a no deal scenario, intervention is required to create a suitable legislative framework for the Cross-Border Healthcare Directive after we leave the EU. When the UK leaves the EU, the EU (Withdrawal) Act 2018 will automatically retain the legislation implementing the Directive, which would be incoherent as the UK would no longer be a Member State and it would be unclear if patients still had rights to UK funded healthcare in the EU. The lack of a clear legal framework would create legal and operational uncertainty, as well as legal risk in relation to the rights that exist and the processes for implementing them.

7.2 Cross-border healthcare arrangements will fail to operate effectively without reciprocity from EEA member states regarding equal treatment and reciprocal healthcare arrangements. If cross-border healthcare arrangements remain in place without agreement to continue the current reciprocal healthcare arrangements (under the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019 being brought forward alongside this instrument), there is a risk that the NHS in each of the four nations could become responsible for unilaterally funding overseas treatment that was previously covered by the reciprocal social security arrangements and thus reimbursed state-to-state by DHSC. For example, in the absence of broader EU reciprocal healthcare arrangements, people could choose to use 'Directive rights' to claim reimbursement for treatments that were formerly provided under the EHIC scheme and reimbursed state-to-state. Further, without agreement to continue treating citizens equally (with respect to healthcare charging), the cost of treatments for UK patients in the EEA could rise, increasing costs to both the UK and to individuals.

7.3 As set out in paragraphs 2.11 to 2.13, this instrument will retire the current cross-border healthcare arrangements giving effect to the Directive in domestic legislation, but at the same time make important savings provisions to protect those in a transitional position on exit day and enable transitional continuation (up to 31 December 2020) of cross-border healthcare arrangements with those countries with whom we have established basic reciprocity.

7.4 These regulations thus enable residents in England and Wales to continue accessing cross-border healthcare with "listed" countries. We envisage listing countries that reach agreement with the UK to continue current reciprocal healthcare and cross-border healthcare arrangements for a time-limited period until 31 December 2020. The saving would not apply to countries where there is no reciprocity.

7.5 This instrument also seeks to protect so far as possible key groups in a transitional situation on exit day, irrespective of any reciprocity in place. This group covers people who have applied for or obtained authorisation for planned treatment before exit day, though not yet obtained the treatment and those people who accessed healthcare abroad prior to exit day. This time-limited measure is aimed at preventing, so far as possible without reciprocity, the sudden loss of overseas healthcare rights for our residents in England and Wales on exit day.

7.6 Cross-border healthcare arrangements are devolved. This instrument addresses the deficiencies that arise in the legislation that implemented the directive in England and Wales. Welsh consent has therefore been sought for this instrument. Consent has also been sought from Northern Ireland and Scotland in respect of the miscellaneous amendments made by this instrument that extend beyond England and Wales, in so far as they consider those amendments to fall within devolved competence.

7.7 This instrument is intended to support other preparations the UK Government is making with regard to reciprocal healthcare arrangements.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the

Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

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

10. Consultation outcome

10.1 Reciprocal healthcare arrangements are popular and enjoy broad support from the general public. The Department of Health and Social Care has not undertaken a consultation on the instrument but has engaged with relevant stakeholders on its approach to the future of EU reciprocal and cross-border healthcare arrangements.

11. Guidance

11.1 No further guidance is published alongside this Instrument.

11.2 Specific guidance for UK nationals in the EU and EU Citizens in the UK on how to access healthcare is available on www.gov.uk and www.nhs.uk. Further, this Instrument provides for National Contact Points to have functions relating to the provision of information to patients about matters such as treatment providers and patients' rights.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. This Statutory Instrument provides a mechanism for the continuation of cross-border healthcare arrangements with EEA States.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

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

14. Monitoring & review

14.1 As this instrument is made under the EU (Withdrawal Act) 2018, no review clause is required.

15. Contact

15.1 Sophie Eltringham at the Department of Health and Social Care. Telephone: 020 7972 4018 or email: Sophie.eltringham@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mayerling O'Regan, Deputy Director for EU and International Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Stephen Hammond, Minister of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

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

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

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Appropriateness statement

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

"In my view the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because they correct deficiencies in retained EU law and, in a no deal scenario, intervention is required to create a suitable legislative framework for cross-border healthcare arrangements to continue after we leave the EU. It will do no more than is appropriate to ensure that the Government can take the necessary steps to continue current EU healthcare coordination arrangements on an interim basis, where there is continued reciprocity, and to cease these arrangements where there is not.

2. Good reasons

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

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

2.2 These are, as explained in section 2 of the Explanatory Memorandum, when the UK leaves the EU on the 'exit day', the EU (Withdrawal) Act 2018 will automatically retain the domestic implementing legislation in UK law if no further secondary legislation is made. In the event of no deal, if we do not legislate further, the regulations would in practice be unworkable without reciprocity and cooperation from EEA Member States.

2.3 Without agreement to continue reciprocal healthcare arrangements (provided for by the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019), there is a risk that the NHS in each of the four nations could become responsible for unilaterally funding overseas treatment under the Directive route that was previously reimbursed state-to-state by DHSC (e.g. if people choose to use cross-border healthcare arrangementsto claim reimbursement for treatments that were formerly provided under the EHIC scheme and reimbursed state-to-state).

3. Equalities

3.1 The Minister of State for Health, Stephen Hammond, has made the following statement(s):

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

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

"In relation to the draft instrument, I, Stephen Hammond, 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."

3.3 An Equalities analysis has been conducted for this piece of secondary legislation.

4. Explanations

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

5. Legislative sub-delegation

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

"In my view it is appropriate to create a relevant sub-delegated power in the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019".

5.2 This instrument makes provision for the Secretary of State to publish and maintain a list specifying the Member States with which the UK has reciprocal arrangements. This list mechanism is appropriate because it can be updated quickly in response to the conclusion of negotiations with Member States to continue cross-border healthcare arrangements with them. The list will be published and accessible to the public so that it is clear which countries continue to operate these cross-border healthcare arrangements with the UK and can provide individuals with certainty about the continuation of those arrangements as soon as negotiations are concluded. Including the list in legislation would delay the UK's ability to give effect to agreements seeking to maintain the current healthcare arrangements and would require multiple amending instruments as negotiations with different Member States are concluded in advance of exit day.

UK MINISTERS ACTING IN DEVOLVED AREAS

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

Laid in the UK Parliament: 11 February 2019

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	12 February
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 16
SICM under SO 30A (because amends primary legislation)	Paper 17
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, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The Regulations will remove current cross border healthcare rights under domestic legislation, while at the same time protecting patients in a transitional position and enabling transitional continuation (up to 31 December 2020) of cross-border healthcare arrangements with those countries with whom the UK has established continued reciprocity. They enable people resident in England and Wales to access cross-border healthcare in "listed" countries. The Secretary of State will maintain a list of countries that reach agreement with the UK to continue cross-border healthcare arrangements. However, the Regulations extinguish access to healthcare in countries with which there is no reciprocity.

Legal Advisers agree with the statement laid by the Welsh Government dated 14 February 2019 regarding the effect of these Regulations.

The statement refers to the Statutory Instrument Consent Memorandum laid in respect of amendments to the NHS (Wales) Act 2006, but does not indicate whether the Welsh Government proposes to table a Statutory Instrument Consent Motion under Standing Order 30A.10.

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. The Explanatory Note annexed to the Regulations, on the other hand, is notably unhelpful in explaining 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. The Regulations do, however, raise issues of "political or legal importance or [that give] rise to issues of public policy likely to be of interest to the Assembly" in a way that would give rise to a 'merits' report if this were a Statutory Instrument to be made by the Welsh Ministers.

Members may, therefore, wish to consider whether to table a consent motion in accordance with Standing Order 30A.10 in respect of these Regulations, unless the Welsh Government confirms that it intends to do so.

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/VG/0155/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

14 February 2019

Dear Mick,

This letter is to inform you that I have laid two Statutory Instrument Consent Memoranda in the National Assembly for Wales in respect of:

- **The Social Security Coordination (Benefits in Kind etc) (Amendment etc) (EU Exit) Regulations 2019 and;**

- **The National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019**

as required by Standing Order 30A (SO30A).

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

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

Yours sincerely,

Vaughan Gething

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Social Security Coordination (Benefits in Kind etc) (Amendment etc) (EU Exit) Regulations 2019**
DATE	**14 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

Social Security Coordination (Benefits in Kind etc) (Amendment etc) (EU Exit) Regulations 2019

Policy Overview of the SI

The Regulations provide for the 'switching off' in the UK of current EU law-based reciprocal healthcare arrangements. This will ensure that, post-EU exit, the UK will not be unilaterally committed to continue to continue to satisfy its current obligations. However, the Regulations also provide that current reciprocal arrangements may continue until December 2020 where reciprocal agreements have been reached between the UK and other countries.

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

The retained EU law which is being amended

- Regulation (EC) 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.
- Regulation (EC) 574/72 laying down the procedure for implementing Regulation 1408/71
- Regulation (EC) 883/2004 on the coordination of social security systems.
- Regulation (EC) 987/2009 laying down the procedure for implementing Regulation 883/2004
- National Health Service (Wales) Act 2006
- NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005
- Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The SI will amend section 131 of the NHS (Wales) Act 2006. This consequential amendment will remove the Welsh Ministers' powers to make regulations about the payment by the Welsh Ministers of travel expenses incurred for the purpose of obtaining services authorised to be provided in another EEA State under Articles 20 or 27 of Regulation 883/2004. This regulation-making power will be saved in relation to overseas treatment that can continue to be authorised post-exit under the saving provisions for the retained direct EU law.

The SI does not transfer any EU functions to a UK body. The only new function being conferred on the Secretary of State is that of maintaining and publishing a list of the 3rd countries with which the UK agrees a short-term bilateral agreement for the provision of reciprocal healthcare (and the entry into force and expiry dates of that agreement).

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 legislation relating to reciprocal healthcare agreements. The Regulations will make corrections for reciprocity; switching off the provisions in the long term whilst putting transitional arrangements in place until December 2020 for residents of countries who have entered into an appropriate reciprocal agreement with the UK Government.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://beta.parliament.uk/work-packages/PMg3ENDc

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. Although healthcare is devolved, the scope for Wales to implement different policy is limited by a requirement to meet any international obligations entered into by the UK. These would include international healthcare agreements. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility for patients and providers. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to section 131 of the NHS (Wales) Act 2006

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Social Security Coordination (Benefits in Kind etc) (Amendment etc) (EU Exit) Regulations 2019

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

2. The Social Security Coordination (Benefits in Kind etc) (Amendment etc) (EU Exit) Regulations 2019 was laid before Parliament on 11 February 2019 and is now being laid before the Assembly. The Regulations can be found at:

https://beta.parliament.uk/work-packages/PMg3ENDc

Summary of the Statutory Instrument and its objective

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

4. This SI will make corrections for reciprocity; switching off the provisions in the long term whilst putting transitional arrangements in place until December 2020 for countries who have entered into an appropriate reciprocal agreement with the UK Government.

Relevant provision to be made by the SI

5. The Regulations will amend section 131 of the NHS (Wales) Act 2006. This will remove the Welsh Ministers' powers to make regulations about the payment by the Welsh Minister of travel expenses incurred for the purpose of obtaining services authorised to be provided in another EEA State under Articles under Articles 20 or 27 of Regulation (EC) 883/2004. This regulation-making power will be saved in relation to overseas treatment that can continue to be authorised post-exit under the saving provisions for the retained direct EU law.

6. It is the view of the Welsh Government that the provisions described in paragraph 5 above fall within the legislative competence of the National Assembly for Wales in so far as they relate to the provision of healthcare.

Why it is appropriate for the SI to make this provision

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

Vaughan Gething AM
Minister for Health and Social Services

14 February 2019

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

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. 0000

EXITING THE EUROPEAN UNION

HEALTH SERVICES

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

SOCIAL SECURITY

HUMAN TISSUE, ENGLAND AND WALES

HUMAN TISSUE, NORTHERN IRELAND

The Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

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

(**a**) 2018 c. 16.

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019 and come into force on exit day(**a**).

(2) An amendment, repeal or revocation made by these Regulations has the same extent and application as the provision being amended, repealed or revoked.

Interpretation

2. In these Regulations—

"Regulation (EEC) No 1408/71" means Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community;

"Regulation (EEC) No 574/72" means Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community;

"Regulation (EC) No 883/2004" means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;

"Regulation (EC) No 987/2009" means Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

PART 2

Amendments of primary legislation

The National Health Service Act 2006

3. In the National Health Service Act 2006—

(a) in section 183 (payment of travelling expenses)(**b**), omit paragraph (a)(iii) and the "or" preceding it;

(b) in section 275 (interpretation), omit the definition of "Regulation (EC) No. 883/2004"(**c**) so far as it relates to section 183(a)(iii).

The National Health Service (Wales) Act 2006

4. In the National Health Service (Wales) Act 2006—

(a) in section 131 (payment of travelling expenses)(**d**), omit paragraph (a)(iii) and the "or" preceding it;

(b) in section 206 (interpretation), omit the definition of "Regulation (EC) No. 883/2004"(**e**) so far as it relates to section 131(a)(iii).

(**a**) "Exit day" is defined in section 20 of the European Union (Withdrawal) Act 2018.
(**b**) 2006 c.41; section 183 was amended by paragraph 98 of Schedule 4 to the Health and Social Care Act 2012 (c.7).
(**c**) The definition was inserted by S.I. 2010/915.
(**d**) 2006 c.42; section 131 was amended by S.I. 2010/915; there are other amending instruments but none is relevant.
(**e**) The definition was inserted by S.I. 2010/915.

PART 3

Amendments of subordinate legislation

The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005

5.—(1) The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005(**a**), is amended as follows.

(2) In article 1 (interpretation), omit the definition of "the European Health Insurance Card".

(3) Omit article 3(a)(ii) (functions of the NHS Business Services Authority – the European Health Insurance Card).

The Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006

6. In the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006(**b**), in Schedule 2 (receipt of transplantable material), in paragraph 10, in the text following "case) that—"—

(a) omit sub-paragraph (a);

(b) omit sub-paragraph (b).

The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013

7. In the National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013(**c**), omit regulations 2 to 8 (exercise of EU functions), so far as not omitted by the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019.

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

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

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

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

The Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019

10. In the Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019, in Schedule 3 (amendments to Title 3 of Regulation (EC) No 883/2004)—

(a) omit paragraph 2 (amendments of Article 29);

(b) omit paragraph 5 (amendments of Article 36(2)).

(**a**) S.I. 2005/2414; relevant amendments were made by S.I. 2006/632.
(**b**) S.I. 2006/1260; relevant amendments were made by S.I. 2011/1043 and 2012/1809.
(**c**) S.I. 2013/261; amended by S.I. 2013/2269; there are other amending instruments but none is relevant.
(**d**) S.I. 2015/1862; relevant amendments were made by S.I. 2017/908.
(**e**) S.I. 2015/1879; relevant amendments were made by S.I. 2017/908.

PART 4

Rights etc deriving from the Treaties

Rights etc deriving from the Treaties

11. The rights, powers, liabilities, obligations, restrictions, remedies and procedures which, but for this regulation, would continue to be recognised and available in domestic law(**a**) by virtue of section 4 of the European Union (Withdrawal) Act 2018, are to cease to be recognised and available in domestic law on exit day, so far as they are inconsistent with, or are otherwise capable of affecting the interpretation, application or operation of, provision made by these Regulations.

PART 5

Amendment of EU Regulations

Regulation (EC) No 883/2004

12. Regulation (EC) No 883/2004 is amended as set out in Schedule 1.

Regulation (EC) No 987/2009

13. Regulation (EC) No 987/2009 is amended as set out in Schedule 2.

Regulation (EEC) No 1408/71

14. Regulation (EEC) No 1408/71 is amended as set out in Schedule 3.

Regulation (EEC) No 574/72

15. Regulation (EEC) No 574/72 is amended as set out in Schedule 4.

PART 6

Amendment of the EEA agreement

Amendment of the EEA agreement

16. In the Agreement on the European Economic Area signed at Oporto on 2 May 1992, so far as it forms part of domestic law by virtue of section 3(2)(b) of the European Union (Withdrawal) Act 2018, in Annex 6, in Part 1 (general social security coordination), in paragraph 1 (provision relating to Regulation (EC) No 883/2004)—

(a) omit point (e) (modification of Annex 3);

(b) omit point (f) (modification of Annex 4);

(c) omit point (l) (modification of Annex 11), so far as not omitted by regulation 3 of the Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019.

(**a**) "Domestic law" is defined in section 20 of the European Union (Withdrawal) Act 2018.

PART 7

Savings and transitional provision

Savings and transitional provision

17. Schedule 5 makes savings and transitional provision.

Signed by authority of the Secretary of State for Health and Social Care.

Name
Minister of State,
Date Department for Health and Social Care

SCHEDULES

SCHEDULE 1 Regulation 12

Regulation (EC) No 883/2004

1. Regulation (EC) No 883/2004 is amended as follows.

2.—(1) Article 1 is amended as follows.

(2) In point (i)(1)(ii), for "pursuant to Title III, Chapter 1 on sickness, maternity and equivalent paternity benefits" substitute "referred to in Article 29".

(3) In point (va)(**a**)—

(a) in point (i)—

(i) for "Title III, Chapter 1 (sickness, maternity and equivalent paternity benefits)" substitute "this Article, Article 3 and Article 29";

(ii) for "Member State" substitute "State";

(b) omit point (ii).

(4) In point (z), omit "in kind or".

3. In Article 3, after paragraph 5 insert—

"6. References in this Regulation to receipt of social security benefits do not, in relation to the United Kingdom, include receipt of benefits in kind.".

4. Omit Articles 17 to 20.

5.—(1) Article 22 is amended as follows.

(2) In paragraph 1—

(a) for "benefits in kind", in each place it occurs, substitute "cash benefits";

(b) for "Member State in which he/she resides" substitute "United Kingdom";

(**a**) Point (va) was inserted by Regulation (EC) No 988/2009 of the European Parliament and the Council of 16 September 2009 ("Regulation (EC) 988/2009").

(c) for the words from "the pension claimant" to "in paragraph 2" substitute "in the event of a pension being awarded the United Kingdom would be competent under Articles 23 to 25";

(d) omit "in the Member State of residence".

(3) Omit paragraph 2.

6. In Article 23—

(a) for "benefits in kind", in each place it occurs (including the heading), substitute "cash benefits";

(b) in the heading for "Member State of residence" substitute "United Kingdom where it is the State of residence";

(c) after "person who" insert "resides in the United Kingdom and";

(d) for "Member States" substitute "States";

(e) for "Member State of residence" substitute "United Kingdom";

(f) for "that Member State", in both places it occurs, substitute "the United Kingdom";

(g) omit "and at the expense of";

(h) for "place of residence" substitute "United Kingdom".

7. For Article 24 (including the heading) substitute—

"Article 24

No right to cash benefits under the legislation of the Member State of residence

The United Kingdom will be competent for cash benefits for pensioners, or their family members, resident in a Member State where the pensioner is in receipt of a pension from the United Kingdom and not from the Member State of residence, and:

(a) the pensioner is only entitled to cash benefits under the legislation of the United Kingdom; or

(b) the pensioner is entitled to cash benefits under the legislation of two or more States, one of which is the United Kingdom, and the pensioner has been subject to the legislation of the United Kingdom for the longest period of time. If the pensioner has been subject for an equal period of time to the legislation of another State, the United Kingdom will be competent if the pensioner was last subject to its legislation.".

8. In Article 25—

(a) in the heading—

(i) for "Member States" substitute "States";

(ii) for "benefits in kind" substitute "cash benefits";

(iii) for "latter Member State" substitute "Member State of residence";

(b) for "Member States", in the first place it occurs, substitute "States";

(c) for "benefits in kind", in the first place it occurs, substitute "cash benefits";

(d) for the words from "the cost of benefits in kind provided" to "Article 24(2)" substitute "where the United Kingdom has been determined in accordance with Article 24 as competent in respect of that person's pensions, the United Kingdom is competent for cash benefits";

(e) for "that Member State", in the second place it occurs, substitute "the United Kingdom".

9. In Article 26—

(a) for "Member State", in each place it occurs (including the heading), substitute "State";

(b) for "Member States" substitute "States, one of which is the United Kingdom,";

(c) for the words from "benefits in kind", in the first place it occurs, to "costs of the benefits in kind" substitute "cash benefits from the United Kingdom, where the United Kingdom is competent for cash benefits".

10. Omit Articles 27 and 28.

11. In Article 29, for paragraph 1 substitute—

"1. Where a person resides in a Member State and receives a pension or pensions under the legislation of the United Kingdom and one or more Member States, the competent institution of the United Kingdom is not responsible for paying cash benefits where the competent institution in the Member State of residence is responsible for the cost of benefits in kind provided to the person in that Member State. Article 21 shall apply *mutatis mutandis*.".

12. In Article 31, for "Articles 17 to 21" substitute "Article 21".

13. Omit Articles 32 to 35.

14. In Article 36—

(a) for the heading substitute "Article 21 to apply to benefits within this Chapter";

(b) omit paragraphs 1, 2 and 2a.

15. In Article 40, omit paragraphs 1 and 2.

16. In Article 85, omit "Article 35(3) and/or".

17. Omit Annexes 3 to 5.

18.—(1) Annex 11 is amended as follows.

