Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 11 March 2019
Meeting time: 13.30

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

2 Senedd and Elections (Wales) Bill: Evidence session 1

(Pages 1 – 26)

Elin Jones AM, Llywydd and Member in Charge of the Bill;
Anna Daniel, Assembly Commission;
Matthew Richards, Assembly Commission

Senedd and Election (Wales) Bill
Explanatory Memorandum

CLA(5)-09-19 – Briefing
CLA(5)-09-19 – Legal Briefing

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

(Pages 27 – 32)

CLA(5)-09-19 – Paper 1 – Statutory Instruments with clear reports
Offerynnau'r Weithdrefn Penderfyniad Negyddol

3.1 **SL(5)353 – The Local Government (Assistants for Political Groups) (Remuneration) (Wales) (Amendment) Order 2019**

3.2 SL(5)334 - The Local Authority Adoption Services (Wales) Regulations 2019

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

(Pages 33 - 34)

CLA(5)-09-19 - Paper 2 – Clear reports except for single merits point under Standing Order 21.3 (has been subject to sifting)

4.1 SL(5)363 - The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019

4.2 SL(5)377 - The Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

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

Negative Resolution Instruments

5.1 SL(5)333 - The Adoption Support Services (Wales) Regulations 2019

(Pages 35 - 45)

CLA(5)-09-19 - Paper 3 – Report

CLA(5)-09-19 - Paper 4 – Regulations

CLA(5)-09-19 - Paper 5 – Explanatory Memorandum

5.2 SL(5)342 - The Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019

(Pages 46 - 59)

CLA(5)-09-19 - Paper 6 – Report

CLA(5)-09-19 - Paper 7 – Regulations

CLA(5)-09-19 - Paper 8 – Explanatory Memorandum

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

5.3 **SL(5)336 - The Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

(Pages 60 - 79)

CLA(5)-09-19 - Paper 9 - Report

CLA(5)-09-19 - Paper 10 - Regulations

CLA(5)-09-19 - Paper 11 - Explanatory Memorandum

5.4 **SL(5)337 - The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

(Pages 80 - 96)

CLA(5)-09-19 - Paper 12 - Report

CLA(5)-09-19 - Paper 13 - Regulations

CLA(5)-09-19 - Paper 14 - Explanatory Memorandum

5.5 **SL(5)338 - The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019**

(Pages 97 - 182)

CLA(5)-09-19 - Paper 15 - Report

CLA(5)-09-19 - Paper 16 - Regulations

CLA(5)-09-19 - Paper 17 - Explanatory Memorandum

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

6.1 **SL(5)356 - The Transmissible Spongiform Encephalopathies (Wales) (Amendment) Regulations 2019**

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CLA(5)-09-19 - Paper 18 - Report

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

7.1 SL(5)349 – Code of Practice – The Local Authority Adoption Services (Wales) Regulations 2019

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CLA(5)-09-19 – Paper 19 – Report

7.2 SL(5)350 – Code of Practice – The Local Authority Fostering Services (Wales) Regulations 2018

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CLA(5)-09-19 – Paper 20 – Report

7.3 SL(5)352 – Statutory Guidance for the Commissioning of VAWDASV Services in Wales

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CLA(5)-09-19 – Paper 21 – Report

8 Written statements under Standing Order 30C

8.1 WS-30C(5)118 – The Food (Amendment) (EU Exit) Regulations 2019

(Pages 187 – 190)

CLA(5)-09-19 – Paper 22 – Statement

CLA(5)-09-19 – Paper 23 – Commentary

8.2 WS-30C(5)123 – The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019

(Pages 191 – 195)

CLA(5)-09-19 – Paper 24 – Statement

CLA(5)-09-19 – Paper 25 – Commentary

8.3 WS-30C(5)124 – The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

(Pages 196 – 199)

CLA(5)-09-19 – Paper 26 – Statement

CLA(5)-09-19 – Paper 27 – Commentary

9 Papers to Note

9.1 **Letter from the Minister for International Relations and the Welsh Language regarding the Conformity Assessment (Mutual Recognition Agreements) Regulations 2019**

(Pages 200 – 202)

CLA(5)-09-19 – Paper 28 – Letter from the Minister for International Relations and the Welsh Language, 1 March 2019

The Conformity Assessment (Mutual Recognition Agreements) Regulations 2019

9.2 **Letter from the Counsel General and Brexit Minister regarding The Challenges to Validity of EU Instruments (EU Exit) Regulations 2019**