(2) Under the heading "FRANCE", omit paragraph 2;

(3) Under the heading "NETHERLANDS", in paragraph 1—

(a) omit points (a) to (e);

(b) omit point (h).

SCHEDULE 2

Regulation 13

Regulation (EC) No 987/2009

1. Regulation (EC) No 987/2009 is amended as follows.

2. Omit Article 22.

3. In Article 23—

(a) for "Member State", in both places it occurs, substitute "State";

(b) omit "17, 19(1), 20,".

4. Omit Articles 24 to 26.

5. Omit Article 29.

6. Omit Article 31.

7.—(1) Article 32 is amended as follows.

(2) In paragraph 1, for "benefits in kind or in cash" substitute "cash benefits".

(3) Omit paragraph 2.

(4) Omit paragraph 3.

8.—(1) Article 33 is amended as follows.

(2) In the heading, omit "in kind and".

(3) In paragraph 1, for "Articles 24 to 27" substitute "Article 27".

(4) Omit paragraph 2.

9. Omit Article 35.

10. Omit Article 41.

11. In Title 4, omit Chapter 1 (reimbursement of the cost of benefits in application of Article 35 and Article 41 of Regulation (EC) No 883/2004).

12.—(1) Annex 1(**a**) is amended as follows.

(2) Under the heading BELGIUM-UNITED KINGDOM, omit point (b).

(3) Under the heading DENMARK-UNITED KINGDOM, omit "benefits in kind and".

(4) Under the heading IRELAND-UNITED KINGDOM, omit the words from "Articles 36(3)" to "1408/71) and".

(5) Omit the heading SPAIN-UNITED KINGDOM and the text under it.

(6) Under the heading FRANCE-UNITED KINGDOM, omit point (b).

(7) Omit the heading ITALY-UNITED KINGDOM and the text under it.

(8) Omit the heading HUNGARY-UNITED KINGDOM and the text under it.

(9) Omit the heading MALTA-UNITED KINGDOM and the text under it.

(10) Omit the heading PORTUGAL-UNITED KINGDOM and the text under it.

(11) Under the heading FINLAND-UNITED KINGDOM, omit the words from "Articles 36(3)" to "in kind) and".

(12) Under the heading SWEDEN-UNITED KINGDOM, omit the words from "Article 36(3)" to "in kind) and".

13. Omit Annex 3.

SCHEDULE 3

Regulation 14

Regulation (EEC) No 1408/71

1. Regulation (EEC) No 1408/71 is amended as follows.

2.—(1) Article 1 is amended as follows.

(2) In point (f)(i) for "Articles 22(1)(a) and 31" substitute "Article 31".

(3) In point (u)(i), for "benefits in kind or in cash" substitute "cash benefits".

3.—(1) Article 19 is amended as follows.

(2) Omit paragraph 1(a).

(3) In paragraph 2, omit the second subparagraph.

4. Omit Article 20.

5. In Article 21(2), omit the second subparagraph.

6.—(1) Article 22 is amended as follows.

(**a**) Annex 1 was amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010, Commission Regulation (EU) No 1224/2012 of 18 December 2012, Commission Regulation (EU) No 1372/2013 of 19 December 2013, Commission Regulation (EU) No 1368/2014 of 17 December 2014 (as corrected) and Commission Regulation (EU) 2017/492 of 21 March 2017.

(2) In the heading, omit the words from "Need to" to "appropriate treatment".

(3) In paragraph 1—

(a) omit point (a);

(b) in point (c), for "another Member State" substitute "a Member State";

(c) omit point (c)(i).

(4) In paragraph 3, omit the words from "However" to the end of the paragraph.

7. Omit Article 22a(**a**).

8. Omit Article 24.

9.—(1) Article 25(**b**) is amended as follows.

(2) In paragraph 1—

(a) omit "benefits in kind and";

(b) omit point (a).

(3) In paragraph 2, for "benefits in kind and in cash" substitute "cash benefits".

(4) In paragraph 3, omit point (i).

10. In Article 25a, omit "benefits in kind and".

11. Omit Section 4 of Chapter 1.

12.—(1) Article 28 is amended as follows.

(2) In paragraph 1, for "conditions" substitute "condition".

(3) Omit paragraph 1(a).

(4) In paragraph 2, for "the cost of benefits in kind shall be borne" substitute "cash benefits shall be provided".

(5) In paragraph 2(a), for the words from "a single" to the end of paragraph 2(a) substitute "the United Kingdom only, cash benefits shall be provided by the competent institution of the United Kingdom".

(6) In paragraph 2(b)—

(a) for "cost thereof shall be borne" substitute "benefits shall be provided";

(b) for the words from "the competent institution" to "whose legislation" substitute "the competent institution of the United Kingdom where its legislation is the legislation to which";

(c) for the words from "should the application" to the end of the Article, substitute "in these circumstances, where the pensioner has been subject to the legislation of a Member State or Member States for an equal period of time to the time they have been subject to the legislation of the United Kingdom and where the legislation to which the pensioner was last subject was that of the United Kingdom the benefits shall be provided by the competent institution of the United Kingdom".

13. Omit Article 28a.

14.—(1) Article 29 is amended as follows.

(2) In paragraph 1, for "conditions" substitute "condition".

(3) Omit paragraph 1(a).

(4) Omit paragraph 2(a).

15. Omit Article 30.

(**a**) Article 22a was substituted by Regulation No 631/2004.
(**b**) Article 25 was amended by Regulation No 631/2004.

16. In Article 31, omit paragraph 1(a).

17.—(1) Article 33 is amended as follows.

(2) In paragraph 1, omit "28a,".

(3) Omit paragraph 2.

18.—(1) Article 34 is amended as follows.

(2) In paragraph 1, omit "28a,".

(3) In paragraph 2 for "Articles 27 to 33" substitute "Articles 27 to 29 and 31 and 33".

19. In Article 34a(**a**) for the words from "Articles 18" to "and 7" substitute "Articles 18, 19, 22(3), 23 and section 6".

20. In Article 35, in paragraph 1, omit "26,".

21. Omit Section 7 of Chapter 1.

22. In Article 52, omit point (a).

23.—(1) Article 55 is amended as follows.

(2) In paragraph 1, omit point (c).

(3) Omit paragraph 1(c)(i).

(4) In paragraph 2, omit the second subparagraph.

24. In Article 61, omit paragraphs 1 to 4.

25. Omit Section 4 of Chapter 4.

26. In Article 63a(**b**), for "Sections 1 to 4" substitute "Sections 1 to 3".

27. Omit Article 66.

28. In Article 66a(**c**), for "Articles 64 to 66" substitute "Article 64 and 65".

29. In Annex 1, in part 2(**d**), omit the following headings and the text under each—

(a) C. CZECH REPUBLIC;

(b) D. DENMARK;

(c) J. IRELAND;

(d) M. LATVIA;

(e) N. LITHUANIA;

(f) P. HUNGARY;

(g) V. ROMANIA;

(h) X. SLOVAKIA;

(i) Y. FINLAND;

(j) Z. SWEDEN;

(k) AA. UNITED KINGDOM.

30.—(1) Annex 6(**a**) is amended as follows.

(**a**) Article 34a was inserted by Regulation No 307/1999 and substituted by Regulation No 631/2004.
(**b**) Article 63a was inserted by Regulation No 307/1999.
(**c**) Article 66a was inserted by Regulation No 307/1999.
(**d**) Part 2 of Annex 1 was amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded ("the Accession Act") and Regulation (EC) No 629/2006 of the European Parliament and of the Council of 4 April 2006 ("Regulation No 629/2006").

(2) Under the heading A. BELGIUM, omit point 1.

(3) Under the heading D. DENMARK—

(a) omit point 2;

(b) omit point 10.

(4) Under the heading E. GERMANY—

(a) omit point 9;

(b) omit point 13;

(c) omit point 18;

(d) omit points 21 to 23.

(5) Under the heading G. GREECE, omit point 7.

(6) Under the heading H. SPAIN, omit points 7 and 8.

(7) Under the heading R. NETHERLANDS, in point 1, omit points (a) to (e).

(8) Under the heading Y. FINLAND, omit point 4.

(9) Under the heading AA. UNITED KINGDOM, in point 19(c), omit "(including benefits in kind for which the United Kingdom is the competent State)".

SCHEDULE 4

Regulation 15

Regulation (EEC) No 574/72

1. Regulation (EEC) No 574/72 is amended as follows.

2. In Article 4, omit paragraph 9.

3. Omit Article 17(**b**).

4. Omit Articles 19 to 23(**c**) and the headings "Implementation of Article 20 of the Regulation", "Application of the second indent of Article 21(2) of the Regulation" and "Implementation of Article 22 of the Regulation".

5. In Article 24, for "Article 22(1)(a)(ii)" substitute "Article 22(1)".

6.—(1) Article 26(**d**) is amended as follows.

(2) Omit paragraph 1.

(3) Omit paragraph 3.

(4) In paragraph 6, for "benefit in cash and in kind" substitute "cash benefits".

(5) In paragraph 7, for "Article 18(2), (3), (4), (5), (6), (8) and (9)" substitute "Article 18(2), (3), (4), (4A), (5), (6) and (8)".

7. Omit Articles 27 to 31 and the headings "Implementation of Article 25(3) of the Regulation", "Implementation of Article 26 of the Regulation", "Implementation of Articles 28 and 28a of the Regulation", "Implementation of Article 29 of the Regulation" and "Implementation of Article 31 of the Regulation".

8. Omit Article 34.

(**a**) Annex 6 was amended by Regulation No 1290/97, Regulation No 1223/98, Regulation No 1606/98, Regulation No 1399/1999, Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001, the Accession Act, Regulation No 647/2005, Regulation No 629/2006, Regulation No 1791/2006, Regulation 1992/2006 and Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008.

(**b**) Article 17 was amended by Regulation No 631/2004.

(**c**) Articles 19a, 22 and 23 were amended, Article 20 was revoked and Article 21 substituted, by Regulation No 631/2004.

(**d**) Paragraphs 1 and 3 of Article 26 were substituted, and paragraph 1a inserted, by Regulation No 631/2004.

9. Omit Article 60.

10. Omit Articles 62 and 63.

11. Omit Article 66.

12.—(1) Article 93(**a**) is amended as follows.

(2) for paragraph 1 substitute—

> "1. Where cash benefits are paid in accordance with the provisions of the second sentence of Article 18(8) of the implementing Regulation, the actual amount of benefits shall be refunded by the competent institution in the United Kingdom to the institution which provided the said benefits as shown in the accounts of that institution.".

(3) In paragraph 2, for "In the cases referred to in the second paragraph of Article 21(2), the second subparagraph of Article 22(3) and in Article 31 of the Regulation, and for" substitute "For".

(4) Omit paragraphs 3 to 6.

13. Omit Articles 94 to 96(**b**) and the heading "Implementation of Article 63(2) of the Regulation".

14. Omit Article 99.

15. In Article 100, omit paragraph 2.

16. Omit Article 113.

17.—(1) Annex 2 is amended as follows.

(2) Under the heading A. BELGIUM(**c**)—

(a) in paragraph 1(a), for "29" substitute "26";

(b) in paragraph 4—

(i) omit point (a)(i);

(ii) omit point (b)(i).

(3) Under the heading B. BULGARIA—

(a) omit paragraph 1(a);

(b) omit paragraph 3(a).

(4) Under the heading C. CZECH REPUBLIC—

(a) omit paragraph 1(a);

(b) omit paragraph 3(a).

(5) Under the heading D. DENMARK—

(a) omit point (a)(i);

(b) in point (d)(i), omit "benefits in kind and".

(6) Under the heading E. GERMANY in paragraph 1—

(a) omit point (c);

(b) for "Sections 4 and 5" substitute "Section 5".

(**a**) Article 93(1) was last substituted by Regulation No 1386/2001 and amended by Regulation (EC) No 629/2006 of the European Parliament and of the Council of 5 April 2006.

(**b**) Article 95 was amended by Regulation No 1223/98.

(**c**) Relevant amendments to Annex 2 were made by Regulation No 1290/97, Regulation No 1223/98, Regulation No 1606/98, Council Regulation (EC) No 1399/1999 of 29 April 1999 ("Regulation No 1399/1999"), the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded ("the Accession Act"), Regulation No 647/2005 and Council Regulation (EC) No 1791/2006 of 20 November 2006 ("Regulation No 1791/2006").

(7) Under the heading I. FRANCE, omit paragraphs 1 and 2.

(8) Under the heading J. IRELAND, omit paragraph 1.

(9) Under the heading K. ITALY—

(a) in paragraph 1—

(i) in part A, omit point (a);

(ii) in part B, omit point (a).

(b) in paragraph 2—

(i) in part A, omit points (a) and (b);

(ii) in part B, omit points (a) and (b).

(10) Under the heading L. CYPRUS, omit paragraph 1.

(11) Under the heading M. LATVIA, omit paragraph 2.

(12) Under the heading N. LITHUANIA—

(a) in paragraph 1, omit points (a)(i) and (b)(i);

(b) in paragraph 4, omit point (a).

(13) Under the heading O. LUXEMBOURG—

(a) omit paragraph 1(a);

(b) omit paragraph 6.

(14) Under the heading P. HUNGARY—

(a) in paragraph 1, omit "benefits in kind and";

(b) omit paragraph 2(a);

(c) omit paragraph 4(a).

(15) Under the heading Q. MALTA, omit paragraph 2.

(16) Under the heading R. NETHERLANDS, omit paragraph 1(a).

(17) Under the heading S. AUSTRIA, omit paragraph 1(b).

(18) Under the heading T. POLAND—

(a) omit paragraph 1(a);

(b) omit paragraph 3(a);

(c) omit paragraph 5(a).

(19) Under the heading U. PORTUGAL, in part B, omit the words from "for benefits in kind" to "civil service staff), Lisboa".

(20) Under the heading V. ROMANIA—

(a) omit paragraph 1(a);

(b) omit paragraph 4(a).

(21) Under the heading W. SLOVENIA, omit paragraph 2.

(22) Under the heading X. SLOVAKIA—

(a) in paragraph 1, omit part B;

(b) in paragraph 3, omit part B.

(23) Under the heading Y. FINLAND, omit paragraph 1(b).

(24) Under the heading Z. SWEDEN, in paragraph 1—

(a) in point (d), for "Articles 60 to 77" substitute "Articles 61 to 77";

(b) in point (e), for "Articles 60 to 77" substitute "Articles 61 to 77".

(25) Under the heading AA. UNITED KINGDOM, in paragraph 1, omit the first indent.

18.—(1) Annex 3 is amended as follows.

(2) Under the heading A: BELGIUM(**a**), in part 1—

(a) in paragraph 1—

(i) in point (a), for "Articles 17, 18, 22, 25, 28, 29, 30 and 32" substitute "Articles 18, 25 and 32";

(ii) omit point (b);

(b) omit paragraph 4.

(3) Under the heading B. BULGARIA—

(a) omit paragraph 1(a);

(b) omit paragraph 3(a).

(4) Under the heading C. CZECH REPUBLIC, omit paragraph 1.

(5) Under the heading D. DENMARK—

(a) in part 1, in point (a), for "Articles 17, 18, 22, 25, 28, 29 and 30" substitute "Articles 18 and 25";

(b) in part 2, omit point (a)(i).

(6) Under the heading H. SPAIN, omit paragraph 1.

(7) Under the heading I. FRANCE, in Part A, omit paragraph 1(b).

(8) Under the heading J. IRELAND, omit paragraph 1.

(9) Under the heading K. ITALY—

(a) in paragraph 1—

(i) in part A, omit point (a);

(ii) omit part B;

(b) in paragraph 2—

(i) omit part A (including the heading);

(ii) in part B, omit points (a) and (b).

(10) Under the heading L. CYPRUS, omit paragraph 1.

(11) Under the heading M. LATVIA, omit paragraph 2.

(12) Under the heading N. LITHUANIA—

(a) omit paragraph 1(a)(i) and (b)(i);

(b) omit paragraph 4(a).

(13) Under the heading O. LUXEMBOURG, in paragraph 1(a), for "Articles 17, 18, 20, 21, 22, 24, 29, 30 and 31" substitute "Articles 18 and 24".

(14) Under the heading P. HUNGARY—

(a) in Part 1—

(i) in paragraph 1, omit "Benefits in kind and";

(ii) omit paragraph 2(a);

(iii) omit paragraph 4(a);

(b) in Part 2—

(i) in paragraph 1, omit "Benefits in kind and";

(ii) omit paragraph 2(a);

(iii) omit paragraph 4(a).

(15) Under the heading Q. MALTA, omit paragraph 2.

(**a**) Relevant amendments to Annex 3 were made by Regulation No 1290/97, Regulation No 1223/98, Regulation No 1606/98, the Accession Act, Regulation No 647/2005 and Regulation No 1791/2006.

(16) Under the heading R. NETHERLANDS, omit paragraph 1(a).

(17) Under the heading S. AUSTRIA, omit paragraph 3(a).

(18) Under the heading T. POLAND—

(a) omit paragraph 1(a);

(b) omit paragraph 3(a);

(c) omit paragraph 5(a).

(19) Under the heading U. PORTUGAL—

(a) in part 1, in paragraph 1, omit "(for sickness and maternity benefits in kind see also Annex 10)";

(b) in part 2, in paragraph 1, omit "(for sickness and maternity benefits in kind see also Annex 10)";

(c) in part 3, in paragraph 1, omit "(for sickness and maternity benefits in kind see also Annex 10)".

(20) Under the heading V. ROMANIA, omit paragraph 1.

(21) Under the heading W. SLOVENIA, omit paragraph 2.

(22) Under the heading X. SLOVAKIA, in paragraph 1, omit part B.

(23) Under the heading Y. FINLAND, omit paragraph 1(b).

(24) Under the heading AA. UNITED KINGDOM, in paragraph 1, omit the first indent.

19.—(1) Annex 4 is amended as follows.

(2) In the words in brackets under the heading, for "Articles 3(1), 4(4) and 122" substitute "Articles 3(1) and 4(4)"(**a**).

(3) Under the heading B. BULGARIA—

(a) omit paragraph 1(a);

(b) omit paragraph 3(a).

(4) Under the heading C. CZECH REPUBLIC, omit paragraph 1.

(5) Under the heading D. DENMARK, omit paragraph 1(a).

(6) Under the heading J. IRELAND, omit paragraph 1.

(7) Under the heading K. ITALY—

(a) in paragraph 1, in part A, omit point (a);

(b) in paragraph 2—

(i) omit part A;

(ii) in part B, omit points (a) and (b).

(8) Under the heading L. CYPRUS, omit paragraph 1.

(9) Under the heading M. LATIVIA, omit paragraph 2.

(10) Under the heading N. LITHUANIA, omit paragraph 1(a).

(11) Under the heading O. LUXEMBOURG, in paragraph 6—

(a) omit point (a);

(b) in point (b), omit "in other cases:".

(12) Under the heading P. HUNGARY—

(a) in paragraph 1, omit "Benefits in kind and";

(b) omit paragraph 2(a);

(**a**) Relevant amendments to Annex 4 were made by Regulation No 1290/97, Regulation No 1223/98, Regulation No 1606/98, Regulation No 1399/1999, Regulation No 1791/2006 and the Accession Act.

(c) omit paragraph 4(a).

(13) Under the heading R. NETHERLANDS, omit paragraph 1(a).

(14) Under the heading T. POLAND, omit paragraph 1.

(15) Under the heading V. ROMANIA, omit paragraph 1.

(16) Under the heading X. SLOVAKIA, omit paragraph 2.

(17) Under the heading AA. UNITED KINGDOM—

(a) under the heading "Great Britain", for point (a) substitute—

"(a) contributions: HM Revenue and Customs, PT Operations, North East England, BX9 1AN, United Kingdom;";

(b) under the heading "Northern Ireland", for point (a) substitute—

"(a) contributions: HM Revenue and Customs, PT Operations, North East England, BX9 1AN, United Kingdom;".

20.—(1) Annex 5 is amended as follows.

(2) In the words in brackets under the heading, for "Articles 4(5), 5, 53(3), 104, 105(2), 116, 121 and 122" substitute "Articles 53(3), 105(2), 116 and 121"(**a**).

(3) Under the heading 26. BELGIUM-UNITED KINGDOM, omit point (b).

(4) Under the heading 98. DENMARK-UNITED KINGDOM, in paragraph 1—

(a) omit "Articles 36(3), 63(3) and 70(3) of the Regulation and";

(b) omit point (a).

(5) Under the heading 120. GERMANY-UNITED KINGDOM, omit point (b).

(6) Under the heading 141. ESTONIA-UNITED KINGDOM, for the text substitute "No relevant convention".

(7) Under the heading 180. SPAIN-UNITED KINGDOM, for the text substitute "No relevant convention".

(8) Under the heading 198. FRANCE-UNITED KINGDOM, omit point (b).

(9) Under the heading 215. IRELAND-UNITED KINGDOM, for the text substitute "No relevant convention".

(10) Under the heading 231. ITALY-UNITED KINGDOM, for the text substitute "No relevant convention".

(11) Under the heading 285. LUXEMBOURG-UNITED KINGDOM—

(a) omit point (a);

(b) omit point (b).

(12) Under the heading 315. NETHERLANDS-UNITED KINGDOM, omit point (b).

(13) Under the heading 336. PORTUGAL-UNITED KINGDOM, for the text substitute "No relevant convention".

(14) Under the heading 350. FINLAND-UNITED KINGDOM, for the text substitute "No relevant convention".

(15) Under the heading 351 SWEDEN-UNITED KINGDOM, for the text substitute "No relevant convention".

21. In Annex 6, in the text in brackets under the heading, for "Articles 4(6), 53(1) and 122" substitute "Articles 4(6) and 53(1)"(**b**).

22. In Annex 7(**a**), in paragraph (b), for "55(3) and 122" substitute "and 55(3)".

(**a**) Relevant amendments to Annex 5 were made by Regulation No 1290/97, Regulation No 1223/98, Regulation No 1399/1999, Regulation No 1791/2006 and the Accession Act.

(**b**) Relevant amendments to Annex 6 were made by Regulation No 1290/97, Regulation No 1791/2006 and the Accession Act.

23. Omit Annex 9.

24.—(1) Annex 10 is amended as follows.

(2) Under the heading A. BELGIUM(**b**), omit paragraph 6 and 7.

(3) Under the heading B. BULGARIA, omit paragraph 6.

(4) Under the heading C. CZECH REPUBLIC, omit paragraphs 3 and 4.

(5) Under the heading D. DENMARK—

(a) in paragraph 1, omit the second paragraph;

(b) omit paragraph 6.

(6) Under the heading E. GERMANY—

(a) in paragraph 8—

(i) omit point (a);

(ii) omit point (b);

(iii) in point (c), omit "and Article 102(2) of the implementing Regulation";

(b) omit paragraph 9.

(7) Under the heading F. ESTONIA, omit paragraph 4.

(8) Under the heading G. GREECE—

(a) omit paragraph 7;

(b) omit paragraph 9.

(9) Under the heading H. SPAIN—

(a) in paragraph 2, omit "Article 102(2) (except in respect of mariners and unemployment benefits)," and "and Article 113(2)";

(b) in paragraph 3, omit "Article 102(2) (except in respect of unemployment benefits) and";

(c) omit paragraph 6.

(10) Under the heading I. FRANCE, omit paragraphs 8 and 9.

(11) Under the heading J. IRELAND—

(a) omit paragraph 3;

(b) omit paragraph 4(b).

(12) Under the heading K. ITALY, omit paragraphs 6 and 7.

(13) Under the heading L. CYPRUS, omit paragraph 3.

(14) Under the heading M. LATVIA, omit points (c) and (d).

(15) Under the heading N. LITHUANIA—

(a) omit paragraph 4;

(b) omit paragraph 5(a);

(c) omit paragraph 6.

(16) Under the heading O. LUXEMBOURG, omit paragraphs 8 and 9.

(17) Under the heading P. HUNGARY—

(a) omit paragraph 9;

(b) omit paragraph 12.

(18) Under the heading Q. MALTA—

(a) omit "102(2),";

(**a**) There are amendments to Annex 7 but none are relevant to these Regulations.

(**b**) Relevant amendments to Annex 10 were made by Regulation No 1290/97, Regulation No 1223/98, Regulation No 1606/98, Regulation No 1399/1999, the Accession Act and Regulation No 647/2005.

(b) omit the second paragraph.

(19) Under the heading R. NETHERLANDS, omit paragraph 3.

(20) Under the heading S. AUSTRIA—

(a) omit paragraph 7;

(b) omit paragraph 9.

(21) Under the heading T. POLAND—

(a) omit paragraph 3(a);

(b) omit paragraph 4(a);

(c) omit paragraph 11;

(d) omit paragraph 12.

(22) Under the heading U. PORTUGAL—

(a) in part A, in part I—

(i) omit paragraph 7;

(ii) omit paragraph 11;

(b) in part A, in part II—

(i) omit paragraph 7;

(ii) omit paragraph 11;

(c) in part A, in part III—

(i) omit paragraph 7;

(ii) omit paragraph 11;

(d) in part B—

(i) omit paragraph 6;

(ii) omit paragraph 10.

(23) Under the heading V. ROMANIA—

(a) omit paragraph 2(b);

(b) omit paragraph 3;

(c) omit paragraph 4.

(24) Under the heading W. SLOVENIA, omit paragraphs 9 and 10.

(25) Under the heading X. SLOVAKIA—

(a) omit paragraph 3(b);

(b) omit paragraph 4(d);

(c) in paragraph 6, omit the words from "for benefits in kind" to the end of the paragraph;

(d) omit paragraph 12;

(e) omit paragraph 13(b);

(f) omit paragraph 14.

(26) Under the heading Y. FINLAND, omit paragraph 8.

(27) Under the heading Z. SWEDEN, omit paragraph 5.

(28) Under the heading AA. UNITED KINGDOM—

(i) in paragraph 1, for "Centre for Non-Residents, Benton Park View, Newcastle upon Tyne, NE98 1ZZ" substitute "PT Operations, North East England, BX9 1AN, United Kingdom";

(ii) in paragraph 2, for "Articles 36 and 63 of the Regulation and Articles 8, 38(1), 70(1), 91(2), 102(2), 110 and 113(2)" substitute "Articles 8, 38(1), 70(1), 91(2) and 110".

SCHEDULE 5

Regulation 17

Savings and transitional provision

Interpretation

1.—(1) In this Schedule—

"competent authority" and "competent institution" have the meaning given by Regulation (EC) No 883/2004 or (as the case may be) Regulation (EEC) No 1408/71;

"relevant benefits in kind"—

(a) in relation to Regulation (EC) No 883/2004, means the benefits in kind referred to in Article 1(va)(i) and (ii) of that Regulation;

(b) in relation to Regulation (EEC) No 1408/71, means the benefits in kind to which Chapter 1 or 4 of Title 3 of that Regulation applies immediately before exit day;

"the relevant retained direct EU legislation" means—

(a) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009, and

(b) Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 (as extended by Regulation (EC) No 859/2003),

so far as relating to the coordination of the provision of relevant benefits in kind.

(2) A reference in this Schedule to a member State includes—

(a) where the relevant retained direct EU legislation applies in relation to an EEA state which is not a member State, a reference to the EEA state, and

(b) where the relevant retained direct EU legislation applies in relation to Switzerland, a reference to Switzerland.

Cases arising before exit day

2.—(1) The relevant retained direct EU legislation is to continue to apply on and after exit day, subject to the modifications set out in paragraphs 6 to 8, in a case where sub-paragraph (2), (3), (4) or (5) applies.

(2) This sub-paragraph applies where relevant benefits in kind were provided, or began to be provided, in the United Kingdom to an individual before exit day under—

(a) Chapter 1 or 2 of Title 3 of Regulation (EC) No 883/2004, or

(b) Chapter 1 or 4 of Title 3 of Regulation (EEC) No 1408/71.

(3) This sub-paragraph applies where relevant benefits in kind were provided, or began to be provided, in a member State (other than the United Kingdom) to an individual before exit day under—

(a) Chapter 1 or 2 of Title 3 of Regulation (EC) No 883/2004, or

(b) Chapter 1 or 4 of Title 3 of Regulation (EEC) No 1408/71,

in circumstances where reimbursement for the provision of those benefits fell to be made, or would have fallen to be made had exit day not occurred, under Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71 by the competent institution of the United Kingdom.

(4) This sub-paragraph applies where—

(a) authorisation for treatment in the United Kingdom was given before exit day under Article 20 of Regulation (EC) No 883/2004 or (as the case may be) Article 22 of Regulation (EEC) No 1408/71, or

(b) authorisation for treatment in a member State (other than the United Kingdom) was given before exit day by the competent institution of the United Kingdom under Article 20 or (as the case may be) Article 22.

(5) This sub-paragraph applies where—

(a) a request for authorisation for treatment in a member State (other than the United Kingdom) was made before exit day under Article 20 of Regulation (EC) No 883/2004 or (as the case may be) Article 22 of Regulation (EEC) No 1408/71, and

(b) the competent institution in the United Kingdom has not given or refused that authorisation for treatment before exit day.

(6) Nothing in sub-paragraphs (1) to (5) requires an institution of the United Kingdom—

(a) to provide relevant benefits in kind after the later of—

(i) the end of the period of one year beginning with the day after the day on which exit day falls;

(ii) in a case where the authorisation under Article 20 or (as the case may be) Article 22 authorises relevant benefits in kind to be provided within a specified period, the end of the specified period;

(b) to reimburse an institution of a member State for relevant benefits in kind provided, or a person for payment made for such relevant benefits in kind, after the later of—

(i) the end of the period of one year beginning with the day after the day on which exit day falls;

(ii) in a case where the authorisation under Article 20 or (as the case may be) Article 22 authorises relevant benefits in kind to be provided within a specified period, the end of the specified period.

Cases arising during reciprocal arrangements

3.—(1) The relevant retained direct EU legislation is to continue to apply on and after exit day, subject to the modifications set out in paragraphs 6 to 8, so far as relating to—

(a) the provision of relevant benefits in kind in the United Kingdom, or

(b) the provision of relevant benefits in kind in a member State, in circumstances where reimbursement for the provision of those benefits would have fallen to be made by the competent institution of the United Kingdom had exit day not occurred,

subject to sub-paragraph (2).

(2) The relevant retained direct EU legislation, as applied by sub-paragraph (1), has effect so as to impose an obligation on an institution of the United Kingdom as regards the provision of, or reimbursement for the provision of, relevant benefits in kind to an individual only if, and only during the period when, reciprocal arrangements have effect between—

(a) the United Kingdom, and

(b) the member State by reference to which the obligation arises in the case of the individual.

(3) Sub-paragraph (2) does not affect cases to which paragraph 2 applies.

(4) For the purposes of this paragraph—

(a) arrangements between the United Kingdom and a member State relating to the coordination of the provision of relevant benefits in kind are reciprocal arrangements if and only if the member State is included in the list maintained by the Secretary of State under paragraph 4;

(b) reciprocal arrangements between the United Kingdom and a member State are to be treated as beginning and ceasing to have effect at the times specified in the list maintained by the Secretary of State under paragraph 4.

List for the purposes of paragraph 3

4.—(1) The Secretary of State must maintain a list for the purposes of paragraph 3.

(2) The list must specify in relation to each member State listed in it—

(a) when reciprocal arrangements between the member State and the United Kingdom are to be treated as beginning to have effect;

(b) when reciprocal arrangements between the member State and the United Kingdom are to be treated as ceasing to have effect.

(3) The time specified in the list as the time when reciprocal arrangements are to be treated as beginning to have effect may not be before exit day.

(4) The time specified in the list as the time when reciprocal arrangements are to be treated as ceasing to have effect may not be after 31 December 2020.

(5) The Secretary of State may remove a member State from the list before the time specified in the list as the time when the member State's reciprocal arrangements are to be treated as beginning to have effect.

(6) The Secretary of State may change a time specified in the list (but not after the time specified).

(7) The Secretary of State must publish the list and keep it up to date.

(8) For "reciprocal arrangements" see paragraph 3.

Savings provision for cases arising during reciprocal arrangements

5.—(1) The relevant retained direct EU legislation is to continue to apply on and after exit day (and despite reciprocal arrangements ceasing to have effect), subject to the modifications set out in paragraphs 6 to 8, in a case where sub-paragraph (2), (3), (4) or (5) applies.

(2) This sub-paragraph applies where relevant benefits in kind were provided, or began to be provided, in the United Kingdom to an individual during the relevant period under—

(a) Chapter 1 or 2 of Title 3 of Regulation (EC) No 883/2004 (as modified by paragraph 6), or

(b) Chapter 1 or 4 of Title 3 of Regulation (EEC) No 1408/71 (as modified by paragraph 6).

(3) This sub-paragraph applies where relevant benefits in kind were provided, or began to be provided, in a member State to an individual during the relevant period, in circumstances where reimbursement for the provision of those benefits fell to be made, or would have fallen to be made had the relevant period not ended, by the competent institution of the United Kingdom under Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71 (as modified by paragraph 6).

(4) This sub-paragraph applies where—

(a) authorisation for treatment in the United Kingdom under Article 20 of Regulation (EC) No 883/2004 or (as the case may be) Article 22 of Regulation (EEC) No 1408/71 (as modified by paragraph 6) is given during the relevant period by an institution of a member State, or

(b) authorisation for treatment in a member State is given during the relevant period by the competent institution of the United Kingdom under Article 20 or (as the case may be) Article 22 (as modified by paragraph 6).

(5) This sub-paragraph applies where—

(a) a request for authorisation for treatment in a member State is made during the relevant period under Article 20 of Regulation (EC) No 883/2004 or (as the case may be) Article 22 of Regulation (EEC) No 1408/71 (as modified by paragraph 6), and

(b) the competent institution of the United Kingdom has not given or refused that authorisation for treatment before the end of the relevant period.

(6) Nothing in sub-paragraphs (1) to (5) requires an institution of the United Kingdom—

(a) to provide relevant benefits in kind after the later of—

(i) the end of the period of one year beginning with the day after the end of the relevant period;

(ii) in a case where the authorisation for treatment in the United Kingdom authorises relevant benefits in kind to be provided within a specified period, the end of the specified period;

(b) to reimburse an institution of a member State for relevant benefits in kind provided, or a person for payment made for such relevant benefits in kind, provided after the later of—

(i) the end of the period of one year beginning with the day after the end of the relevant period;

(ii) in a case where the authorisation for treatment in a member State requires that the relevant benefits in kind be provided within a specified period, the end of the specified period.

(7) This paragraph does not apply in a case to which paragraph 2 applies.

(8) In this paragraph—

"reciprocal arrangements" has the meaning given by paragraph 3;

"relevant period", in relation to a member State, means the period during which reciprocal arrangements between the United Kingdom and the member State have effect.

Modifications of the relevant retained direct EU legislation

6.—(1) In a case falling within paragraph 2, 3 or 5, the relevant retained direct EU legislation has effect—

(a) with the modifications set out in the following sub-paragraphs and paragraphs 7 and 8,

(b) without the amendments and revocations of that legislation in Schedules 1 to 4 to these Regulations or other regulations under section 8 of the European Union (Withdrawal) Act 2018, and

(c) as if—

(i) the amendments and revocations of the EEA agreement, and

(ii) the modifications of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, done at Luxembourg on 21st June 1999,

made by regulation 16 of these Regulations or regulations 3 and 4 of the Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019, so far as relating to the coordination of the provision of relevant benefits in kind, had not been made.

(2) A reference in the relevant retained direct EU legislation to a member State is to be read as if the United Kingdom were a member State.

(3) Where a provision of the relevant retained direct EU legislation imposes an obligation on the United Kingdom or an authority, institution or other body of the United Kingdom the performance of which would have been, immediately before exit day, wholly or partly dependent on a step being taken or a requirement being satisfied by—

(a) an EU institution(**a**),

(b) a member State or an authority, institution or other body of a member State, or

(c) any other person or body,

the United Kingdom or an authority, institution or other body of the United Kingdom is not required to perform the obligation unless that step is taken or the requirement is satisfied.

(4) A provision of the relevant retained direct EU legislation that requires effect to be given to—

(a) a list or other document issued by the Administrative Commission,

(b) a decision or determination made by the Administrative Commission,

(c) a procedure or other method established by the Administrative Commission,

(d) an opinion given by the Administrative Commission, or

(**a**) See Schedule 1 to the Interpretation Act 1978 (c. 30) as to the meaning of "EU institution".

(e) rules made or a measure taken by the Administrative Commission,

has effect as a provision that permits an authority, institution or other body of the United Kingdom to have regard to the act done by the Administrative Commission, whether the act is done before, or on or after, exit day.

(5) The relevant retained direct EU legislation is not to be treated by virtue of this paragraph as—

(a) conferring powers or imposing duties on an EU institution in relation to the United Kingdom,

(b) conferring powers or imposing duties on a member State or an authority, institution or other body of a member State in relation to the United Kingdom,

(c) requiring the United Kingdom or an authority, institution or other body of the United Kingdom to provide information to, or to take any other step as regards, an EU institution, or

(d) requiring the United Kingdom or an authority, institution or other body of the United Kingdom to publish material in the Official Journal of the European Union.

(6) Sub-paragraphs (2) to (5) are subject to the specific modifications in paragraphs 7 and 8.

(7) In this paragraph, "the Administrative Commission" means the Administrative Commission for the Coordination of Social Security Systems (see Title 4 of Regulation (EC) No 883/2004) or, where functions have been assumed by the EEA Joint Committee, the EEA Joint Committee; and references in this paragraph to an EU institution are to be read accordingly.

Regulation (EC) No 987/2009

7. Regulation (EC) No 987/2009 has effect as if—

(a) Articles 4, 5(4) and 6(3) were omitted;

(b) in Article 9(2), the words "shall be notified to the Administrative Commission and" were omitted;

(c) Article 62(2) required the amount of a refund to be determined on a basis agreed between the United Kingdom and the member State in question or between their competent authorities;

(d) Article 65 were omitted;

(e) the reference in Article 67(2) to publication in the Official Journal of the European Union were a reference to notification sent to the member State concerned;

(f) Articles 67(7), 69, 75(3), 86, 88 and 89 were omitted;

(g) in Article 90, the second sentence required the date to be fixed by agreement between the United Kingdom and the member State in question or between their competent authorities;

(h) Articles 91, 92 and 95 were omitted;

(i) Annex 4 were omitted.

Regulation (EEC) No 574/72

8. Regulation (EEC) No 574/72 has effect as if—

(a) Article 93(3) required the amount of a refund to be determined on a basis agreed between the United Kingdom and the member State in question or between their competent authorities;

(b) the reference in Article 100(2) to the date of publication in the Official Journal of the European Union were a reference to the date on which notification is given to the member State in question;

(c) Articles 104(2) and 105(2) provided for Annex 5 to be treated as if an agreement described in Article 104(2) or 105(2), to which the United Kingdom or the competent authority of the United Kingdom is party, were entered in the Annex when it was made.

Provision for United Kingdom legislation

9. The legislation repealed or revoked by Parts 2 and 3 of these Regulations is to have effect on and after exit day, as if it had not been repealed or revoked by Parts 2 and 3, so far as necessary for the purposes of provision made by paragraphs 2 to 8 of this Schedule.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (c), (d), (e) and (g) and (3) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

Part 2 amends primary legislation and Part 3 amends subordinate legislation relating to the coordination of the provision of benefits in kind relating to healthcare.

Part 4 relates to rights and other matters which become part of domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018. Part 5 amends or revokes provisions of retained EU Regulations relating to the coordination of the provision of benefits in kind. Part 6 revokes provisions of the EEA agreement.

Part 7 contains savings and transitional provisions.

An impact assessment has been prepared in relation to these Regulations and copies can be obtained from the Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU.

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EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY COORDINATION (RECIPROCAL HEALTHCARE) (AMENDMENT ETC) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department of Health and Social Care (DHSC) and is laid before Parliament by Act.

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

2. Purpose of the instrument

2.1 This instrument remedies deficiencies in retained European Union (EU) law relating to reciprocal healthcare, which arise from the withdrawal of the United Kingdom (UK) from the EU.

2.2 The purpose of this instrument is to ensure there will continue to be a functioning statute book on exit day and an effective mechanism to maintain EU reciprocal healthcare arrangements in appropriate circumstances if the UK leaves the European Union without a deal. The instrument is made under powers in the European Union (Withdrawal) Act 2018.

Explanations

What did any relevant EU law do before exit day?

2.3 Current EU reciprocal healthcare arrangements enable people for whose state healthcare costs the UK has responsibility (known as 'UK-insured') to have access to healthcare when they live, study, work, or travel in the EU, EEA and Switzerland (and *vice versa* for people for whose state healthcare costs those states have responsibility (the 'EU-insured') when in the UK). The EU reciprocal health arrangements give people more life options, and support tourism, businesses and healthcare cooperation.

2.4 The legal framework for EU reciprocal healthcare arrangements is predominantly set out in wider social security coordination regulations which form part of EU retained law (the 'EU SSC Regulations'):

- Regulation (EC) 883/2004[1] of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;
- Regulation (EC) No 987/2009[2] of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems;

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004R0883
[2] https://publications.europa.eu/en/publication-detail/-/publication/1cb8bb8d-3370-4889-a03f-924da9af7318/language-en

- Council Regulation (EEC) No 1408/71[3] of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community; and
- Council Regulation (EEC) No 574/72[4] of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community.

2.5 The EU SSC Regulations define the UK's and other Member States' responsibilities to reimburse healthcare costs when individuals for whom each state is responsible live, work, retire in or visit other states in the EU, EEA and Switzerland. This includes healthcare for UK state pensioners living abroad (the S1 scheme), emergency and needs arising healthcare for UK-insured temporary visitors to the EU such as tourists, students and posted workers (the European Healthcare Insurance Card Scheme (EHIC)) and UK-insured individuals travelling overseas to receive planned treatment in other countries (the S2 scheme).

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

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

Why is it being changed?

2.8 As a responsible government, the UK Government will continue to proportionately prepare for all scenarios, including the unlikely outcome that we leave the EU without any deal in March 2019.