(Pages 203 – 204)

CLA(5)-09-19 – Paper 29 – Letter from the Counsel General and Brexit Minister, 5 March 2019

The Challenges to Validity of EU Instruments (EU Exit) Regulations 2019

9.3 **Letter from the Chair of the Climate Change, Environment and Rural Affairs Committee to the First Minister re: Scrutiny of Legislative Consent Memorandums**

(Pages 205 – 207)

CLA(5)-09-19 – Paper 30 –Letter from the Climate Change, Environment and Rural Affairs Committee, 28 February 2019

9.4 **Supplementary Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill – Correspondence**

(Pages 208 – 223)

CLA(5)-09-19 – Paper 31 – Letter from the Minister for Health and Social Services, 28 February 2019

CLA(5)-09-19 – Paper 32 – Supplementary Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill

CLA(5)-09-19 – Paper 33 – Letter from Stephen Hammond MP, Minister for State for Health, to the Minister for Health and Social Services, 27 February 2019

CLA(5)-09-19 – Paper 34 – Government Amendment

CLA(5)-09-19 – Paper 35 – Letter from the Minister for Health and Social Services, to Stephen Hammond MP Minister of State for Health, 28 February 2019

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

11 Senedd and Elections (Wales) Bill: Consideration of Evidence

12 Legislation (Wales) Bill: Draft Report

(Pages 224 – 326)

CLA(5)-09-19 – Paper 36 – Draft Report

CLA(5)-09-19 – Paper 36 – Annex

13 Forward Work Programme

(Pages 327 – 332)

CLA(5)-09-19 – Paper 37 –Forward Work Programme

14 Discussion on Statutory Instruments requiring Consent: Brexit

Agenda Item 2

Document is Restricted

Document is Restricted

Statutory Instruments with Clear Reports

11 March 2019

SL(5)353 – The Local Government (Assistants for Political Groups) (Remuneration) (Wales) (Amendment) Order 2019Procedure: Negative

The Local Government (Assistants for Political Groups) (Remuneration) (Wales) Order 2009 linked the maximum salary of political assistants in local authorities to an assigned point on the National Joint Council pay scale. This means that the maximum salary of political assistants increases annually with the pay increases for the pay scale.

From 1 April 2019 the National Joint Council is changing their pay scales and merging some of the pay points. As a result, from 1 April 2019 the current pay point for political assistants will no longer exist. This Order aligns the current pay scales of political assistants to the new pay scale.

Parent Act: Local Government and Houysing Act 1989

Date Made: 21 February 2019

Date Laid: 22 February 2019

Coming into force date: 01 April 2019

SL(5)334 – The Local Authority Adoption Services (Wales) Regulations 2019

Procedure: Negative

These Regulations are made under section 9 of the Adoption and Children Act 2002 ("the 2002 Act").

These Regulations impose requirements on local authority adoption service providers setting out

- policies and procedure each service must have in place;
- standards of support to be provided;
- specific requirements in relation to ensuring individuals are safe and protected from abuse or neglect;
- staffing requirements;
- requirements as to the fitness of individuals working at the services;
- requirements on managers;
- requirements on monitoring, reviewing and improving the quality of support provided; and
- miscellaneous requirements including the need for each service to have a strategy in place in relation to recruitment of sufficient numbers of adopters.

Parent Act: Adoption and Children Act 2002; Regulation and Inspection of Social Care (Wales) Act 2016

Date Made: 17 February 2019

Date Laid: 19 February 2019

Coming into force date: 29 April 2019

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

11 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)363 – The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations make amendments to the Air Quality Standards (Wales) Regulations 2010 in order to address failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union. Although relevant Directives will remain effective as retained EU law, they are to be read as if Member-State functions were functions of the Welsh Ministers, and functions of the European Commission were removed.

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 18 February 2019

Date Made: 26 February 2019

Date Laid: 28 February 2019

Coming into force: In accordance with regulation 1(1)

SL(5)377 – The Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

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

These Regulations, other than regulation 6, are to be made in exercise of the powers conferred on the Welsh Ministers by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: 18 February 2019

Date Made: 4 March 2019

Date Laid: 5 March 2019

Coming into force: In accordance with regulation 1(3)

SL(5)333 – The Adoption Support Services (Wales) Regulations 2019

Background and Purpose

These Regulations are made under the Adoption and Children Act 2002 ("the 2002 Act"). Section 2(6) of the 2002 Act provides that counselling, advice and information, and any other services prescribed by regulations, in relation to adoption, are adoption support services.

Regulation 3(1) of these Regulations prescribes services which are adoption support services.

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(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 2 includes the following definition (emphasis added):

> "**adoptive parent**" ("rhiant mabwysiadol") means a person—
>
> (a) who an adoption agency has decided in accordance with regulation 34(1) of the Adoption Agencies (Wales) Regulations 2005 is a suitable **adoptive parent** for a particular child,
>
> (b) with whom an adoption agency has placed a child for adoption,
>
> (c) who has given notice under section 44 of the 2002 Act of their intention to apply for an adoption order for a child,
>
> (d) who has adopted a child, or
>
> (e) who has adopted a child who has subsequently attained the age of 18,
>
> but does not include a person who is the step parent or birth parent of the child or was the step parent of the child before they adopted the child.

With regard to the definition in paragraph (a), the definition appears to be circular, i.e. adoptive parent is defined by reference to adoptive parent. We assume that, in paragraph (a), adoptive parent should be defined by reference to a suitable prospective adopter under regulation 34(1) of the Adoption Agencies (Wales) Regulations 2005.

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

The technical scrutiny element of the draft report refers to one drafting point which is noted.

The definition of "adoptive parent" in regulation 2 reflects identical provision which is made in existing Regulations which also make provision about the delivery of adoption support services, namely the Adoption Support Services (Local Authorities) (Wales) Regulations 2005 (S.I. 2005/1512 (W. 116)).

It is acknowledged that there is an element of circularity about the definition. However, the wording of subparagraph (a) still works to make clear that the term "adoptive parent" includes those who are approved in relation to a particular child even if the child is not yet placed with them.

On that basis, we do not propose to bring forward any amendment to the definition as we are satisfied that the meaning is sufficiently clear as drafted and will be understood by all those persons who are or will be affected by the Regulations.

Legal Advisers
Constitutional and Legislative Affairs Committee
21 February 2019

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

The Adoption Support Services (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Adoption and Children Act 2002 ("the 2002 Act"). Section 2(6) of the 2002 Act provides that counselling, advice and information, and any other services prescribed by regulations, in relation to adoption, are adoption support services. Regulation 3(1) of these Regulations prescribes services which are adoption support services.

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 Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

The Adoption Support Services (Wales) Regulations 2019

Made *17 February 2019*

Laid before the National Assembly for Wales *19 February 2019*

Coming into force *29 April 2019*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 2(6)(b) of the Adoption and Children Act 2002(**1**).

Title and commencement

1.—(1) The title of these Regulations is the Adoption Support Services (Wales) Regulations 2019.

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

Interpretation

2. In these Regulations—

"the 2002 Act" ("*Deddf 2002*") means the Adoption and Children Act 2002;

"adoptive child" ("*plentyn mabwysiadol*") means a child who is an agency adoptive child or a non-agency adoptive child;

"adoptive parent" ("*rhiant mabwysiadol*") means a person—

(**1**) 2002 c. 38; Section 144(1) of the 2002 Act defines "regulations" as meaning regulations made by the appropriate Minister, unless they are required to be made by the Lord Chancellor, the Secretary of State or the Registrar General. Section 144(1) defines "appropriate Minister" in relation to Wales as meaning the National Assembly for Wales. The power conferred on the National Assembly for Wales to make regulations under the 2002 Act transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(a) who an adoption agency has decided in accordance with regulation 34(1) of the Adoption Agencies (Wales) Regulations 2005(**1**) is a suitable adoptive parent for a particular child,

(b) with whom an adoption agency has placed a child for adoption,

(c) who has given notice under section 44 of the 2002 Act of their intention to apply for an adoption order for a child,

(d) who has adopted a child, or

(e) who has adopted a child who has subsequently attained the age of 18,

but does not include a person who is the step parent or birth parent of the child or was the step parent of the child before they adopted the child;

"agency adoptive child" ("*plentyn mabwysiadol drwy asiantaeth*") means a child—

(a) in respect of whom an adoption agency has decided in accordance with regulation 19 of the Adoption Agencies (Wales) Regulations 2005 should be placed for adoption,

(b) whom an adoption agency has placed for adoption, or

(c) who has been adopted after having been placed for adoption by an adoption agency;

"non-agency adoptive child" ("*plentyn mabwysiadol heb fod drwy asiantaeth*") means a child—