2.9 The EU SSC Regulations are predicated on membership of the EU. Further, they provide for reciprocal healthcare rights and obligations which cannot operate without the agreement and cooperation of the other state involved. This Statutory Instrument therefore:

- prevents, remedies or mitigates deficiencies in retained EU law by retiring reciprocal healthcare arrangements which are rendered defunct by the UK's exit from the EU;
- transitionally preserves relevant aspects of the EU SSC Regulations in respect of states agreeing with the UK to continue these arrangements reciprocally; and

[3] https://publications.europa.eu/en/publication-detail/-/publication/81312945-046b-4697-9712-905771f1bd77
[4] https://publications.europa.eu/en/publication-detail/-/publication/bc43c0c2-fc26-44fc-8711-b7f66f24d554

- makes provision to protect the position of patients who are in the course of treatment under the current reciprocal healthcare arrangements, in as far as the UK is able to offer such protection unilaterally. This provision also protects the position of patients whose planned treatment has been authorised before exit day (again, in as far as the UK is able to offer unilateral protection).

2.10 This Statutory Instrument affords the UK a mechanism for ensuring there is no interruption to healthcare arrangements for UK-insured individuals after exit day in those Member States who agree to maintain the current arrangements for an interim period. Through this instrument, the UK can transitionally maintain the current EU reciprocal healthcare arrangements for countries where we have established reciprocity until 31 December 2020. The instrument extinguishes healthcare arrangements with Member States who do not agree to transitionally maintain the current reciprocal arrangements with the UK, with the exception of the savings protecting the position of patients in the course of treatment.

2.11 This instrument is intended to support other preparations the UK Government is making with regard to reciprocal healthcare arrangements, and to remedy flaws in the statute book that exist in any event following UK exit.

What will it now do?

2.12 The Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019 (the 'SSC Exit Regulations') will change aspects of EU SSC Regulations relating to reciprocal healthcare that would otherwise be incoherent following exit. The SSC Exit Regulations will fix the deficiencies in retained EU law by extinguishing reciprocal health aspects of the EU SSC Regulations or domestic implementing legislation which are inoperable without reciprocity, while at the same time transitionally maintaining in place and adjusting relevant provisions for countries where the UK have established reciprocity.

2.13 Specifically, the SSC Exit Regulations:

- fix deficiencies in retained EU law contained in primary legislation giving effect to of EU law on reciprocal healthcare , for example by omitting references to EU concepts that will no longer be appropriate (Part 2);
- fix deficiencies in subordinate legislation giving effect to certain aspects of the EU SSC Regulations, for example by omitting references to EU concepts that will no longer be appropriate (Part 3);
- fix deficiencies relating to reciprocal healthcare contained in each of the EU SSC Regulations (Part 5);
- fix deficiencies relating to reciprocal healthcare contained in the EEA Agreement so far as it forms part of domestic law by virtue of section 3(2)(b) of the European Union(Withdrawal) Act (Part 6); and
- in Part 7, make savings for cases arising before exit day and transitional provision, for a period up to 31 December 2020, for those cases in respect of which bilateral transitional reciprocal arrangements with listed countries are in place.

2.14 The Healthcare (International Arrangements) Bill, currently before Parliament, will provide a legislative framework to implement any future longer-term reciprocal healthcare arrangements with the EU, individual Member States or countries outside the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

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

3.2 The instrument contains provisions which anticipate prospective changes to be made by the Social Security Coordination Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019 and the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019, which are laid in draft alongside this instrument. Footnotes in the instrument indicate where this is the case. Both instruments will be made at the same time to come into force on exit day.

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

3.3 The territorial application of this instrument varies between provisions.

4. Extent and Territorial Application

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

4.2 The territorial extent and application of Parts 5, 6 and 7 is all of the UK.

5. European Convention on Human Rights

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

"In my view the provisions of the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This Statutory Instrument is made under Section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. As set out under section 2 above, this instrument seeks to correct deficiencies in retained EU law relating to reciprocal healthcare arising as a result of EU exit.

6.2 We have set out above the four EU SSC Regulations which this instrument will amend insofar as they relate to reciprocal healthcare. In addition, this instrument amends primary legislation which was enacted in order to implement or give effect to the EU law on reciprocal healthcare, as well as making miscellaneous changes to subordinate legislation which is retained EU law relating to reciprocal healthcare.

6.3 This Statutory Instrument:

- prevents, remedies or mitigates deficiencies in the EU SSC Regulations;
- prevents, remedies or mitigates deficiencies in certain primary and secondary legislation which gives effect to or implements EU law on reciprocal healthcare, which are caused by the UK's exit. For example, Part 2 amends section 183 of the National Health Service Act 2006 and section 131 of the National Health Service (Wales) Act 2006, both of which were introduced under section 2(2) of the European Communities Act 1972;

- transitionally preserves relevant aspects of the EU SSC Regulations in respect of states agreeing with the UK to continue these arrangements reciprocally;
- saves certain provisions of the EU SSC regulations to protect, so far as possible unilaterally, the position of UK-insured patients who are in the course of treatment in an EU Member State, EEA or Switzerland on Exit Day;
- clarifies the effect of the instrument on directly effective treaty rights retained under section 4 of the European Union (Withdrawal) Act 2018, insofar as they overlap with the instrument's provisions;
- in Part 6, makes amendments to the EEA Agreement insofar as it forms part of domestic law.

6.4 The Department for Work and Pensions is making four separate Statutory Instruments to correct other deficiencies in the EU SSC Regulations. They will maintain the status quo, on a unilateral basis, for those aspects of social security coordination which do not relate to reciprocal healthcare.

6.5 The Healthcare (International Arrangements) Bill, currently before Parliament, will provide a legislative framework to implement any future longer-term reciprocal healthcare arrangements with the EU, individual Member States or countries outside the EU. The Bill also provides the Government with the ability to respond to other scenarios related to EU Exit, for example implementing any bilateral arrangements which may differ to the current EU regulations or making independent arrangements to pay for healthcare.

6.6 This instrument supports other preparations which the UK Government is making with regard to healthcare abroad, such as the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations which are laid in draft alongside this instrument.

7. Policy background

What is being done and why?

7.1 In a no deal scenario, intervention is required to create a suitable legislative framework for reciprocal healthcare arrangements after we leave the EU. When the UK leaves the EU, the EU (Withdrawal) Act 2018 will automatically retain the current EU regulations, and the domestic implementing legislation in UK law, if no further secondary legislation is made.

7.2 If we do not legislate further, the current EU SSC Regulations, which are predicated on EU membership and require cooperation between Member States, would be incoherent or unworkable without reciprocity by Member States. Retaining this legal framework as it is now would mean that it would include defunct terms, such as EU SSC Regulations provisions relating to the role of the EU Commission. Further, the obligations of other states towards the UK contained in the EU SSC would no longer be recognised in the EU legal order. This would create a lack of clarity and certainty for patients as to their rights and entitlements.

7.3 For example, if a UK tourist visited an EU state and attempted to use their EHIC while abroad for emergency or needs-arising care, there would be no valid multilateral mechanism or reciprocal obligation to ensure that state's recognition of the EHIC (given that the UK would no longer be a Member State) or for processing reimbursements between that state and the UK. Further, the NHS may be left in a

position where it would not be able to recover any costs from other states for EU-insured individuals receiving treatment in the UK, but UK-insured individuals overseas would not receive equivalent treatment in the EU, EEA states or Switzerland.

7.4 In a no deal scenario, intervention is also required to create an agile legislative framework for reciprocal healthcare arrangements after we leave the EU. In a no deal scenario, the UK would like to make arrangements with individual EU Member States, EEA States and Switzerland, to ensure there are no immediate changes to people's access to healthcare after Exit Day and so that there is a strong basis for ongoing co-operation on health issues.

7.5 The UK is seeking to transitionally maintain reciprocal healthcare rights for pensioners, workers, students, tourists and other visitors in line with the current EU arrangements, including reimbursement of healthcare costs, for an interim period lasting no longer than until 31 December 2020. This is only possible with agreement from other Member States.

7.6 Through this instrument, the UK can transitionally maintain the current EU reciprocal healthcare arrangements for countries where we have established reciprocity until 31 December 2020. The arrangements would only apply to those Member States who agree to maintain the current reciprocal arrangements with us, and would not apply to Member States who do not agree to maintain the status quo.

7.7 Elements of reciprocal healthcare fall within Scotland, Wales and Northern Ireland's devolved competence. Consent has therefore been sought for this instrument in so far as it makes provision that could have been made by the Devolved Authorities under the EU (Withdrawal) Act 2018.

7.8 This instrument is intended to support other preparations the UK Government is making with regard to reciprocal healthcare arrangements.

What will it now do?

7.9 As explained above, the SSC Exit Regulations will change aspects of the retained EU regulations that are incoherent and relate to reciprocal healthcare, by removing aspects of the EU SSC Regulations that are redundant or inoperable following Exit (for example, removing EU institutions' role) and maintaining and adjusting provisions that are relevant for preserved reciprocal arrangements to function with specific states with whom reciprocity has been agreed.

7.10 The SSC Exit Regulations will cease to apply the current reciprocal healthcare legislation in the longer term, but transitionally retain relevant aspects until 31 December 2020, with appropriate modifications, through a time-limited savings provision for a list of countries.

7.11 The regulations will enable the UK to continue to support the provision of healthcare to UK-insured persons in selected "listed" countries (as well as receiving reimbursement for healthcare provided in the UK to those countries' citizens). Countries would be selected and listed by the Secretary of State. We envisage listing countries who reach agreement with the UK to continue to continue the current arrangements for a time-limited period until 31 December 2020. The saving would not apply to countries where there is no reciprocity, in relation to whom inoperable legislation would be discontinued.

7.12 This instrument also saves relevant aspects of the EU SSC regulations to preserve, so far as possible, the position of patients in the course of treatment on Exit Day, irrespective of any reciprocity in place. This would allow the UK to continue to fund treatment that is ongoing on exit day for a period of a year following exit.

7.13 The Healthcare (International Arrangements) Bill, currently before Parliament, will provide a legislative framework to implement any future longer-term reciprocal healthcare arrangements with the EU, individual Member States or countries outside the EU.

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

8.1 This instrument is made using the powers in section 8(1) of, and paragraph 21 of schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

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

10. Consultation outcome

10.1 Reciprocal Healthcare arrangements are popular and enjoy broad support from the general public. The Department of Health and Social Care has not undertaken a consultation on the instrument, but has engaged with relevant stakeholders on its approach to the future of EU reciprocal healthcare arrangements.

11. Guidance

11.1 No further guidance is published alongside this instrument.

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

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. This Statutory Instrument assumes that there will be continuing reciprocal arrangements with EU Member States, EEA states and Switzerland.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

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

14. Monitoring & review

14.1 As this instrument is made under the EU (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Sophie Eltringham at the Department of Health and Social Care. Telephone: 020 7972 4018 or email: Sophie.eltringham@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mayerling O'Regan, Deputy Director for EU and International Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Stephen Hammond, Minister of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

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

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

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Appropriateness statement

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

"In my view the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the instrument corrects deficiencies in EU retained law and, in a no deal scenario, intervention is required to create a suitable legislative framework for reciprocal healthcare arrangements after we leave the EU. This is because, following the UK's withdrawal from the EU, it will no longer be appropriate to continue reciprocal healthcare arrangements with EU states in the absence of reciprocity. This instrument does no more than is appropriate to remedy this deficiency because it ensures that reciprocal healthcare arrangements can continue to operate in respect of countries that agree to continue them with the UK. Furthermore, the instrument makes provision so that even where reciprocity ceases with another country, the legislation continues to apply for a transitional period to protect individuals that sought authorisation or started treatment before the arrangements ended.

2. Good reasons

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

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

2.2 As explained in section 2 of the main body of this Explanatory Memoranda, when the UK leaves the EU (on the 'Exit Day'), the EU (Withdrawal) Act 2018 will automatically retain EU reciprocal healthcare regulations, and their domestic implementing legislation, in UK law. In the event of no deal, if we do not legislate further, these retained EU regulations which currently operate on the basis of rights and obligations between Member States, would become incoherent and unworkable without being underpinned by reciprocity between the UK and EU Member States. This would create lack of clarity and certainty for patients as to their rights and entitlements.

2.3 For example, if a UK tourist visited an EU state and attempted to use their European Health Insurance Card (EHIC) while abroad for emergency care, there would be no valid multilateral mechanism or reciprocal obligation to ensure that state's recognition of the EHIC (given that the UK would no longer be a Member State). There would also be no mechanism for processing reimbursements between that state and the UK. Further, the NHS may be left in a position where it would not be able to recover any costs from other states for EU-insured individuals receiving treatment in the UK, but

UK-insured individuals overseas would not receive equivalent treatment in the EU, EEA states or Switzerland.

2.4 There are therefore good reasons why reciprocal healthcare should only be continued with those countries that continue to operate reciprocal healthcare arrangements with the UK. Providing transitional protection to individuals that sought authorisation or started treatment before the arrangements ended will provide a reasonable period within which they can go on to receive and complete their courses of treatment.

3. Equalities

3.1 The Minister of State for Health, Stephen Hammond, has made the following statement(s):

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

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

"In relation to the draft instrument, I, Stephen Hammond 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."

3.3 An Equalities analysis has been conducted for this piece of secondary legislation.

4. Explanations

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

5. Legislative sub-delegation

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

"In my view it is appropriate to create a relevant sub-delegated power in the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019".

5.2 This instrument makes provision for the Secretary of State to publish and maintain a list specifying the Member States with which the UK has reciprocal arrangements. This list mechanism is appropriate because it can be updated quickly in response to the conclusion of negotiations with Member States to continue reciprocal healthcare arrangements with them. The list will be published and accessible to the public so that it is clear which countries continue to operate these reciprocal healthcare arrangements with the UK and can provide individuals with certainty about the continuation of those arrangements as soon as negotiations are concluded. Including the list in legislation would delay the UK's ability to give effect to agreements seeking to maintain the current healthcare arrangements and would require multiple amending instruments as negotiations with different Member States are concluded in advance of exit day.

UK MINISTERS ACTING IN DEVOLVED AREAS

103 - The Social Security Coordination (Benefits in Kind etc) (Amendment etc) (EU Exit) Regulations 2019

Laid in the UK Parliament: 11 February 2019

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 22
SICM under SO 30A (because amends primary legislation)	Paper 23
Scrutiny procedure	
Outcome of sifting	NA
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	25 February 2019

Commentary

The written statement, and accompanying documentation, has an incorrect title. The written statement relates to The Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019. This has been raised with the Welsh Government.

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

EU Member States currently have reciprocal arrangements under which healthcare is available to each others' citizens wherever those citizens access healthcare throughout the EU. In the event of the UK leaving the European Union without a deal, these arrangements will no longer apply to EU citizens in the UK (or vice versa).

The Regulations will remove redundant references in UK law which will no longer be relevant once the UK leaves the European Union. They will also allow the UK to provide transitional protection to EU citizens until 31 December 2020. This will apply to citizens of those EU member states with which the UK Government has agreed a reciprocal arrangement for each others' citizens.

The Regulations amend the following EU instruments-

Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;

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

Council Regulation (EEC) No 1408/713 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community; and

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

They also amend-

The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005;

The Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006; and

The National Health Service (Wales) Act 2006.

As regards the latter, an amendment to section 131 will remove the power of the Welsh Ministers to make Regulations to reimburse travel costs for EU citizens (or for citizens of the EEA or Switzerland) where those costs were incurred for the purpose of accessing healthcare in Wales.

Legal Advisers agree with the statement laid by the Welsh Government dated 14 February 2019 regarding the effect of these Regulations.

The statement refers to the Statutory Instrument Consent Memorandum laid in respect of amendments to the National Health Service (Wales) Act

2006. The Welsh Government has indicated that it does not propose to table a motion to seek a debate under Standing Order 30A.10.

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.

Members may wish to consider whether to table a consent motion in accordance with Standing Order 30A.10 in respect of these Regulations, given that the Welsh Government does not intend to do so.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Public Procurement (Amendment etc.) (EU Exit) (No.2) Regulations 2019**
DATE	**13 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Public Procurement (Amendment etc.) (EU Exit) (No.2) Regulations 2019

The law which is being amended
The regulations will amend the following:

- The Public Contracts Regulations 2015 (S.I. 2015/102),
- The Concession Contracts Regulations 2016 (S.I. 2016/273)
- The Utilities Contracts Regulations 2016 (S.I. 2016/274)

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
There will be no impact on the Assembly's legislative competence or Welsh Minister'' executive competence.

The purpose of the amendments
The statutory instrument amends the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (the "First SI") so as to remove the effect of changes that the First SI made to the Public Contracts Regulations 2015 (S.I. 2015/102),the Concession Contracts Regulations 2016 (S.I. 2016/273) and the Utilities Contracts Regulations 2016 (S.I. 2016/274) which removed provisions relating to international agreements by which the EU is bound. The statutory instrument does not to create any new international obligations – its broad purpose is to maintain the effect of international agreements by which the EU is bound (albeit not reciprocally) which were removed by the First SI.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/PkKvpuFu

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to,

and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully and we have no policy concerns regarding the amendments.

UK MINISTERS ACTING IN DEVOLVED AREAS	
101 - The Public Procurement (Amendment etc.) (EU Exit) (No.2) Regulations 2019 *Laid in the UK Parliament: 11 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	N/A
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	26 February 2019

Commentary

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

These Regulations are being made in order to amend the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 before they come into effect in such a way as to preserve in domestic law, for a time-limited period of 18 months, the duties which United Kingdom (UK) contracting authorities and other contracting entities currently owe towards economic operators from countries with which the European Union (EU) has, before exit day, concluded a trade agreement by which it is bound.

In doing so, the UK wish to demonstrate that it is able to comply with the procurement obligations arising from those EU-third country trade

agreements which the UK intends to 'transition' to apply to the UK as an independent party following EU Exit.

These Regulations have no effect on the legislative competence of the Assembly or Welsh Minster's executive competence. These Regulations do not create any new international obligations.

Legal Advisers agree with the statement laid by the Welsh Government dated 13th February regarding the effect of these Regulations.

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

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

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Market Measures (Marketing Standards) (Amendment of Retained Direct EU Legislation) (EU Exit) Regulations 2019**
DATE	**15 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Market Measures (Marketing Standards) (Amendment of Retained Direct EU Legislation) (EU Exit) Regulations 2019 ("2019 Regulations")

The law which is being amended

European Directly Applicable Instruments

- Commission Implementing Regulation (EU) 1333/2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector

- Regulation (EC) No 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97

- Commission Regulation (EC) No 1825/2000 of 25 August 2000 laying down detailed rules for the application of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the labelling of beef and beef products

- Commission Regulation (EC) 566/2008 laying down detailed rules for the application of Council Regulation (EC) 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less

- Commission Implementing Regulation (EU) 2017/1184 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals

- Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors

- Commission Regulation (EC) No 1850/2006 laying down detailed rules for the certification of hops and hop products

- Commission Regulation (EC) No 1295/2008 on the importation of hops from third countries
- Commission Regulation (EC) No 445/2007 laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products

- Commission Regulation (EC) No 2004/2002 relating to the procedure for determining the meat and fat content of certain pigmeat products

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
Common Market Organisation is primarily a devolved subject matter.

The instrument contains provisions which enable Welsh Ministers to exercise administrative functions in Wales without encumbrance.

The instrument also confers administrative functions on the Secretary of State to exercise functions in relation to Wales with the consent of the Welsh Ministers and on one occasion in consultation. A single regulation making function is conferred on the Secretary of State without encumbrance.

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

The purpose of the amendments
The Common Market Organisation (CMO) is the framework for the market measures provided for under the Common Agricultural Policy (CAP), providing the framework for the market support schemes set up in the various agricultural sectors. The CMOs were set up as a means of meeting the objectives of the CAP and in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to:

- manage work volatility;
- incentivise collaboration between and competitiveness of agricultural producers; and
- facilitate trade.

The 2019 Regulations make amendments to existing EU legislation which forms part of UK law relating to CMO.

These 2019 Regulations make amendments to retained directly applicable EU legislation in relation to food marketing standards. The 2019 Regulations will ensure marketing standards in the food sector will be operable following the UK's exit from the EU. The objective is to maintain all existing marketing standards relevant for the UK market on Day 1.

After EU Exit and without amendment, the above retained EU legislation would contain inoperable provisions that would prevent the delivery of market support schemes to the agricultural sector.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/sj6gfDBw

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

104 - The Market Measures (Marketing Standards) (Amendment of Retained Direct EU Legislation) (EU Exit) Regulations 2019

Laid in the UK Parliament: 13 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	W/C 25/02/2019
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

The written statement has an incorrect title. The written statement relates to The Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019. This has been raised with the Welsh Government.

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

The Common Market Organisation ("CMO") is the framework for the market measures provided for under the Common Agriculture Policy ("CAP"), providing the framework for the market support schemes set up in the various agricultural sectors. The CMOs were set up as a means of meeting the objectives of the CAP and in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a

toolkit that enables the EU to manage market volatility, incentivise collaboration between and competitiveness of agricultural producers and facilitate trade.

The 2019 Regulations make amendments to various existing EU legislation which forms part of UK law relating to the CMO.
The 2019 Regulations make amendments to retained directly applicable EU legislation in relation to food marketing standards. The 2019 Regulations will ensure marketing standards in the food sector will be operable following the UK's exit from the EU. After EU Exit and without amendment, the retained EU legislation would contain inoperable provisions that would prevent the delivery of market support schemes to the agricultural sector.

Legal Advisers agree with the statement laid by the Welsh Government dated 15 February 2019 regarding the effect of these Regulations.
The statement notes that this instrument contains provisions which:

- enable the Welsh Ministers to exercise functions in Wales, without encumbrance;
- confers functions on the Secretary of State to exercise functions in relation to Wales with the consent of the Welsh Ministers and on one occasion in consultation. A single regulation making function is conferred on the Secretary of State without encumbrance.

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

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019**
DATE	**15 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019

The law which is being amended

- Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financial management and monitoring of the common agricultural policy. This EU Regulation has a fundamental role in setting out the overarching framework for how the CAP functions
- Article 11(1) of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
This instrument confers functions on the Welsh Ministers without encumbrance. There are also two functions which are being transferred to the Welsh Ministers, Secretary of State and other Devolved Authorities which can only be exercised by them jointly.

Functions transferred to the Secretary of State so that they are exercisable jointly with the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006. This 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
This instrument will ensure that the retained EU CAP "Horizontal" legislation will operate effectively throughout the UK after EU Exit. The appropriate legislative "fixes" introduced by

this instrument will maintain a status quo position, as far as possible, and will have no noticeable impacts on the ground for farmers or land managers.

The amendments made by these Regulations do not amount to a change in policy but ensure that retained EU law continues to operate effectively after the UK leaves the EU.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/6rx7NS3s

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered and present no divergence of policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

105 - The Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 13 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	W/C 25/02/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 31
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, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The intention of these Regulations is to ensure that retained EU Common Agricultural Policy (CAP) "Horizontal" regulations will work effectively throughout the UK after the UK leaves the EU, maintaining a status quo position and enabling payments to continue for farmers or land managers.

These Regulations amend Regulation (EU) No 1306/2016 of the European Parliament and of the Council of 17 December 2013 on the financial management and monitoring of the common agricultural policy. This EU

Regulation sets out the overarching framework for how the common agricultural policy (CAP) functions.

These Regulations also make a consequential amendment to article 11(1) of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy. This amendment makes a technical change to amend reference to European funds.

Legal Advisers agree with the statement laid by the Welsh Government dated 15 February 2019 regarding the effect of these Regulations.

The statement notes that in addition to functions being conferred on the Welsh Ministers without encumbrance, two functions are being transferred to the Welsh Ministers, Secretary of State and other Devolved Authorities which can only be exercised by them jointly.

The statement further notes that functions which are transferred to the Secretary of State that are exercisable jointly with the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. This may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

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

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Market Measures Payment Schemes (Amendments) (EU Exit) Regulations 2019**
DATE	**15 February 2019**

Market Measures Payment Schemes (Amendments) (EU Exit) Regulations 2019 ("2019 Regulations")

The law which is being amended

European Directly Applicable Instruments

- Commission Delegated Regulation (EU) No 2016/1238 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage

- Commission Implementing Regulation (EU) No 2016/1240 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage

- Commission Regulation (EC) No 1312/2008 fixing the conversion rates, the processing costs and the value of the by-products for the various stages of rice processing

- Commission Delegated Regulation (EU) 2015/1829 of 23 April 2015 supplementing Regulation (EU) No 1144/2014 of the European Parliament and of the Council on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries

- Commission Implementing Regulation (EU) 2015/1831 of 7 October 2015 laying down rules for application of Regulation (EU) No 1144/2014 of the European Parliament and of the Council on information provision and promotion measures concerning agricultural products implemented in the internal market and in the third countries

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
CMO is primarily a devolved subject matter.

This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Secretary of State to exercise functions in relation to Wales subject to the consent of the Welsh Ministers.

Functions transferred to the Secretary of State to be exercised concurrently with the consent of the Welsh Ministers, constitute functions of a Minister of the Crown that relate to a qualified devolved function for the purposes 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.

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

The purpose of the amendments

The Common Market Organisation ("CMO") is the framework for the market measures provided for under the Common Agriculture Policy ("CAP"), providing the framework for the market support schemes set up in the various agricultural sectors. The CMOs were set up as a means of meeting the objectives of the CAP and in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to:

- manage market volatility;
- incentivise collaboration between and competitiveness of agricultural producers; and
- facilitate trade.

The 2019 Regulations make amendments to existing EU legislation which forms part of UK law relating to CMO.

The 2019 Regulations provide operability fixes to the policy areas of public intervention, private storage aid, promotions and conversion rates for rice.

After EU Exit and without amendment, the above retained EU legislation would contain inoperable provisions that would prevent the delivery of market support schemes to the agricultural sector.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/FS1sjysb

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

106 - The Market Measures Payment Schemes (Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 13 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 33
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	W/C 25/02/2019

Commentary

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

These Regulations are part of a suite of instruments which together amend the retained EU legislation providing rules for the functioning and administration of the Common Organisation of Agricultural Markets and the Agri-Promotion scheme.

The instruments make predominantly technical changes to the retained EU legislation to ensure that it continues to function correctly after the UK has left the EU.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 15 February 2019 regarding the effect of these Regulations:

1. The Welsh Government has stated the following in its written statement:
"Functions transferred to the Secretary of State to be exercised concurrently with the consent of the Welsh Ministers, constitute functions of a Minister of the Crown that relate to a qualified devolved function for the purposes 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."

2. The Welsh Government's statement does not identify which functions in this instrument may be exercised by the Secretary of State "concurrently" with the consent of the Welsh Ministers. Legal Advisers therefore recommend that clarification is sought on which functions are to be exercised concurrently and why they are content for the Assembly's competence to be limited in the future in this regard.

3. In relation to the drafting of the Welsh Government's written statement, Legal Advisers note that the statement refers to the title of these Regulations being the "Market Measures Payment Schemes (Amendments) (EU Exit) Regulations 2019". However, the correct title is the "Market Measures Payment Schemes (Amendment) (EU Exit) Regulations 2019". "Amendment" is singular.

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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019**
DATE	**15 February 2019**

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

The law which is being amended

European Directly Applicable Instruments

- Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999
- Regulation No 1026/2012 of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing
- Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel.
- Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006
- Council Regulation (EC) No 2406/96 laying down common marketing standards for certain fishery products
- Regulation (EU) No 1380/2013 of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC
- Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito
- Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95

- 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002
- Regulation (EU) 2017/1004 of 17 May 2017 on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy and repealing Council Regulation (EC) No 199/2008
- Regulation (EU) 2017/1130 of the European Parliament and of the Council of 14 June 2017 defining characteristics for fishing vessels
- Council Regulation (EEC) No 2136 / 89 of 21 June 1989 laying down common marketing standards for preserved sardines.
- Regulation (EU) No.508/2014 of the European Parliament and of the Council of 15th May 2014 on the European Maritime and Fisheries Fund
- Council Regulation (EC) No 1386/2007 of 22 October 2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation
- Council Regulation (EC) No 2115/2005 of 20 December 2005 establishing a recovery plan for Greenland halibut in the framework of the Northwest Atlantic Fisheries Organisation.
- Regulation (EU) No 1236/2010 of the European Parliament and of the Council of 15 December 2010 laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North East Atlantic fisheries
- Commission Implementing Regulation (EU) No 433/2012 of 23 May 2012 laying down detailed rules for the application of Regulation (EU) No 1236/2010 of the European Parliament and of the Council laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries
- Regulation (EU) 2017/2107 of the European Parliament and of the Council of 15 November 2017 laying down management, conservation and control measures applicable in the Convention area of the International Commission for the Conservation of Atlantic Tunas (ICCAT)
- Regulation (EU) 2016/1627 of the European Parliament and of the Council of 14 September 2016 on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean
- Commission Delegated Regulation (EU) No 2015/98 on the implementation of the Union's international obligations under the International Convention for the Conservation of Atlantic Tunas and the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries
- Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms
- Council Regulation (EC) No 1984/2003 of 8 April 2003 introducing a system for the statistical monitoring of trade in swordfish and big-eye tuna within the Community
- Council Regulation (EC) No 1185/2003 of 26 June 2003 on the removal of shark fins on board vessels

- Council Regulation (EC) No 520/2007 of 7 May 2007 laying down technical measures for the conservation of certain stocks of highly migratory species
- Commission Regulation (EEC) No 3440/84 on the attachment of devices to trawls, Danish seines and similar nets
- Commission Regulation (EC) No 494/2002 establishing additional technical measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VII a, b, d, e
- Commission Implementing Regulation (EU) No 737/2012 on the protection of certain stocks in the Celtic Sea
- Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries
- Commission Regulation (EC) No 1922/1999 laying down detailed rules for the application of Council Regulation (EC) No 850/98 as regards conditions under which vessels exceeding eight metres length overall shall be permitted to use beam trawls within certain waters of the Community
- Commission Regulation (EEC) No 3440/84 on the attachment of devices to trawls, Danish seines and similar nets
- Council Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources
- Council Regulation (EC) No 2549/2000 establishing additional technical measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa)
- Council Regulation (EEC) No 1638/87 fixing the minimum mesh size for the pelagic trawls used in fishing for blue whiting in that part of the area covered by the Convention on Future Multilateral Cooperation in the North Eat Atlantic Fisheries which extends beyond the maritime waters falling with in the fisheries jurisdiction of Contracting Parties to the Convention
- Commission Regulation (EC) No 2056/2001 establishing additional technical measures for the recovery of the stocks of cod in the North Sea and to the West of Scotland
- Regulation (EU) 2018/973 of the European Parliament and of the Council establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea.

<u>Domestic legislation</u>

- The Sea Fishing (Enforcement) Regulations 2018.

<u>European legislation to be revoked</u>

- Council Regulation (EU) 2018/120 of 23 January 2018 fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, and amending Regulation (EU) 2017/127;
- Commission Implementing Decision of 19 March 2014 establishing a specific control and inspection programme for fisheries exploiting stocks of bluefin tuna in the Eastern Atlantic and the Mediterranean, swordfish in the Mediterranean and for fisheries exploiting stocks of sardine and anchovy in the Northern Adriatic Sea;

- Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94;
- Council Regulation (EC) No 2187/2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
Fisheries is a devolved subject area, and the National Assembly for Wales (the "Assembly") has broad legislative competence in this area in relation to Wales

This instrument confers both administrative and legislative functions on the Welsh Ministers without encumbrance. This instrument also confers functions on the Secretary of State to exercise functions in relation to Wales with the consent of Welsh Ministers and in certain cases without encumbrance.

Functions transferred to the Secretary of State to be exercised concurrently with the Welsh Ministers may constitute functions of a Minister of the Crown for the purposes 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.

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

The purpose of the amendments
This instrument makes operability changes under section 8 of, and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 to the instruments referred to above, in order to address deficiencies within Common Fisheries Policy (CFP) legislation, as a result of the UK's exit from the European Union. These changes will ensure that fishing in UK waters continues to be regulated in a sustainable manner post EU exit, but makes no substantive changes to the effect of the CFP or the manner in which fishers conduct their activities.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: https://beta.parliament.uk/work-packages/BQ7x1NiI

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

functional following the UK’s exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May 2018.

UK MINISTERS ACTING IN DEVOLVED AREAS

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

Laid in the UK Parliament: 13 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 35
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	W/C 25/02/2019

Commentary

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

These Regulations make extensive detailed amendments to European Union legislation on Fisheries as retained EU law to enable it to operate effectively outside the EU. Legislative and non-legislative functions of EU entities are transferred to the UK fisheries administrations.

These functions are generally expressed so that Devolved Administrations can make their own regulations when the matter is devolved, while the Secretary of State can make regulations when matters are reserved. In certain cases, in areas of devolved competence when an UK-wide approach may be preferred, the Secretary of State can exercise the

function for the whole of the UK, with the consent of the Devolved Administrations.

The regulations are to be subject to the affirmative procedure at Westminster.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 15 February 2019 regarding the effect of these Regulations.

The statement states:

"Fisheries is a devolved subject area, and the National Assembly for Wales (the "Assembly") has broad legislative competence in this area in relation to Wales
This instrument confers both administrative and legislative functions on the Welsh Ministers without encumbrance. This instrument also confers functions on the Secretary of State to exercise functions in relation to Wales with the consent of Welsh Ministers and in certain cases without encumbrance.
Functions transferred to the Secretary of State to be exercised concurrently with the Welsh Ministers may constitute functions of a Minister of the Crown for the purposes 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.*** *[our emphasis]*
Functions transferred so that they are exercisable by the Secretary of State alone or with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006. ***A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government****." [our emphasis]*

Standing Order 30C.3(ii) requires the written statement to "specify the impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence;" This statement (and in particular the sentences highlighted above) suggests rather than specifies.

Clarification was sought by the Committee on a similar point in relation to the Nutrition (Amendment etc.) (EU Exit) Regulations 2019. 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."

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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019**
DATE	**15 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019

The law which is being amended
Regulation (EC) No 648/2004 of the European Parliament and of the Council on detergents (the "Detergents Regulation") establishes common rules to enable detergents and surfactants to be sold and used across the EU, while providing a high degree of protection to the environment and human health. It stipulates that surfactants used in detergents must be fully biodegradable and imposes a restriction on phosphates in domestic laundry and dishwasher detergents. In addition, it regulates how products should be labelled with ingredient and dosage information in order to protect human health (e.g. skin allergies) and avoid overuse of detergents.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
There is no impact on the Assembly's legislative competence.

The purpose of the amendments
The 2019 Regulations make some of the modifications necessary to continue to apply the current rules set out in law post-EU Exit.

In particular, the Regulations make amendments to ensure the operability of the safeguard provision in the Detergent Regulation. The amendments will allow the Welsh Ministers to take urgent, temporary restriction action in relation to a product, where the exercise of the function falls within devolved competence (within the meaning of sections 58A(7) and (8) of the Government of Wales Act 2006) .

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/RpoJSgLV

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

108 - The Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 14 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 37
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	W/C 25/02/2019

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 Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents ("the Detergents Regulation") to enable its continued operability following EU Exit.

The Detergents Regulation establishes common rules to enable detergents and surfactants to be sold and used across the EU, and contains a safeguard clause to ensure the protection of the environment and human health from unforeseen risks of detergents. The safeguard clause allows Member States to implement temporary national restrictions on the free movement of detergents within the Single Market in the event of safety concerns. It also provides for the European Commission to analyse the justification of any national safeguard

measures and to inform all national competent authorities about dangerous detergents, in order to have any necessary restrictions extended to all Member States.

These Regulations removes references to Member States and the European Commission in the safeguard clause and provide for an appropriate authority to initiate temporary, restrictive actions in relation to a product where that authority has justifiable grounds for believing that a specific detergent, despite complying with the Detergents Regulation, constitutes a risk to the safety or health of humans, animals or a risk to the environment. In relation to Wales, the appropriate authority is the Welsh Ministers where the matter would be within the legislative competence of the Assembly, and the Secretary of State where the matter is reserved. Legal Advisers agree with the statement laid by the Welsh Government dated 15 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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019**
DATE	**15 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019

The law which is being amended

European Directly Applicable Instruments

- Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

- Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005.

- Regulation (EU) 1307/2013 of of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009.

- Commission Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agricultural sector.

- Commission Regulation (EC) No 702/2014 declaring certain categories of aid in agriculture and the forestry sectors in rural affairs compatible with the internal markets in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union.

- Commission Regulation (EU) 717/2014 on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector.

- Common Implementing Regulation (EU) 808/2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

- Commission Regulation (EU) No 1388/2014 declaring certain aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union.

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

Functions transferred to the Competition and Markets Authority (CMA)

This engages paragraph 10 of Schedule 7B to the Government of Wales Act 2006 (GOWA 2006). This provides that a provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a public authority other than a devolved Welsh authority, unless the appropriate (UK) Minister consents to the provision. A future Assembly Bill seeking to remove or modify these functions would require the consent of the appropriate Minister of the Crown.

The purpose of the amendments

The State Aid (Agriculture and Fisheries) (EU Exit) Regulations 2019 make amendments to legislation in the field of Agriculture and Fisheries State aid. Primarily, they correct deficiencies arising from EU Exit and ensure legal operability post EU Exit. They also transfer various regulatory functions to either the Welsh Ministers as "competent authority" in relation to Wales, or to the Competition and Markets Authority.

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

Why consent was not given

Despite the Welsh Government's position 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, the UK Government does not consider it as such, and therefore it has not requested Welsh Ministerial consent under the terms of the Intergovernmental Agreement. The Welsh Government has requested from the UK Government an explanation of its legal position but there has been no response.

However, the Welsh Government is content that the effect of the State Aid (EU Exit) Regulations 2019 and the State Aid (Agriculture and Fisheries) (EU Exit) Regulations 2019 combined achieve the Welsh Ministers' overarching policy objectives of securing and maintaining the confidence of EU partners, facilitating a dynamic alignment with EU State

aid rules and enabling effective cross-UK alignment. This, in turn, will form an important cornerstone of our future relationship with the European Union. The Welsh Government will continue to work to ensure that a Memorandum of Understanding that will underpin the regulations provides for a meaningful role for Welsh Ministers in the administration of the UK wide State aid regime.

UK MINISTERS ACTING IN DEVOLVED AREAS

109 - The State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 12 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 39
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	W/C 25/02/2019

Commentary

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

These Regulations complement the State Aid (EU Exit) Regulations 2019 (the State Aid Framework SI) laid by the UK Government before the UK Parliament.

These Regulations ensure that the current agricultural, fisheries and CAP exemptions from the EU State aid regime remain operable. They correct deficient references to, for example, the European Commission, Member States and the internal market. For example, in Article 5 of Agricultural Block Exemption Regulation, references to European Commission Notices are being replaced with references to Competition and Markets Authority (CMA) statements of policy.

These Regulations transfer a number of minor European Commission functions to the CMA. For example, when the UK has exceeded its annual State aid budget, certain categories are then only exempted from State aid rules for a 6 month period. These Regulations give the CMA the power to extend this 6 month period.

These Regulations also make minor amendments to other CAP legislation in the area of State aid.

As with the State Aid Framework SI, there is disagreement between the Welsh Government and the UK Government as to whether State aid is devolved.

Further, as noted above, these Regulations transfer functions to the CMA, which is a reserved authority. Under the reserved powers model, the National Assembly for Wales would not be able to remove or modify those CMA functions without UK Government consent.

Given the significant effect of these Regulations, Members may wish to consider writing to the Secondary Legislation Scrutiny Committee of the House of Lords to:

(a) endorse the Welsh Government's argument that State aid is devolved in Wales, and
(b) note that these Regulations are another example of subordinate legislation restricting the legislative competence of the National Assembly for Wales (albeit in a relatively narrow field).

The Committee may also wish to draw the matter to the attention of the Constitution Committee of that House.

Legal Advisers agree with the statement laid by the Welsh Government dated 15 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 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.

As noted in the Welsh Government's written statement:

"Despite the Welsh Government's position 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, the UK Government does not consider it as such, and therefore it has not requested Welsh Ministerial consent under the terms of the Intergovernmental Agreement. The Welsh Government has requested from the UK Government an explanation of its legal position but there has been no response.

However, the Welsh Government is content that the effect of the State Aid (EU Exit) Regulations 2019 and the State Aid (Agriculture and Fisheries) (EU Exit) Regulations 2019 combined achieve the Welsh Ministers' overarching policy objectives of securing and maintaining the confidence of EU partners, facilitating a dynamic alignment with EU State aid rules and enabling effective cross-UK alignment. This, in turn, will form an important cornerstone of our future relationship with the European Union. The Welsh Government will continue to work to ensure that a Memorandum of Understanding that will underpin the regulations provides for a meaningful role for Welsh Ministers in the administration of the UK wide State aid regime."

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L-/LG/0047/19

Mick Antoniw AM
Chair,
Constitutional and Legislative Affairs Committee
Mick.Antoniw@assembly.wales

18 February 2019

Dear Mick,

I thought it pertinent to outline the approach Welsh Ministers have decided to take in response to the UK Government laying of the State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019 in Parliament on 12 February 2019.

The 2019 Regulations, together with the State Aid (EU Exit) Regulations 2019 laid before Parliament on the 29 January, rollover existing Agricultural and Fisheries EU Block Exemption and De Minimis regulations into domestic law. This is to ensure agriculture and fisheries funding can continue. The Department for Business, Energy and Industrial Strategy is rolling over the State Aid Framework, the General Block Exemption Regulation ("GBER") and the Industrial De Minimis Regulation.

The Regulations and a supporting Memorandum of Understanding (MoU) are an important step in ensuring dynamic alignment between the UK and the EU on State aid. Welsh Ministers are pleased that regulations will secure and maintain the confidence of our EU partners, facilitate a dynamic alignment with EU State aid rules, and will enable cross-UK alignment, which in turn will form an important cornerstone of our future relationship with the European Union.

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 does not consider it as such (as was noted in the Intergovernmental Agreement) and therefore it has not requested Welsh Ministerial consent). The Welsh Government has requested from the UK Government an explanation of its legal position but there has been no response.

The Minister for Environment, Energy and Rural Affairs has written to the Parliamentary Under Secretary of State for Food and Animal Welfare to reiterate our position that it is not acceptable for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competency. Understanding the importance and time constraints of ensuring that these regulations are laid and in force by the time the UK leaves the European Union, it is vital that the long-term UK State aid regime is one which is developed, altered and owned by the UK Government and Devolved Administrations jointly.