(a) in respect of whom a person—

(i) has given notice under section 44 of the 2002 Act of their intention to apply for an adoption order, and

(ii) is not the birth parent or step parent of the child, or

(b) who has been adopted by a person who—

(i) is not the birth parent of the child, and

(ii) was not the step parent of the child before they adopted the child,

but does not include an agency adoptive child;

"related person" ("*person perthynol*") means—

(a) a relative within the meaning of section 144(1) of the 2002 Act, or

(b) any person with whom the adoptive child has a relationship which appears to the local authority to be beneficial to the welfare of the

(**1**) S.I. 2005/1313 (W. 96), amended by S.I. 2009/1892, 2012/1905 (W. 232) and 2014/852; there are other amending instruments but none is relevant.

child having regard to the matters referred to in sub-paragraphs (i) to (iii) of section 1(4)(f) of the 2002 Act.

Adoption support services

3.—(1) For the purposes of section 2(6)(b) of the 2002 Act the following services are prescribed as adoption support services—

(a) assistance to adoptive parents, adoptive children, and related persons in relation to arrangements for contact between an adoptive child and a birth parent or a related person of the adoptive child;

(b) services that may be provided in relation to the therapeutic needs of a child in relation to the child's adoption;

(c) assistance for the purpose of ensuring the continuance of the relationship between a child and the child's adoptive parent, including—

(i) training for the adoptive parent for the purpose of meeting any special needs of the child arising from that adoption, and

(ii) subject to paragraph (3), respite care;

(d) assistance where disruption in an adoption arrangement or placement has occurred or is in danger of occurring, including—

(i) mediation, and

(ii) organising and running meetings to discuss disruptions in adoptions or placements;

(e) assistance to adopted persons who have attained the age of 18 in obtaining information in relation to their adoption or facilitating contact between such persons and their relatives;

(f) assistance to relatives of adopted persons who have attained the age of 18, in obtaining information in relation to that adoption or facilitating contact between such persons and the adopted person;

(g) services to enable groups of adoptive children, adoptive parents and birth parents or former guardians of an adoptive child to discuss matters relating to adoption.

(2) For the purposes of paragraph (1)(e) and (f), "relative" means any person who but for their adoption would be related to the adopted person by blood, including half blood or marriage.

(3) For the purposes of paragraph (1)(c)(ii), respite care that consists of the provision of accommodation must be accommodation provided by or on behalf of a

local authority under section 81 of the Social Services and Well-being (Wales) Act 2014(**1**) or by a voluntary organisation under section 59 of the Children Act 1989(**2**).

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

(**1**) 2014 anaw 4.
(**2**) 1989 c. 41.

Explanatory Memorandum to The Adoption Support Services (Wales) Regulations 2019.

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

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Adoption Support Services (Wales) Regulations 2019 and I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services
19 February 2019

PART 1

1. Description

These Regulations are made under the Adoption and Children Act 2002 ("the 2002 Act"). Section 2(6) of the 2002 Act provides that counselling, advice and information, *and any other services prescribed by regulations*, in relation to adoption, are adoption support services. Regulation 3(1) of The Adoption Support Services (Wales) Regulations 2019 ('the Regulations') prescribes those additional services which are 'adoption support services'.

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The content of these Regulations was consulted upon – from 4 September to 27 November 2018 – within the draft Adoption Services (Service Providers and Responsible Individuals) and Local Authority Adoption Services (Wales) Regulations 2019. However, those draft Regulations were subsequently separated out into three statutory instruments due to their differing enabling Acts and procedures for scrutiny.

These are:

- The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019
- The Local Authority Adoption Services (Wales) Regulations 2019
- **The Adoption Support Services (Wales) Regulations 2019**

The Adoption Support Services (Wales) Regulations 2019 are being made under the National Assembly for Wales' negative resolution procedure.

4. Purpose and intended effect of the legislation

These Regulations, made under section 2(6) of the 2002 Act, prescribe additional types of adoption support services to be included within the meaning of 'adoption support services'. These largely replicate the current adoption support services prescribed in regulation 2 of the Adoption Support Agencies (Wales) Regulations 2005 (these 2005 Regulations are to be replaced under the implementation of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") but also prescribe two further types of adoption support services:

- services to enable groups of adoptive children, adoptive parents and birth parents or former guardians of an adoptive child to discuss matters relating to adoption; and

- respite care.

5. Consultation

A 12-week consultation ran between 4 September and 27 November 2018, with 9 responses received in total (including one composite response, co-ordinated by the National Adoption Service). All responses have been analysed and considered by officials who have taken into account feedback received at the consultation events (held on 6 November in Cardiff and 8 November in Wrexham) and through wider engagement with the sector. Prior to consultation, the draft Regulations were developed and tested with the assistance of a stakeholder technical group which met several times in autumn/winter 2017-18.

A consultation summary report together with a list of respondents will be published on the Welsh Government website:

https://beta.gov.wales/new-regulatory-framework-adoption-services

6. Regulatory Impact Assessment (RIA)

Officials have considered the need for a Regulatory Impact Assessment to accompany these Regulations. However given the limited impact that these regulations pose it has been decided that it is more appropriate to refer to the Explanatory Memorandum and the Regulatory Impact Assessment that has been completed for The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and The Local Authority Adoption Services (Wales) Regulations 2019.

These Regulations add another two types of adoption support services, which were not in the original regulations which are to be replaced under the implementation of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act"). One of these is "services to enable groups of adoptive children, adoptive parents and birth parents or former guardians of an adoptive child to discuss matters relating to adoption". The other is "respite care".

In principle, where adoption support services are provided to individuals, the provider will be required to register as an adoption service under the 2016 Act and be subject to the provisions within the Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 ("the 2019 Regulations").

An Explanatory Memorandum and fully scoped Regulatory Impact Assessment to support the 2019 Regulations has been completed and will accompany the laid regulations to be found here:

http://www.assembly.wales/en/bus-home/Pages/Plenary.aspx?assembly=5&category=Laid%20Document

If either of these two additional types of adoption support services is also provided as part of the service provided by an adoption service then they will already be subject to the requirements within the 2019 Regulations.

However, a provider will not be required to register as an adoption service if it only provides services to enable groups of adoptive children, adoptive parents and birth parents or former guardians of an adoptive child to discuss matters relating to adoption. This is by virtue of the exception set out in regulation 3 of the 2019 Regulations. Also by virtue of regulation 3 of the 2019 Regulations, if the provision of respite care is as part of a registered care home/domiciliary care service or a child minding/day care service, the provider of these registered services will not be required to separately register as an adoption service.

Agenda Item 5.2

SL(5)342 – The Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019

Background and Purpose

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 58B of the Government of Wales Act 2006.

These Regulations amend the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 ("the 2013 Regulations") as a result of the devolution, by the Wales Act 2017, of energy consenting functions in relation to electricity generating stations in Wales which have or will have a capacity not exceeding 350 megawatts.

The 2013 Regulations implemented Article 36 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast) (OJ No. L334, 17.12.2010, p.17).

Regulation 2 inserts new definitions.

Regulation 4 amends regulation 4 of the 2013 Regulations to make provision in respect of the Welsh Ministers' new functions under Schedule 6 to the Planning Act 2008 in relation to combustion plants in Wales with a rated electrical output of between 300 and 350 megawatts.

Regulation 5 inserts a new regulation 6A. Regulation 6A relates to planning permissions for the construction of combustion plants in Wales with a rated electrical output of between 300 and 350 megawatts (or for extensions to combustion plants in Wales which have the effect of increasing the rated electrical output of the plants to between 300 and 350 megawatts). Before granting such a planning permission the Welsh Ministers or local planning authority (as applicable) must determine whether certain conditions are met relating to the feasibility off carbon capture and storage. If the conditions are met, the planning permission must include conditions for suitable space to be set aside for equipment necessary to capture and compress all the carbon dioxide that would otherwise be emitted from the plant.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

These Regulations are made under section 2(2) of the European Communities Act 1972. There is a choice of procedure in relation to instruments made under section 2(2) of that Act. The Explanatory

Memorandum to these Regulations explains that the negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the instrument as it is giving effect to EU provisions.

Implications arising from exiting the European Union

The 2013 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

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
26 February 2019

WELSH STATUTORY INSTRUMENTS

2019 No. 294 (W. 72)

ENVIRONMENTAL PROTECTION, WALES

ELECTRICITY, WALES

The Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 ("the 2013 Regulations") as a result of the devolution, by the Wales Act 2017, of energy consenting functions in relation to electricity generating stations in Wales which have or will have a capacity not exceeding 350 megawatts.

The 2013 Regulations implemented Article 36 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast) (OJ No. L334, 17.12.2010, p.17).