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Discussions are ongoing between Defra and Welsh Government officials to consider implementation. Despite this, Welsh Ministers are disappointed that the regulations as they have been laid do not provide for decision making by mutual consent and do not provide for a State aid regime that is truly owned by all four Governments in the UK.

It is possible for the Welsh Government to agree with the UK Government that a fully functioning UK wide State aid regime is desirable, and indeed necessary to ensure full and unfettered access to the single market, without agreeing to relinquish all statutory control over the State aid rules going forward to the UK Government. Consequently, Welsh Ministers do not plan to grant unilateral consent for this Statutory Instrument.

Yours sincerely,

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019**
DATE	**15 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 ("2019 Regulations")

The law which is being amended

European Directly Applicable Instruments

- Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein
- Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market
- Commission Regulation (EU) No 546/2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards uniform principles for evaluation and authorisation of plant protection products
- Commission Implementing Regulation (EU) No 844/2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market

Amendment of secondary legislation

- The Trade in Endangered Species of Wild Fauna and Flora (Amendment) (EU Exit) Regulations 2018

- The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019

- The Control of Mercury (Amendment) (EU Exit) Regulations 2019

- The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019

- The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019

- The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019

The following provisions of retained direct EU legislation are revoked:

1.Commission Decision (EU) 2018/1590 amending Decisions 2012/481/EU, 2014/391/EU, 2014/763/EU and 2014/893/EU as regards the period of validity of the ecological criteria for the award of the EU Ecolabel for certain products, and of the related assessment and verification requirements.

2.Commission Implementing Regulation (EU) 2018/1913 renewing the approval of the active substance tribenuron in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.

3.Commission Implementing Regulation (EU) 2018/1914 concerning the non-renewal of approval of the active substance quinoxyfen, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011.

4. Commission Implementing Regulation (EU) 2018/1915 approving the active substance Metschnikowia fructicola strain NRRL Y-27328 in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.

5.Commission Implementing Regulation (EU) 2018/1916 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval period of the active substance bispyribac.

6. Commission Implementing Regulation (EU) 2018/1917 concerning the non-renewal of approval of the active substance flurtamone, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011.

7. Commission Implementing Regulation (EU) 2018/1981 renewing the approval of the active substances copper compounds, as candidates for substitution, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.

8.Commission Regulation (EU) 2018/2026 amending Annex IV to Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

9. Commission Regulation (EU) 2019/50 amending Annexes II, III, IV and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlorantraniliprole, clomazone, cyclaniliprole, fenazaquin, fenpicoxamid, fluoxastrobin, lambda-cyhalothrin, mepiquat, onion oil, thiacloprid and valifenalate in or on certain products.

10. Commission Decision (EU) 2019/61 on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the public administration sector under Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

11. Commission Decision (EU) 2019/62 on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the car manufacturing sector under Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

12. Commission Decision (EU) 2019/63 on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the electrical and electronic equipment manufacturing sector under Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

13. Commission Decision (EU) 2019/70 establishing the EU Ecolabel criteria for graphic paper and the EU Ecolabel criteria for tissue paper and tissue products.

14. Commission Regulation (EU) 2019/88 amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acetamiprid in certain products.

15. Commission Implementing Regulation (EU) 2019/139 approving the active substance *Beauveria bassiana* strain IMI389521, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.

16. Commission Implementing Regulation (EU) 2019/147 approving the active substance *Beauveria bassiana* strain PPRI 5339, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011.

17. Commission Implementing Regulation (EU) 2019/148 concerning the non-approval of the active substance propanil, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market.

18. Commission Implementing Regulation (EU) 2019/168 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances abamectin, *Bacillus subtilis* (Cohn 1872) Strain QST 713, *Bacillus thuringiensis* subsp. Aizawai, *Bacillus thuringiensis* subsp. israeliensis, *Bacillus thuringiensis* subsp. kurstaki, *Beauveria bassiana*, benfluralin, clodinafop, clopyralid, *Cydia pomonella Granulovirus* (CpGV), cyprodinil, dichlorprop-P, epoxiconazole, fenpyroximate, fluazinam, flutolanil, fosetyl, *Lecanicillium muscarium*, mepanipyrim, mepiquat, *Metarhizium anisopliae* var. Anisopliae, metconazole, metrafenone, *Phlebiopsis gigantea*, pirimicarb, *Pseudomonas chlororaphis* strain: MA 342, pyrimethanil, *Pythium oligandrum*, rimsulfuron, spinosad, *Streptomyces* K61, thiacloprid, tolclofos-methyl, *Trichoderma asperellum*, *Trichoderma atroviride*, *Trichoderma gamsii*, *Trichoderma harzianum*, triclopyr, trinexapac, triticonazole, *Verticillium albo-atrum* and ziram.

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

There is no impact on the Assembly's legislative competence. These Regulations do not confer legislative functions, however they confer administrative functions on the Welsh Ministers without encumbrance.

The purpose of the amendments

The 2019 Regulations makes a number of miscellaneous amendments and revocations to ensure certain environmental laws function after the UK's Exit from the European Union ("EU") as summarised below.

Regulations 2, 4 and 5 amend other EU Exit SIs to correct minor errors, or consequential changes needed, in the amendments made by those instruments to retained direct EU legislation or domestic legislation relating to CITES, control of mercury and water abstraction.

Regulation 3 amends the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 to amend the change made to the cross reference to Article 9 of the Industrial Emissions Directive, so that regulators are not required to include in permits additional provisions in respect of emission limit values for greenhouse gas emissions from, or energy efficiency requirements for, the installations specified in Article 9. This is presently the case and this change will ensure that there is continuity in the approach.

Regulation 6 makes two amendments to the transitional provisions in Schedule 1 to the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 as a result of subsequent changes to Regulation (EC) No 396/2005.

Regulation 7 amends the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019, principally as a result of recent amendments made by the EU Commission to Regulation (EC) No 1107/2009 and Commission Implementing Regulation (EU) No 844/2012 by Commission Implementing Regulation (EU) 2018/1659. Regulation 9 amends Article 46 of Regulation (EC) No 1107/2009 and the Annex to Commission Regulation (EU) No 546/2011 which governs plant protection product grace periods. The original amendment inadvertently altered the operation of that Article, and the amendment made by regulation 9 rectifies this. Regulation 10 makes a minor amendment to the Annex to Commission Regulation (EU) No 546/2011, in place of a previous amendment which contained a minor error. The original amendments of those provisions by the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 are also omitted from those Regulations. Regulation 11 amends provisions which are inserted into Commission Implementing Regulation (EU) No 844/2012 by Commission Implementing Regulation (EU) 2018/1659, in order to ensure the operability of those provisions following EU exit.Regulation 8 amends Article 44j of Commission Regulation (EC) No 865/2006 to correct a deficiency arising from EU exit.

Regulation 12(1) and the Schedule revoke various retained direct EU legislation relating to pesticides, eco-management and audit and ecolabelling, and regulation 12(2) contains a saving provision in relation to some of the revoked legislation relating to pesticides. The saving provision ensures that any grace periods for the use of plant protection products which contain active substances for which approval has been withdrawn, where those grace periods expire after exit day, continue to remain in force in the United Kingdom after exit until their ordinary expiry date. In this way the pesticides legislation will continue to function appropriately.

The amendments made by these Regulations do not amount to a change in policy, but ensure that retained EU law continues to operate effectively after the UK leaves the EU. Regulation 3 is being made to reflect greenhouse gas emissions reduction policy, which has now been clarified, including how the emissions from affected installations will continue to be regulated. In effect, the amendments being made to the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 maintain the current approach.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/blvqbmh2

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered and present no

divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

110 - The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019

Laid in the UK Parliament: 12 February 2019

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Negative
Date of consideration by the House of Commons European Statutory Instruments Committee	26 February 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	25 February 2019
Date sifting period ends in UK Parliament	28 February 2019
Written statement under SO 30C:	Paper 42
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 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

These Regulations make several amendments and revocations to several environmental laws to ensure that they function after the UK's exit from the European Union.

These Regulations amend 4 EU Commission Regulations and 5 EU Exit UK Regulations. They also revoke specified provisions in a further 18 EU Commission regulations and EU Decisions, which are listed correctly in the Welsh Government statement.

There is no impact on the Assembly's competence, but the Government's statement says, "these Regulations do not confer legislative functions,

however they confer administrative functions on the Welsh Ministers without encumbrance." The statement does not specify what these "administrative functions" are. Legal Services have recommended that the Committee ask for further detail in this regard.

Aside from this point Legal Advisers agree with the statement laid by the Welsh Government dated 15th February regarding the effect of these Regulations.

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

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

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**THE FOOD, DRINK, VETERINARY MEDICINES AND RESIDUES (AMENDMENTS ETC.) (EU EXIT) REGULATIONS 2019**
DATE	**18 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

THE FOOD, DRINK, VETERINARY MEDICINES AND RESIDUES (AMENDMENTS ETC.) (EU EXIT) REGULATIONS 2019

The law which is being amended

Domestic Legislation

The Veterinary Medicines Regulations 2013 (Reserved)
The Wine Regulations 2011
The Spirit Drinks Regulations 2008
The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009
The Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018

EU Legislation

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

Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs

Commission Implementing Regulation (EU) No 716/2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks

Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products

Commission Delegated Regulation (EU) No 664/2014 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules

Commission Delegated Regulation (EU) No 665/2014 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to conditions of use of the optional quality term 'mountain product'

Commission Implementing Regulation (EU) No 668/2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs

Commission Delegated Regulation (EU) 2018/273 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties

Commission Implementing Regulation (EU) 2018/274 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, certification, the inward and outward register, compulsory declarations and notifications, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks

Regulation (EC) No 470/2009 of the European Parliament and of the Council laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin

Annex 2 to the EEA Agreement

Revoked EU Directly Applicable Legislation

Council Decision 94/184/EC concerning the conclusion of an Agreement between the European Community and Australia on trade in wine.

Council Decision 97/361/EC concerning the conclusion of an Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks

Commission Decision 2000/192/EC concerning the conclusion of an Agreement amending the Agreement between the European Community and Australia on trade in wine.

Commission Decision 2001/339/EC concerning an Exchange of Letters amending point B of the Annex to the Agreement between the European Community and the Republic of Bulgaria on the reciprocal protection and control of wine names.

Commission Decision 2001/581/EC concerning the conclusion of an Agreement amending the Agreement between the European Community and Australia on trade in wine.

Council Decision 2001/916/EC on the conclusion of an Additional Protocol adjusting the trade aspects of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, to take account of the outcome of the negotiations between the parties on reciprocal preferential concessions for certain wines, the reciprocal recognition, protection and control of wine names and the reciprocal recognition, protection and control of designations for spirits and aromatised drinks

Council Decision 2001/917/EC on the conclusion of an Additional Protocol adjusting the trade aspects of the Interim Agreement between the European Community, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, to take account of the outcome of the negotiations between the parties on reciprocal preferential concessions for certain wines, the reciprocal recognition, protection and control of wine names and the reciprocal recognition, protection and control of designations for spirits and aromatised drinks.

Council Decision 2001/918/EC on the conclusion of an Additional Protocol adjusting the trade aspects of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, to take account of the outcome of the negotiations between the parties on reciprocal preferential concessions for certain wines, the reciprocal recognition, protection and control of wine names and the reciprocal recognition, protection and control of designations for spirits and aromatised drinks.

Council Decision 2001/919/EC on the conclusion of an Additional Protocol adjusting the trade aspects of the Interim Agreement between the European Community, of the one part, and the Republic of Croatia, of the other part, to take account of the outcome of the negotiations between the parties on reciprocal preferential concessions for certain wines, the reciprocal recognition, protection and control of wine names and the reciprocal recognition, protection and control of designations for spirits and aromatised drinks.

Council Decision 2001/920/EC on the conclusion of an Additional Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part, to take account of the outcome of the negotiations between the parties on reciprocal preferential concessions for certain wines, the reciprocal recognition, protection and control of wine names and the reciprocal recognition, protection and control of designations for spirits and aromatised drinks.

Council Decision 2002/51/EC on the conclusion of an Agreement between the European Community and the Republic of South Africa on trade in wine.

Council Decision 2002/53/EC concerning the provisional application of the Agreement between the European Community and the Republic of South Africa on trade in wine.

Council Decision 2002/55/EC on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Republic of South Africa on trade in wine.

Commission Decision 2002/650/EC concerning the conclusion of an Agreement amending the Agreement between the European Community and Australia on trade in wine.

Commission Decision 2003/898/EC concerning the conclusion of an agreement amending the Agreement between the European Community and Australia on trade in wine.

Council Decision 2004/91/EC on the conclusion of the agreement between the European Community and Canada on trade in wines and spirit drinks.

Commission Decision 2004/387/EC on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the United Mexican States concerning amendments to Annex I to the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks, taking into account the enlargement.

Commission Decision 2004/483/EC on the conclusion of an Agreement in the form of an exchange of letters between the European Community and the United Mexican States concerning amendments to Annex I of the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks, taking into account the enlargement.

Commission Decision 2004/785/EC on the conclusion of an Agreement in the form of an exchange of letters between the European Community and the United Mexican States concerning amendments to Annex II of the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks.

Council Decision 2005/798/EC concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the United States of America on matters related to trade in wine.

Council Decision 2006/136/EC on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Republic of Chile concerning amendments to the Agreement on Trade in Wines annexed to the Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part.

Council Decision 2006/232/EC on the conclusion of the Agreement between the European Community and the United States of America on trade in wine.

Commission Decision 2006/567/EC on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Republic of Chile concerning amendments to Appendices I, II, III and IV of the Agreement on Trade in Wines annexed to the Association Agreement between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part.

Commission Decision 2006/569/EC on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Republic of Chile concerning amendments to Appendix VI of the Agreement on Trade in Wines annexed to the Association

Agreement between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part.

Commission Regulation (EC) No 555/2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector.

Council Decision 2009/49/EC on the conclusion of the Agreement between the European Community and Australia on trade in wine.

Commission Decision 2009/104/EC on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Republic of Chile concerning amendments to Appendix V of the Agreement on Trade in Wines annexed to the Association Agreement between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part.

Council Decision 2011/51/EU on the signing of the Agreement between the European Union and the Swiss Confederation on the protection of designations of origin and geographical indications for agricultural products and foodstuffs, amending the Agreement between the European Community and the Swiss Confederation on trade in agricultural products.

Council Decision 2011/620/EU on the signing, on behalf of the Union, of the Agreement between the European Union and Georgia on protection of geographical indications of agricultural products and foodstuffs.

Council Decision 2011/738/EU on the conclusion of the Agreement between the European Union and the Swiss Confederation on the protection of designations of origin and geographical indications for agricultural products and foodstuffs, amending the Agreement between the European Community and the Swiss Confederation on trade in agricultural products.

Commission Implementing Decision 2011/751/EU on the notification of a proposal for amendment to the Annexes to the EC-US Agreement on trade in wine.

Council Decision 2012/164/EU on the conclusion of the Agreement between the European Union and Georgia on protection of geographical indications of agricultural products and foodstuffs.

Commission Implementing Decision 2012/275/EU on the inclusion of vine varieties in Appendix IV of the Protocol on wine labelling as referred to in Article 8(2) of the EC-US Agreement on trade in wine.

Council Decision 2012/292/EU on the signing, on behalf of the Union, of the Agreement between the European Union and the Republic of Moldova on the protection of geographical indications of agricultural products and foodstuffs.

Council Decision 2012/533/EU on the position to be taken by the European Union within the Joint Committee set up by Article 11 of the Agreement between the European Union and Georgia on protection of geographical indications of agricultural products and foodstuffs, as regards the adoption of the rules of procedure of the Joint Committee.

Council Decision 2013/7/EU on the conclusion of the Agreement between the European Union and the Republic of Moldova on the protection of geographical indications of agricultural products and foodstuffs.

Council Decision 2013/482/EU on the position to be taken by the European Union within the Joint Committee set up by Article 11 of the Agreement between the European Union and the Republic of Moldova on protection of geographical indications of agricultural products and foodstuffs, as regards the adoption of the rules of procedure of the Joint Committee.

Council Decision 2014/429/EU on the position to be adopted on behalf of the European Union within the Association Council set up by the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America, on the other, as regards the adoption of a decision by the Association Council on the inclusion in Annex XVIII of the respective geographical indications protected in the territory of the parties.

Commission Delegated Regulation (EU) 2016/1149 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector.

Commission Implementing Regulation (EU) 2016/1150 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector. Council Decision (EU) 2016/2136 on the signing, on behalf of the European Union, of the Agreement between the European Union and Iceland on the protection of geographical indications for agricultural products and foodstuffs.

Council Decision (EU) 2017/1912 on the conclusion of the Agreement between the European Union and Iceland on the protection of geographical indications for agricultural products and foodstuffs.

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

This instrument transfers functions to the Secretary of State. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UKG.

The purpose of the amendments

Part 2 and 3 of this instrument amend domestic and EU legislation relating to food and drink, this is to ensure that the law in this area remains operable upon the UK's withdrawal from the EU. A significant portion of this instrument deals with incorporating the existing EU Protected Food Name (PFN) and Geographical Indication (GI) schemes into domestic law (so that there is a UK scheme on exit). Part 3 also revokes the EU legislation listed in Schedule 7 of the instrument.

Geographical Indications

Currently EU Regulations provide for the registration and protection of GIs in the UK. These cover i) agricultural products and foodstuffs ii) wines iii) spirit drinks and iv) aromatised wines. There are 15 fifteen Welsh food products registered under the European Scheme, including Welsh lamb and Welsh beef. GI is an important award as it is seen as a mark of quality which

can give producers a greater economic benefit for their produce. The schemes provide legal protection from imitation for both regional and traditional specialties, whose authenticity and origin can be guaranteed. This gives assurance to consumers that products are genuine and enables producers to better promote and market their products.

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

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

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

1) The GI schemes will be administered as UK schemes, not as European schemes. All GI applications will go through a single UK scrutiny and opposition process, rather than the current two-stage process (the current Member State and European Commission stages will be combined into a single modified UK scheme process);

2) Appeals provisions are being introduced as a result of the UK assuming new responsibilities and functions, previously belonging to the EU. These allow those with a legitimate interest to appeal to the First-tier Tribunal where they disagree with decisions made in the administration of the scheme; and

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

Parts 4 and 5 of the instrument deal with veterinary medicines.

This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the powers in paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments

Consent

Consent has been given for the UK Government to make corrections in relation to, and on behalf of, Wales on matters relating to Wine, Spirits and Veterinary medicines for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

In relation to Protected Food Names and Geographical Indicator schemes, we have a strong interest in ensuring that Welsh Protected Food Names and Geographical Indicators are protected throughout the UK (and ideally, through the negotiations on the future partnership, the EU). While the Welsh Government's position is that these matters are devolved, the UK Government considers them to be reserved, and therefore these matters are not subject to the terms of the Intergovernmental Agreement, from its perspective. The Welsh Government has sought joint decision making functions within this instrument in relation to approving food names and GIs, but the UK Government has maintained its view that these matters are reserved. We accept that the UK Government has been acting in good faith under the Intergovernmental Agreement and it has not been possible to resolve these matters within the timeframe required to ensure a functioning statute book.

However, in an exchange of letters between the Minister for Environment, Energy and Rural Affairs and the Secretary of State, written assurances have been given that all Devolved Administrations will be involved in the operation of the new scheme. The Welsh Government will continue to work to ensure that a Memorandum of Understanding that will underpin the instrument provides for a meaningful role for Welsh Minsters in the administration of the scheme. Consent has therefore been given on the basis that this will be addressed in due course and it has been clarified that this consent is without prejudice to our position on legislative competence.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019**
DATE	**18 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019 ("2019 Regulations")

The law which is being amended

Amendment of legislation applicable in relation to Wales

- The Hops Certification Regulations 1979
- The Quality Standards for Green Bananas (England and Wales) Regulations 2012
- The Olive Oil (Marketing Standards) Regulations 2014

Amendment of other legislation

The 2019 Regulations also amend other legislation. However, that legislation is not applicable in relation to Wales, and as such is not discussed in this statement.

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

CMO is primarily a devolved subject matter.

This SI contains provision which enables the Welsh Ministers, in relation to Wales, to exercise administrative functions previously conferred on the Secretary of State by the Hops Certification Regulations 1979 without encumbrance.

The purpose of the amendments

The Common Market Organisation ("CMO") is the framework for the market measures provided for under the Common Agriculture Policy ("CAP"), providing the framework for the market support schemes set up in the various agricultural sectors. The CMOs were set up as a means of meeting the objectives of the CAP and in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to:

- manage market volatility;
- incentivise collaboration between and competitiveness of agricultural producers; and
- facilitate trade.

The 2019 Regulations make amendments to existing domestic legislation which forms part of UK law relating to CMO.

The 2019 Regulations provide operability fixes that in policy terms are intended to maintain a status quo position as far as possible and is not intended to have noticeable impacts on the ground for the agricultural sector.

After EU Exit and without amendment, the above domestic legislation would contain inoperable provisions that would prevent the delivery of market support schemes to the agricultural sector.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019**
DATE	**18 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019 ("2019 Regulations")

The law which is being amended

Amendment of legislation applicable in relation to Wales

- The Hops Certification Regulations 1979
- The Quality Standards for Green Bananas (England and Wales) Regulations 2012
- The Olive Oil (Marketing Standards) Regulations 2014

Amendment of other legislation

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- manage market volatility;
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After EU Exit and without amendment, the above domestic legislation would contain inoperable provisions that would prevent the delivery of market support schemes to the agricultural sector.

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Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

112 - The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 13 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 46
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	W/C 25/02/2019

Commentary

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

The Common Market Organisation ("CMO") is the framework for the market measures provided for under the Common Agriculture Policy ("CAP"), providing the framework for the market support schemes set up in the various agricultural sectors. The CMOs were set up as a means of meeting the objectives of the CAP and in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to manage market volatility, incentivise collaboration between and competitiveness of agricultural producers and facilitate trade.

The 2019 Regulations make amendments to various existing EU legislation which forms part of UK law relating to the CMO.
The 2019 Regulations make amendments to retained directly applicable EU legislation in relation to food marketing standards. The 2019 Regulations will ensure marketing standards in the food sector will be operable following the UK's exit from the EU. After EU Exit and without amendment, the retained EU legislation would contain inoperable provisions that would prevent the delivery of market support schemes to the agricultural sector.

Legal Advisers agree with the statement laid by the Welsh Government dated 15 February 2019 regarding the effect of these Regulations.
The statement notes that this instrument contains provisions which:

- enable the Welsh Ministers to exercise functions in Wales, without encumbrance;
- confers functions on the Secretary of State to exercise functions in relation to Wales with the consent of the Welsh Ministers and on one occasion in consultation. A single regulation making function is conferred on the Secretary of State without encumbrance.

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

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019**
DATE	**18 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019

The law which is being amended

The elements of these Regulations that apply to Wales amend Commission Implementing Decision 2014/709/EU and the Plant Health (EU Exit) Regulations 2019.

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

There is no impact on the Assembly's legislative competence. The elements of these Regulations that apply to Wales do not confer legislative functions, however they confer administrative functions on the Welsh Ministers without encumbrance.

The purpose of the amendments

The elements of these Regulations that apply to Wales:

make minor technical amendments to ensure that Commission Implementing Decision 2014/709 concerning animal health control measures relating to African swine fever will continue to be operable after EU exit. The Decision was due to expire in December 2018 but has now been extended by the Commission and so requires certain deficiency amendments to be made. The Decision requires appropriate Ministers to prohibit movement of live feral pigs and requires advisory signage regarding the dangers of spread of the disease; and

amend the Plant Health (EU Exit) Regulations 2019 to ensure that recent Commission Implementing Decisions (EU) 2018/1503 and (EU) 2018/1959 establishing measures to prevent the introduction into and spread within the EU of *Aromia bungii* and *Agrilus planipennis* (Fairmaire) are implemented to protect domestic biosecurity. Changes are also

made to facilitate trade in plant health controlled material between the Crown Dependencies and Wales, England and Northern Ireland.

The amendments made by these Regulations do not amount to a change in policy but ensure that retained EU law continues to operate effectively after the UK leaves the EU.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered and present no divergence of policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

113 - The Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 12 February 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	26 February 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 25/02/2019
Date sifting period ends in UK Parliament	28 February 2019
Written statement under SO 30C:	Paper 48
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, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 of the European Union (Withdrawal) Act 2018 and
- section 2(2) of the European Communities Act 1972.

The latter power is used to incorporate recent changes to EU law being retained.

These Regulations seek to ensure that, in the fields of trade in animals and animal products, production of animal feed, plant health, and the marketing of seed potatoes, unlisted seed vegetable varieties and fruit propagating material, retained direct EU legislation and domestic

legislation implementing certain EU Directives will remain operable after the UK has left the EU.

In relation to plant health and seed potatoes this instrument makes amendments to domestic implementing legislation and EU Exit legislation to facilitate trade with the Crown Dependencies. Apart from amending EU exit legislation to take account of recent changes to EU law, most of the other changes that it makes to related legislation applies only to England.

Legal Advisers agree with the statement laid by the Welsh Government dated 18 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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Organic Production and Control (Amendment) (EU Exit) Regulations 2019**
DATE	**18 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

Organic Production and Control (Amendment) (EU Exit) Regulations 2019 ("2019 Regulations")

The law which is being amended

European Directly Applicable Instruments

- Council Regulation (EC) No 834/2007 on organic production and labelling of organic products.
- Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control.
- The EEA Agreement

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

The 2019 Regulations make amendments to legislation relating to organic products. The functions which are the subject of this SI are all transferred without encumbrance to the Welsh Ministers in relation to Wales.

The purpose of the amendments

The 2019 Regulations make amendments which will enable the law relating to organic products to continue to apply after the withdrawal of the UK from the EU.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

114 - The Organic Production and Control (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 13 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	W/C 25/02/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 50
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, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations amend two EU Regulations and Annex 2 to the EEA Agreement. The purpose of these Regulations is to ensure that organic standards remain the same for organic operators, after the UK exits the European Union, as they are now.

The Regulations amend the following legislation:

- Commission Regulation (EC) No 834/2007 on organic production and labelling of organic products;
- Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No

834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control;

- Paragraph 54b of Chapter 12 of annex 2 to the EEA Agreement is revoked.

Legal Advisers agree with the statement laid by the Welsh Government dated 18 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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Agriculture (Legislative Functions) (EU Exit) (No 2) Regulations 2019**
DATE	**19 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Agriculture (Legislative Functions) (EU Exit) (No 2) Regulations 2019 ("2019 Regulations")

The law which is being amended

European Directly Applicable Instruments

- Regulation (EU) No. 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products.
- Council Regulation (EU) No. 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products.
- Regulation (EU) No. 1144/2014 of the European Parliament and of the Council on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries.
- Commission Implementing Regulation (EU) No. 1240/2016 laying down rules for the application of Regulation (EU) No.1308/2013 with regard to public intervention and aid for private storage.
- Regulation 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy.
- Council Regulation (EC) No 834/2007 on organic production and labelling of organic products.

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

The 2019 Regulations make amendments to legislation relating to the common market for agricultural products including organic products.

The 2019 Regulations contain provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise those functions in relation to Wales.

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 Schedule 7B to the Government of Wales Act 2006. This may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

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

In relation to the Welsh Ministers' executive competence, the 2019 Regulations confer both regulation making powers, and functions of an administrative nature, on the Welsh Ministers, which will be exercisable by them post-Brexit.

The purpose of the amendments
The 2019 Regulations make amendments which will enable the law relating to the common market for agricultural products including organic products to continue to apply after the withdrawal of the UK from the EU. They are particularly important to ensure that the existing policy regimes will continue to function smoothly after EU Exit, without the need for primary legislation every time a change in technical matters is required.

The instrument does not make changes to substantive policy content beyond the minimum necessary to enable the regimes to continue to work post-exit.

The legislation is amended to the extent necessary to enable it to work in the UK when we have left the EU.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/zXHaYUL8

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

115 - The Agriculture (Legislative Functions) (EU Exit) (No 2) Regulations 2019

Laid in the UK Parliament: 14 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 52
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	W/C 25/02/2019

Commentary

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

This instrument changes the identity of the public authority which carries out the specific functions under the EU Regulations set out in the Welsh Government statement. It also converts EU procedures to UK procedures, as appropriate. The functions are conferred on the Secretary of State, Scottish Ministers, Welsh Ministers and DAERA in Northern Ireland to exercise in their respective areas as detailed in section 6.1-6.2 in this explanatory memorandum. The Secretary of State may also exercise the functions on behalf of a devolved administration, but only with their consent.

The regulations are to be subject to the affirmative procedure at Westminster.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 19 February 2019 regarding the effect of these Regulations:

A The statement states:

"The 2019 Regulations contain provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise those functions in relation to Wales.

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 Schedule 7B to the Government of Wales Act 2006. ***This may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas****. [our emphasis]*

Functions transferred so that they are exercisable by the Secretary of State alone or to the Secretary of State but which are only exercisable with the consent of the Welsh Ministers in relation to Wales constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. ***A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government****." [our emphasis]*

Standing Order 30C.3(ii) requires the written statement to "specify the impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence;" This statement (and in particular the sentences highlighted above) suggests rather than specifies.

Clarification was sought by the Committee on a similar point in relation to the Nutrition (Amendment etc.) (EU Exit) Regulations 2019. 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."

B Paragraph 6.1. of the Explanatory Memorandum states as follows:

"The corrections made by this instrument relate will create regimes for the UK that will respect the UK devolution settlements. In most instances, where regimes are devolved, the powers will be transferred to the relevant Ministers or department of Scotland, Wales and Northern Ireland, but with provision for the Secretary of State to act on behalf of Scottish Ministers, Welsh Ministers or the Department of Agriculture, Environment and Rural Affairs ("DAERA") in Northern Ireland, with consent. The ability of the Secretary of State to be able to act for one or more of the devolved administrations will allow for powers to be exercised uniformly across the UK or across certain constituent nations, where it is convenient to do so. ***In certain cases, the ability of the Secretary of State to act with the consent of Ministers does not apply to Wales****." [our emphasis]*

The Explanatory Memorandum does not explain what those cases are. The Welsh Government statement does not refer to this point, let alone explain when it applies or why a different approach has been taken in those cases. The Committee may wish to seek clarification from the Minister.

C The drafting of some amendments such as those made by regulation 88 give rise to particular concern. As is generally the case in EU Exit regulations, powers are conferred upon "the appropriate authority". However, in these Regulations the Secretary of State is the appropriate authority if the Welsh Ministers consent. In other regulations, the devolved administrations remain the relevant or appropriate authority but may consent to the Secretary of State making regulations. The drafting seen here permits a more formal transfer of authority to the Secretary of State. Neither the Welsh Government statement nor the Explanatory Memorandum make reference to this. The Committee may wish to seek clarification from the Minister.

Subject to the above, the statement and 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. However, it is unclear from the Welsh Government's

statement dated 19 February 2019 what impact the Regulations may have on the Assembly's legislative competence.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019**
DATE	**15 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019.

The law which is being amended

- Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance;
- Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance;
- Commission Implementing Regulation (EU) No 906/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to public intervention expenditure;
- Commission Implementing Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of the euro;
- Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency; The following Regulations have been revoked;
- Commission Implementing Regulation (EU) No 834/2014 laying down rules for the application of the common monitoring and evaluation framework of the common agricultural policy;

- Commission Delegated Regulation (EU) No 2015/1971 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development and repealing Commission Regulation (EC) No 1848/2006;
- Commission Implementing Regulation (EU) No 2015/1975 setting out the frequency and the format of the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for the Rural Development, under Regulation (EU) No 1306/2013 of the European Parliament and of the Council;
- Commission Implementing Regulation (EU) No 367/2014 setting the net balance available for EAGF expenditure.
- Commission Implementing Regulation (EU) 2017/1758 laying down form and content of the accounting information to be submitted to the Commission for the purpose of the clearance of the accounts of the EAGF and the EAFRD as well as for monitoring and forecasting purposes.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
This instrument confers functions on the Welsh Ministers without encumbrance. There are also two functions which are being transferred to the Welsh Ministers, Secretary of State and other Devolved Authorities which can only be exercised by them jointly.

Functions transferred to the Secretary of State so that they are exercisable jointly with the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006. This 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 instrument will ensure that the retained EU CAP "Horizontal" legislation will operate effectively throughout the UK after EU Exit. The appropriate legislative "fixes" introduced by the instrument will maintain a status quo position, as far as possible, and will have no noticeable impacts on the ground for farmers or land managers.

Agriculture is a devolved subject, and this instrument reflects the UK devolution settlements. The relevant authorities in England, Northern Ireland, Scotland and Wales will continue to be able to operate "Horizontal" CAP provisions within their respective territories.

The amendments made by these Regulations do not amount to a change in policy but ensure that retained EU law continues to operate effectively after the UK leaves the EU.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/aJuu1576

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical

nature of the amendments. The amendments have been considered and present no divergence of policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS	
116 - The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019 *Laid in the UK Parliament: 13 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 54
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	W/C 25/02/2019
Commentary	

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Agriculture (Legislative Functions) (EU Exit) Regulations 2019**
DATE	**18 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Agriculture (Legislative Functions) (EU Exit) Regulations 2019

The law which is being amended

- Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008;

- Commission Delegated Regulation (EU) No 906/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to public intervention expenditure;

- Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009;

- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006; and

- Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005.

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

The Common Agricultural Policy ("CAP") and its implementation in Wales is a devolved subject.

This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales. Functions transferred to the Secretary of State to be exercised concurrently with the consent of the Welsh Ministers constitute functions of a Minister of the Crown that relate to a qualified devolved function for the purposes 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.
Functions transferred so that they are exercisable by the Secretary of State alone or to the Secretary of State but which are only exercisable with the consent of the Devolved Authorities in relation to devolved territories constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The purpose of the amendments

This affirmative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The 2019 Regulations make the modifications necessary to continue to ensure that the CAP financing, management and monitoring; CAP Direct Payment Schemes; CAP Rural Development; and marine and fisheries regimes remain operable once the UK withdraws from the EU.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

117 - The Agriculture (Legislative Functions) (EU Exit) Regulations 2019

Laid in the UK Parliament: 13 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 56
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, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

This instrument amends provisions of European Union ("EU") legislation relating to the EU Common Agricultural Policy and the European Maritime and Fisheries Fund, which currently confer legislative functions on the European Commission. Under the amendments, these functions will instead be exercisable by public authorities in the United Kingdom ("UK").

In so doing, this instrument changes the identity of the public authority which carries out the specific functions under the EU Regulations set out in the Welsh Government statement. It also converts EU procedures to UK procedures, as appropriate. The functions are conferred on the Secretary of State, Scottish Ministers, Welsh Ministers and DAERA in Northern

Ireland to exercise in their respective areas as detailed in section 6 of the Explanatory Memorandum. The Secretary of State may also exercise the functions on behalf of a devolved administration, but only with their consent.

The regulations are to be subject to the affirmative procedure at Westminster.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 18 February 2019 regarding the effect of these Regulations:

(1) The statement says:

*"This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales. Functions transferred to the Secretary of State to be exercised concurrently with the consent of the Welsh Ministers constitute functions of a Minister of the Crown that relate to a qualified devolved function for the purposes 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**. [our emphasis]*

*Functions transferred so that they are exercisable by the Secretary of State alone or to the Secretary of State but which are only exercisable with the consent of the Devolved Authorities in relation to devolved territories constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006. **A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government**." [our emphasis]*

Standing Order 30C.3(ii) requires the written statement to "specify the impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence;" This statement (and in particular the sentences highlighted above) suggests rather than specifies.

Clarification was sought by the Committee on a similar point in relation to the Nutrition (Amendment etc.) (EU Exit) Regulations 2019. 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."

(2) Paragraph 6.2. of the Explanatory Memorandum states as follows:

*"The corrections made by this instrument relating to CAP financing and management, CAP Direct Payments schemes and CAP Rural Development will create legislative regimes for the UK that will respect the UK devolution settlements. The way in which legislative functions will be exercised will depend on the content and scope of the power in question. In most instances, where provisions are devolved, the legislative powers will be transferred to the relevant Ministers or Department of the constituent nations, but with provision for the Secretary of State to act on behalf of Scottish Ministers, Welsh Ministers or the Department of Agriculture, Environment and Rural Affairs ("DAERA"), where those Ministers or Department consent. The ability of the Secretary of State to be able to act for one or more of the devolved administrations will allow for powers to be exercised uniformly across the UK or across certain constituent nations, where it is convenient to do so**. ***In certain cases, the ability of the Secretary of State to act with consent of Ministers does not apply to Wales****." [our emphasis]*

The Explanatory Memorandum does not explain what those cases are. The Welsh Government statement does not refer to this point, let alone explain when it applies or why a different approach has been taken in those cases. The Committee may wish to seek clarification from the Minister.

The Welsh Government's statement does not identify which legislative powers of the Assembly or executive powers of the Welsh Ministers are affected by this instrument. Legal advisors recommend that clarification is sought on which devolved powers are affected.

Subject to the 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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019**
DATE	**19 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019

The law to be amended

<u>European Directly Applicable Instruments</u>

- Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks
- Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers
- Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products
- Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation
- Regulation (EC) No 1830/2003 of the European Parliament and of the Council concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC
- Commission Decision 2009/821/EC drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces
- Commission Implementing Decision 2011/630/EU on imports into the Union of semen of domestic animals of the bovine species
- Commission Implementing Decision 2012/137/EU on imports into the Union of semen of domestic animals of the porcine species

- Commission Implementing Regulation (EU) 2018/659 on the conditions for the entry into the Union of live equidae and of semen, ova and embryos of equidae
- Commission Regulation (EC) No 599/2004 concerning the adoption of a harmonised model certificate and inspection report linked to intra-Community trade in animals and products of animal origin

Amendment of secondary legislation

The Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007 (this does not apply in relation to Wales).

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The 2019 Regulations contain provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance. This instrument also contains provisions which transfer functions to the Secretary of State in relation to Wales.

Functions transferred to the Secretary of State to be exercised concurrently with 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.

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

The 2019 Regulations contain provision which will extend the Welsh Ministers' executive functions. It will transfer some of the European Commission's current powers to Welsh Ministers in relation to Wales, for example in Regulation (EC) No 599/2004.

The purpose of the amendments
The 2019 Regulations make operability changes under section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 to the instruments referred to above, in order to address deficiencies within a broad range of areas such as food and drink, genetically modified organisms and the import and trade in animals and animal products, as a result of the UK's exit from the European Union. These changes will ensure that legislation in these subject areas continues to work post EU exit.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/wzwpCEVU

Why consent was given
Consent has been given for the UK Government to make corrections in relation to, and on behalf of, Wales on matters relating to food, drink, genetically modified organisms and the

import of, and trade in animal and animal products for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

In relation to GI schemes, we have a strong interest in ensuring that Welsh GIs are protected throughout the UK (and ideally, through the negotiations on the future partnership, the EU). While the Welsh Government's position is that this matter is devolved, the UK Government considers it to be reserved, and therefore this matter is not subject to the terms of the Intergovernmental Agreement, from its perspective. The Welsh Government has sought joint decision making functions within this instrument in relation to GIs, but the UK Government has maintained its view that this matter is reserved. We accept that the UK Government has been acting in good faith under the Intergovernmental Agreement and it has not been possible to resolve this matter within the timeframe required to ensure a functioning statute book.

However, in an exchange of letters between the Minister for Environment, Energy and Rural Affairs and the Secretary of State, written assurances have been given that all Devolved Administrations will be involved in the operation of the new scheme. The Welsh Government will continue to work to ensure that a Memorandum of Understanding that will underpin the instrument provides for a meaningful role for Welsh Minsters in the administration of the scheme. Consent has therefore been given on the basis that this will be addressed in due course and it has been clarified that this consent is without prejudice to our position on legislative competence.

UK MINISTERS ACTING IN DEVOLVED AREAS

117 - The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 14 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 58
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, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations amend domestic regulations, retained and directly applicable EU regulations and directly applicable EU decisions, which implement different European regulations and directives related to:

- spirits;
- food labelling;
- wines and aromatised wines;
- genetically modified organisms; and
- animal health.

(The Regulations also amend England only legislation in respect of natural mineral waters). The amendments made by these Regulations are made to ensure that the existing policy regimes can continue to operate effectively after the UK leaves the EU.

Legal Advisers make the following comments in relation to the Welsh Government's statement (the Statement) dated 19 February 2019 regarding the effect of these Regulations.
Standing Order 30C.3(ii) states that the Welsh Government's written statement must "specify any impact the statutory instrument may have on the Assembly's competence and/or the Welsh Ministers' executive competence".

The Statement states that:
This instrument also contains provisions which transfer functions to the Secretary of State in relation to Wales...
Functions transferred to the Secretary of State to be exercised concurrently with 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.

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

We note that the Welsh Government has been in discussions with the UK Government regarding geographical indication schemes ("GI schemes"), as there is disagreement between the two governments as to whether this matter is devolved or reserved. As the UK Government considers these matters to be reserved, from its perspective they are not subject to the terms of the Intergovernmental Agreement. The Welsh Government has sought joint decision making functions within this instrument in respect of GI schemes, but the UK government has maintained its view that these matters are reserved.

The Statement includes references to time pressures:
We accept that the UK Government has been acting in good faith under the Intergovernmental Agreement and it has not been possible to resolve this matter within the timeframe required to ensure a functioning statute book.

The Statement also refers to correspondence between the parties:
However, in an exchange of letters between the Minister for Environment, Energy and Rural Affairs and the Secretary of State, written assurances have been given that all Devolved Administrations will be involved in the operation of the new scheme. The Welsh Government will continue to work to ensure that a Memorandum of Understanding that

will underpin the instrument provides for a meaningful role for Welsh Minsters in the administration of the scheme. Consent has therefore been given on the basis that this will be addressed in due course and it has been clarified that this consent is without prejudice to our position on legislative competence.

Standing Order 30C.3(iii) states that the Welsh Government's written statement must "where the Welsh Ministers consented to UK Ministers making the relevant statutory instruments, explain the reasons why consent was given". The reasoning for consenting to the provisions relating to food, drink, genetically modified organisms and the import of and trade in animal products is provided clearly in the statement. However, in relation to GI schemes, the reasoning as to why the Welsh Ministers have consented to the making of these provisions is much less clear, particularly given that the Welsh Government and UK Government disagree as to whether these matters are devolved.