Regulation 2 inserts new definitions.

Regulation 4 amends regulation 4 of the 2013 Regulations to make provision in respect of the Welsh Ministers' new functions under Schedule 6 to the Planning Act 2008 in relation to combustion plants in Wales with a rated electrical output of between 300 and 350 megawatts.

Regulation 5 inserts a new regulation 6A. Regulation 6A relates to planning permissions for the construction of combustion plants in Wales with a rated electrical output of between 300 and 350 megawatts (or for extensions to combustion plants in Wales which have the effect of increasing the rated electrical output of the plants to between 300 and 350 megawatts). Before granting such a planning permission the Welsh

Ministers or local planning authority (as applicable) must determine whether certain conditions are met relating to the feasibility of carbon capture and storage. If the conditions are met, the planning permission must include conditions for suitable space to be set aside for equipment necessary to capture and compress all the carbon dioxide that would otherwise be emitted from the plant.

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.

WELSH STATUTORY INSTRUMENTS

2019 No. 294 (W. 72)

ENVIRONMENTAL PROTECTION, WALES

ELECTRICITY, WALES

The Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019

Made	*18 February 2019*
Laid before the National Assembly for Wales	*20 February 2019*
Coming into force	*1 April 2019*

The Welsh Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and section 58B of the Government of Wales Act 2006(**2**), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Carbon Capture Readiness (Electricity Generating Stations)

(**1**) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(**2**) 2006 c. 32. Section 58B was inserted by section 20(1) of the Wales Act 2017 (c. 4). It is prospectively repealed by paragraphs 27 and 34 of Schedule 3 to the European Union (Withdrawal) Act 2018 (c. 16) from a date to be appointed. Section 58B allows the Welsh Ministers to make secondary legislation using powers in section 2(2) of the European Communities Act 1972 as if they were a Minister of the Crown or government department designated by Order in Council under that provision, provided such legislation would otherwise be within the legislative competence of the National Assembly for Wales.

(Amendment) (Wales) Regulations 2019 and they come into force on 1 April 2019.

(2) These Regulations apply in relation to Wales.

Amendment of the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013

2. The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013(**1**) are amended as set out in regulations 3 to 5.

Interpretation

3. In regulation 2(1) (interpretation) at the appropriate places insert the following definitions—

> ""the 1990 Act" means the Town and Country Planning Act 1990(**2**);";
>
> ""devolved combustion plant" means a combustion plant in Wales with a related electrical output of between 300 and 350 megawatts;";
>
> ""local planning authority" and "planning permission" have the meanings given in section 336 of the 1990 Act(**3**);";
>
> ""relevant planning authority" means in relation to a relevant planning permission—
>
> (a) where the development to which the application relates is of national significance for the purposes of section 62D of the 1990 Act(**4**), the Welsh Ministers;
>
> (b) in all other cases, the local planning authority;";
>
> ""relevant planning permission" means a planning permission—
>
> (a) for the construction of a devolved combustion plant; or
>
> (b) for an extension or alteration to a combustion plant in Wales which will have the effect of increasing the rated electrical output of the plant to between 300 and 350 megawatts;".

Changes to development consent orders: determination of carbon capture readiness and

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(**1**) S.I. 2013/2696.
(**2**) 1990 c. 8.
(**3**) Section 336 was amended by Part 1 of Schedule 19 to the Planning and Compensation Act 1991 (c. 34) and by S.I. 2006/1281. Other amendments are not relevant to these Regulations.
(**4**) Section 62D was inserted by section 19 of the Planning (Wales) Act 2015 (anaw 4).

requirements to be imposed where CCR conditions are met

4. In regulation 4 (changes to development consent orders)—

(a) at the end of paragraph (1) after "("the modified plant")" insert "(but see paragraph (1A))";

(b) after paragraph (1) insert—

"(1A) The Welsh Ministers must not—

(a) change a consent order in respect of a combustion plant in Wales with a rated electrical output of less than 300 megawatts in such a way as to enable the plant to have a rated electrical output of between 300 and 350 megawatts; or

(b) change a relevant consent order in respect of a devolved combustion plant in such a way as to enable a combustion plant to increase its rated electrical output to a maximum of 350 megawatts,

unless the Welsh Ministers have determined whether the CCR conditions are met in relation to the combustion plant, as constructed or extended in accordance with the consent order as so changed ("the modified plant").";