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

Legal Advisers draw attention to the above commentary on the Welsh Government's Statement in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

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

DATE **19 February 2019**

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

The Food and Farming (Amendment) (EU Exit) Regulations 2019 ("2019 Regulations")

The law which is being amended

Domestic Legislation

- The Genetically Modified Organisms (Amendment) (England) (EU Exit) Regulations 2019;
- The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019;
- The Genetically Modified Organisms (Amendment) (Northern Ireland) (EU Exit) Regulations 2019;
- The Genetically Modified Organisms (Deliberate Release) Regulations 2002;
- The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019;
- The Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019.

EU Legislation

- Commission Regulation (EC) No 2870/2000 laying down Community reference methods for the analysis of spirits drinks;
- Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks;
- Commission Regulation (EU) No 606/2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions;
- Commission Regulation (EC) No 936/2009 applying the agreements between the European Union and third countries on the mutual recognition of certain spirit drinks;

- Commission Implementing Regulation (EU) No 716/2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks;
- Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation; and
- Commission Implementing Regulation (EU) 2019/34 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
This instrument transfers functions to the Secretary of State. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The purpose of the amendments
The 2019 Regulations make operability changes under section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 to the instruments referred to above, in order to address deficiencies within a broad range of areas such as food and drink, Geographical Indicators (GIs), genetically modified organisms and direct payments to farmers, as a result of the UK's exit from the European Union. These changes will ensure that legislation in these subject areas continues to work post EU exit.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/3oS0aVN9

Consent
Consent has been given for the UK Government to make corrections in relation to, and on behalf of, Wales on matters relating to wine, spirits, genetically modified organisms and direct payments to farmers for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

In relation to GI schemes, we have a strong interest in ensuring that GIs are protected throughout the UK (and ideally, through the negotiations on the future partnership, the EU).

While the Welsh Government's position is that these matters are devolved, the UK Government considers them to be reserved, and therefore these matters are not subject to the terms of the Intergovernmental Agreement, from its perspective. The Welsh Government has sought joint decision making functions within this instrument in relation to GIs, but the UK Government has maintained its view that these matters are reserved. We accept that the UK Government has been acting in good faith under the Intergovernmental Agreement and it has not been possible to resolve these matters within the timeframe required to ensure a functioning statute book.

However, in an exchange of letters between the Minister for **Environment, Energy and Rural Affairs and** the Secretary of State, written assurances have been given that all Devolved Administrations will be involved in the operation of GI schemes. The Welsh Government will continue to work to ensure that a Memorandum of Understanding that will underpin the instrument provides for a meaningful role for Welsh Minsters in the administration of the schemes. Consent has therefore been given on the basis that this will be addressed in due course and it has been clarified that this consent is without prejudice to our position on legislative competence.

UK MINISTERS ACTING IN DEVOLVED AREAS

118 - The Food and Farming (Amendment) (EU Exit) Regulations 2019
Laid in the UK Parliament: 14 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	25 February 2019
Date sifting period ends in UK Parliament	5 March 2019
Written statement under SO 30C:	Paper 60
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, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations make amendments to EU legislation concerning genetically modified organisms, wine, spirit drink and direct payments. The amendments consist mostly of technical changes which maintain the operability of the relevant legislation in the context of the UK having left the European Union and thus being a 'third country' in respect of the EU. These Regulations also make amendments to retained EU law on Geographical Indicator (GI) schemes. GIs are a form of intellectual property protection for the names of agricultural, food and drink products, the qualities or characteristics of which are attributable to the region or locality where they are produced and/or the traditional methods by which they are produced. Examples include Welsh Lamb, Scotch Whiskey, Irish Cream and Kentish Ale.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 19 February 2019 regarding the effect of these Regulations:

1. Standing Order 30C.3(ii) states that the written statement must "specify any impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence".
2. The Welsh Government has stated the following in its written statement:

"This instrument transfers functions to the Secretary of State. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government."

3. The Welsh Government, in its written statement, has indicated that there has been disagreement with the UK Government as to whether GI schemes are devolved or reserved.
4. As the UK Government considers this matter to be reserved, from its perspective it is not subject to the terms of the Intergovernmental Agreement. However, the Welsh Government considers the matter to be devolved.
5. The Welsh Government has sought joint decision making functions within this instrument in relation to GIs, but the UK Government has maintained its view that the matter is reserved.
6. The Welsh Government has indicated that it has not been possible to resolve these matters within the timeframe required to ensure a functioning statute book.
7. The Secretary of State has given written assurances to the Minister for Environment, Energy and Rural Affairs that all Devolved Administrations will be involved in the operation of a new UK-wide GI scheme. A Memorandum of Understanding is set to underpin this instrument, and the Welsh Government states that it is seeking to ensure that the Welsh Ministers will provide a meaningful role in the administration of the scheme.
8. The Welsh Government has therefore given consent on the basis that this will be addressed in due course and it has been clarified that this consent is without prejudice to its position on legislative competence.
9. Standing Order 30C.3(iii) states that "where the Welsh Ministers consented to UK Ministers making the relevant statutory instruments, explain the reasons why consent was given".
10. The Welsh Government's written statement has clearly explained that consent was given for corrections to be made by the UK Government on matters relating to wine, spirits, genetically modified organisms and direct payments to farmers for reasons of efficiency, expediency and due to the technical nature of the amendments.

11. However, the Welsh Government's written statement does not clearly explain why consent was given in relation to GI schemes and there is a lack of clarification on whether the matter is devolved or reserved.

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 attention to paragraphs 3 and 4 of the above commentary on the statement by the Welsh Government in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Common Organisation of the Markets in Agricultural Products (Council Regulations) (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019**
DATE	**19 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

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

The law which is being amended

- Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products
- Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products
- Regulation (EU) No 1144/2014 of the European Council and of the Parliament of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries

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

Common Market Organisation is primarily a devolved subject matter.

This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales.

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 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.

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

The purpose of the amendments

The Common Market Organisation ("CMO") is the framework for the market measures provided for under the Common Agriculture Policy ("CAP"), providing the framework for the market support schemes set up in the various agricultural sectors. The CMOs were set up as a means of meeting the objectives of the CAP and in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to:

- manage market volatility;
- incentivise collaboration between and competitiveness of agricultural producers; and
- facilitate trade.

The 2019 Regulations make amendments to existing EU legislation which forms part of UK law relating to CMO.

The 2019 Regulations provide operability fixes to the following policy areas: public intervention and aid for private storage, aid schemes, marketing standards, producer organisations, import and export rules and crisis measures. The 2019 Regulations also makes the necessary operability fixes on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries.

After EU Exit and without amendment, the above retained EU legislation would contain inoperable provisions that would prevent the delivery of market support schemes to the agricultural sector.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/sRSPoqjf

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

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

Laid in the UK Parliament: 14 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 62
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

The written statement has an incorrect title. The written statement relates to The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments) (EU Exit) Regulations 2019. This has been raised with the Welsh Government.

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

The Common Market Organisation ("CMO") is the framework for the market measures provided for under the Common Agriculture Policy ("CAP"), providing the framework for the market support schemes set up in the various agricultural sectors. The CMOs were set up as a means of meeting the objectives of the CAP and in particular to stabilise markets,

ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to manage market volatility, incentivise collaboration between and competitiveness of agricultural producers and facilitate trade.
The 2019 Regulations make amendments to various existing EU legislation which forms part of UK law relating to the CMO.

The 2019 Regulations provide operability fixes to the following policy areas: public intervention and aid for private storage, aid schemes, marketing standards, producer organisations, import and export rules and crisis measures.

The 2019 Regulations also makes the necessary operability fixes on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries.
After EU Exit and without amendment, the above retained EU legislation would contain inoperable provisions that would prevent the delivery of market support schemes to the agricultural sector.

Legal Advisers agree with the statement laid by the Welsh Government dated 19 February 2019 regarding the effect of these Regulations.
The statement notes that that the instrument contains provision which enables the Welsh Ministers to exercise functions with encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales.

Further, functions which are transferred to the Secretary of State that are exercisable jointly with the Welsh Ministers may constitute functions of Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006 ("GOWA 2006"). This may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

The statement further notes, that functions transferred so that they are exercisable by the Secretary of State alone or to the Secretary of State but which are only exercisable with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GOWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

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.

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair,
Constitutional and Legislative Affairs Committee
Mick.Antoniw@assembly.wales

28 February 2019

Dear Mick,

The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019

I thought it pertinent to outline the approach the Welsh Ministers have decided to take in response to the UK Government laying of the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 ("2019 Regulations") in Parliament on 14 February 2019.

The 2019 Regulations make technical operability changes under section 8 of the European Union (Withdrawal) Act 2018 to retained EU Law. The legislation concerned relates to the common market organisation (CMO) of agricultural products and the management of the common agricultural policy (CAP). The 2019 Regulations confer functions, relating to CMO of agricultural products and financing, management and monitoring of CAP, currently being exercised by the Commission, on the Secretary of State.

The CMO is a set of rules which regulates agricultural markets in the European Union. It builds on the rules for the common market in goods and services with specific policy tools that help improve the functioning of agricultural markets. The CMO sets out the parameters for intervening on agricultural markets and providing sector-specific support (e.g. for fruits and vegetables, wine, olive oil sectors, school schemes). It also includes rules on marketing of agricultural products (e.g. marketing standards, geographical indications, labelling) and the functioning of producer- and inter-branch organisations. It also covers issues related to international trade (e.g. licenses, tariff quota management, inward and outward processing) and competition rules.

The Welsh Government's view is that the 2019 Regulations makes provision in relation to Agriculture and CAP which is within the legislative competence of the National Assembly for Wales (i.e. devolved) and that under the terms of the Intergovernmental Agreement, the consent of Welsh Ministers should have been sought prior to its laying. However, it appears the UK Government considers the 2019 Regulations relates to reserved matters and has

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not requested Welsh Ministerial consent prior to its laying. The Welsh Government has requested an explanation from the UK Government of its legal position but there has been no response.

The Minister for Environment, Energy and Rural Affairs has written to the Parliamentary Under Secretary of State for Food and Animal Welfare to reiterate our position that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence. I enclose a copy of that letter for your information.

Discussions are ongoing between Defra and Welsh Government officials to consider implementation. Despite this, Welsh Ministers are disappointed that the regulations, as they have been laid, do not provide for decision making by mutual consent and do not provide for a CMO regulatory framework that is truly owned by all four Governments in the UK. Consequently, Welsh Ministers do not plan to grant unilateral consent for this Statutory Instrument.

Yours sincerely,

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019**
DATE	**19 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019

This written statement has been re-issued due to the Regulations being laid by the UK Government to the sifting committee on 20 November 2018, cleared by the sifting committee on 7 December 2018, withdrawn, and re-laid on 11 February. This was due to additional provision which were added post laying. The amendments made do not change the purpose or effect of the Regulations.

The retained EU law which is being amended

The Regulations make amendments to retained EU law in relation to the monitoring and control of zoonotic disease, particularly salmonella, which are necessary as a result of the withdrawal of the United Kingdom from the European Union.

Those elements of the Regulations that apply to Wales amend the following retained EU direct legislation;

- Commission Decision 2003/644/EC establishing additional guarantees regarding salmonella for consignments to Finland and Sweden of breeding poultry and day-old chicks for introduction into flocks of breeding poultry or flocks of productive poultry
- Regulation (EC) No 2160/2003 on the control of salmonella and other specified food-borne zoonotic agents
- Commission Decision 2004/235/EC establishing additional guarantees regarding salmonella for consignments to Finland and Sweden of laying hens
- Commission Regulation (EC) No 1177/2006 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards requirements for the use of specific control methods in the framework of the national programmes for the control of salmonella in poultry
- Commission Regulation (EU) No 200/2010 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards a Union target for

the reduction of the prevalence of *Salmonella* serotypes in adult breeding flocks of *Gallus gallus*
- Commission Regulation (EU) No 517/2011 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards a Union target for the reduction of the prevalence of certain *Salmonella* serotypes in laying hens of *Gallus gallus*
- Commission Regulation (EU) No 200/2012 concerning a Union target for the reduction of *Salmonella enteritidis* and *Salmonella typhimurium* in flocks of broilers
- Commission Regulation (EU) No 1190/2012 concerning a Union target for the reduction of *Salmonella* Enteritidis and *Salmonella* Typhimurium in flocks of turkeys
- Commission Implementing Decision 2013/652/EU on the monitoring and reporting of antimicrobial resistance in zoonotic and commensal bacteria.

Background to the above mentioned retained EU law
- Controls on salmonella and other specified food-borne zoonotic agents are set out in Council Regulation (EC) No 2160/2003. This requires Member States to:
- establish national control programmes (NCPs) for specified zoonosis and zoonotic agents (the regulated serovars);
- sets out requirements for the movement of live animals and hatching eggs between Member States and third countries; and
- sets out the requirements for laboratories testing for zoonosis and zoonotic agents.

This Regulation is implemented by:
- Commission Regulation (EC) No 1177/2006 which sets out the requirements for the use of specific control methods (antimicrobials and vaccinations) in the NCPs for salmonella in poultry;
- Commission Regulation (EU) No 200/2010 which sets an EU target for the reduction of the prevalence of Salmonella in laying hens;
- Commission Regulation (EU) No 200/2012 of 8 March 2012 which sets an EU target for the reduction of the prevalence of Salmonella in broilers; and,
- Commission Regulation (EU) No 1190/2012 which sets an EU target for the reduction in the prevalence of Salmonella in turkeys.

(Salmonella in these instances refers to ‘regulated salmonella serovars’)

Any impact the SI may have on the Assembly’s legislative competence and/or the Welsh Ministers’ executive competence
Animal health is a matter which falls within the legislative competence of the National Assembly and is therefore devolved.

This SI will extend 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.

The powers conferred on the Welsh Ministers to make regulations are to be exercised concurrently by the Secretary of State with the consent of the Welsh Ministers.

The regulation-making powers (which are subject to the negative procedure) relate to the setting of targets for the reduction of the prevalence of salmonella in Wales, specifying the requirements and minimum sampling rules required within the control plan and specifying the conditions and requirements that must be practiced by the reference laboratory (which is the Animal and Plant Health Agency laboratory in Weybridge, England, the main reference laboratory for zoonotic agents and for approving methods of testing to be conducted there).

This instrument also contains provision which enables the Welsh Ministers to exercise administrative functions, in relation to Wales without encumbrance. This includes provision which will enable Welsh Ministers to establish a control programme for sampling and testing regimes, in relation to various poultry flocks (gallus gallus – broilers, layers and breeders – and turkeys – broilers and breeders) of a specific size, in order to demonstrate that Wales is both monitoring the salmonella prevalence across Wales and that actions are being taken to control and minimise those occurrences in order to protect the food chain.

Functions relating to third country lists in article 10 of EC Regulations 2160/2003 are conferred on the Secretary of State with the consent of the Welsh Ministers. The Secretary of State may, by regulations amend the list of third countries authorised for the purpose of imports of animals.

In terms of the impact on the Assembly's legislative competence, functions transferred to the Secretary of State exercised concurrently with the consent of the Welsh Ministers may constitute functions of a Minister of the Crown for the purposes 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.

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

The purpose of the amendments

The amendments in this instrument are necessary to correct deficiencies in and ensure the operability of retained EU law at the point of the UK's exit from the European Union in a way that continues to allow the UK to have effective controls that protect public health from zoonotic disease and in particular from salmonella. The Welsh Government wish to retain these standards of health protection following exit from the EU and these proposed legislative amends will allow for this.

The corrections include:

- transfer of non-legislative functions in relation to Wales to the Welsh Ministers as "the appropriate Minister"
- removal of references to "the Union" and "Community";

- changes to the provisions for trading live poultry and hatching eggs with Member States and for imports from third countries necessary to reflect the UK's status as a non-EU country; and,
- removal of provisions relating to community institutions such as reference laboratories.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/Wofjg9AH

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered and present no divergence of policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

122 - The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 14 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 64
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, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations amend retained EU law which protects human health against zoonotic disease (in particular, salmonella) so that it will continue to be operable after the UK leaves the EU. Zoonotic diseases are those that may transfer from animals to humans.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 19 February 2019 regarding the effect of these Regulations:

1. This written statement has been re-issued due to the Regulations being laid by the UK Government to the sifting committee on 20 November 2018, cleared by the sifting committee on 7 December 2018,

withdrawn, and re-laid on 11 February 2019. This was due to additional provisions which were added post laying as a result of the devolved administrations expressing preference for the provisions to be drafted to transfer legislative functions from the European Commission to the UK so that these functions would rest with each administration, rather than with the Secretary of State.

2. The statement states the following:
"In terms of the impact on the Assembly's legislative competence, functions transferred to the Secretary of State exercised concurrently with the consent of the Welsh Ministers may constitute functions of a Minister of the Crown for the purposes Schedule 7B [sic] *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.*** [emphasis added]

Functions transferred to the Secretary of State but which are only exercisable with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government [sic] *of Wales Act 2006.* ***A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government."*** [emphasis added]

3. Standing Order 30C.3(ii) requires the written statement to "specify the impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence". This statement (and in particular the sentences highlighted above) suggests rather than specifies.

4. Clarification was sought by the Committee on a similar point in relation to the Nutrition (Amendment etc.) (EU Exit) Regulations 2019. 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:

"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."

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.

HOUSE OF LORDS
Secondary Legislation Scrutiny Committee

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18 February 2019

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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Dear Mr Antoniw,

State Aid (EU Exit) Regulations 2019

Thank you for your letter of 6 February and for bringing your concerns about the effect of the above Regulations on the devolution settlement and the legislative competency of the National Assembly for Wales to the attention of the Secondary Legislation Scrutiny Committee (SLSC).

Sub-Committee B of the SLSC under its chairman Lord Cunningham of Felling considered the draft Regulations at its meeting on 5 February and decided to report them to the House on the ground of policy interest. A copy of the report is available on our website (15th Report, HL Paper 281).

While this means that the Committee has cleared the instrument from scrutiny, Sub-Committee B decided at its most recent meeting on 12 February to draw your concerns about the State Aid Regulations to the attention of the House by way of an information paragraph. This and a copy of your letter are included in the Committee's 16th Report (HL Paper 286), which is also available on our website. We would now expect the House to draw on the Committee's report and on the information provided in your letter when debating the instrument.

Yours sincerely

David Trefgarne

Rt Hon. Lord Trefgarne PC
Chairman of the Secondary Legislation Scrutiny Committee

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
National Assembly for Wales
Constitutional and Legislative Affairs Committee

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

25 January 2019

Dear Lesley

The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019

The Constitutional and Legislative Affairs Committee considered the Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2018 (the Regulations) at its meeting on 21 January 2019. While satisfied that the Regulations meet the sift requirements set out in Standing Order 21.3C, we further discussed the territorial application of the Regulations.

We note that you are proposing to make the Regulations on an England and Wales basis and we accept that the Welsh Ministers have the power to do so. However, we believe it would be helpful if the Explanatory Memorandum accompanying the Regulations included some reference to the cross-border nature of the Regulations. This is because, in the main, the Welsh Ministers make subordinate legislation that applies in Wales only.

For that reason we hope that, in future, all subordinate legislation laid before the National Assembly that is made by the Welsh Ministers on an England and Wales basis will include a brief explanation in the explanatory memoranda of the cross-border matters that arise and why the Welsh Ministers need to make the subordinate legislation on an England and Wales basis.

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Yours sincerely

Mick Antoniw AM
Chair

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

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

Llywodraeth Cymru
Welsh Government

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

22 February 2019

Dear Mick

Thank you for your letter of 25 January regarding the draft Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019, laid for sifting on 8 January 2019.

I note your concerns regarding the Explanatory Memorandum and the extent to which it clarifies the cross-border nature of these regulations. When the Regulations are re-laid for scrutiny following sifting, the Explanatory Memorandum will be amended to address your concerns.

I have also asked officials to ensure the Welsh Government's guidance on the content of Explanatory Memoranda made by the Welsh Ministers includes setting out an explanation of any specific cross border matters.

Regards

Lesley Griffiths

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

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Ein cyf/Our ref LG/05376/19

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
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15 February 2019

Dear Mike,

Thank you for your letter of 6 February regarding The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019 (SICM(5)18).

You wished to know why we did not lay a revised written statement in respect of this SI. We did not do so as we felt this was not necessary in order to bring the amendment to the attention of the Committee. The SICM and accompanying letter to CLAC clearly identified that the change had been made. Under Standing Order 30A the amended SI and EM were laid in the National Assembly, giving members ample opportunity to consider the final text.

As my colleague the Minister for Finance and Trefnydd wrote in her letter to you of 7 February, if you feel it would be beneficial for the transparency of the process, we can lay revised written statements when UK SIs are withdrawn and re-laid for the rest of the EU Exit SI programme.

We have received your report on the scrutiny of subordinate legislation arising from the European Union (Withdrawal) Act 2018. We will respond to the points raised, including on motions for Statutory Instrument Consent Memoranda, in due course.

Regards,

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

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Agenda Item 14

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