(c) in paragraph (2) after "determination under paragraph (1)" insert "and the Welsh Ministers' determination under paragraph (1A)";

(d) in paragraph (3)(a) after "determines" insert "under paragraph (1)";

(e) after paragraph (3) insert—

"(3A) If the Welsh Ministers—

(a) determine under paragraph (1A) that the CCR conditions are met in relation to a combustion plant; and

(b) decide to—

(i) change a consent order in respect of that plant in the way described in paragraph (1A)(a); or

(ii) change a relevant consent order in respect of that plant in the way described in paragraph (1A)(b),

the Welsh Ministers must ensure that the consent order (as changed) includes a requirement that suitable space is set aside for the equipment necessary to capture and compress all of the CO_2 that would otherwise be emitted from the plant."

Applications for relevant planning permission: determination of carbon capture readiness and requirements to be imposed where CCR conditions are met

5. After regulation 6 (variations of section 36 consents) insert—

"Applications for planning permission: determination of carbon capture readiness and requirements to be imposed where CCR conditions are met

6A.—(1) The relevant planning authority must not grant a relevant planning permission unless the relevant planning authority has determined whether the CCR conditions are met in relation to the combustion plant to which the planning permission relates.

(2) The relevant planning authority's determination under paragraph (1) must be made on the basis of—

(a) a CCR assessment of the combustion plant prepared by the person who made the application for the relevant planning permission; and

(b) any other available information, particularly concerning the protection of the environment and human health.

(3) If the relevant planning authority—

(a) determines that the CCR conditions are met in relation to a combustion plant; and

(b) decides to grant a relevant planning permission in respect of that plant,

the relevant planning authority must include a requirement in the relevant planning permission that suitable space is set aside for the equipment necessary to capture and compress all of the CO_2 that would otherwise be emitted from the plant.

(4) In this regulation, in the case of a planning permission for an extension to a combustion plant which will have the effect of increasing the rated electrical output of the plant to between 300 and 350 megawatts, references to a "combustion plant" are references to that plant as extended."

Julie James
Minister for Housing and Local Government, one of the Welsh Ministers
18 February 2019

Explanatory Memorandum to the Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019:

This Explanatory Memorandum has been prepared by Planning Directorate 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 Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019.

Julie James
Minster for Housing and Local Government
20 February 2019

PART 1

1. Description

1.1 The Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019 amend the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 ("the 2013 Regulations") as a result of the devolution, by the Wales Act 2017, of energy consenting functions in relation to electricity generating stations in Wales which have or will have a capacity not exceeding 350MW.

1.2 The 2013 Regulations implemented Article 36 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast) ("the 2010 Directive").

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

2.1 These Regulations are made under section 2(2) of the European Communities Act 1972. There is a choice of procedure in relation to instruments made under section 2(2) of that Act. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the instrument as it is giving effect to EU provisions.

3. Legislative Background

3.1 These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 ("the 1972 Act") and section 58B of the Government of Wales Act 2006 ("the 2006 Act").

3.2 Section 58B of the 2006 Act was inserted by section 20(1) of the 2017 Act. Section 58B allows the Welsh Ministers to make secondary legislation using powers in section 2(2) of the 1972 Act as if they were a Minister of the Crown or government department designated by Order in Council under that provision, provided such legislation is within the legislative competence of the National Assembly for Wales. The 2017 Act devolves to the Welsh Ministers and the National Assembly for Wales responsibility for energy consenting up to 350MW.

4. Purpose and Effect

4.1 These Regulations ensure the continued transposition of Article 36 of the 2010 Directive.

4.2 The aim of Article 36 is to ensure potential for future carbon capture and storage ("CCS") is assessed when developers apply for consent to construct plants with a rated electrical output of 300MW or more.

4.3 A number of assessments need to be carried out relating to the technical and economic feasibility of capturing, transporting and storing potential carbon dioxide emissions from an applicable plant. These assessments are designed to determine whether it is reasonable to expect that the proposed power station could be fitted with CCS technology in the future. If an assessment demonstrates that fitting of CCS technology is feasible then Article 36 requires space to be set aside to accommodate retrofitting of such equipment, thus making the proposed plan "carbon capture ready".

4.4 The 2013 Regulations transposed Article 36 of the 2010 Directive. The 2013 Regulations require that before making any development consent order or granting consent under section 36 of the Electricity Act 1989 ("1989 Act") for the construction of combustion plants with rated electrical output of 300 megawatts or more (and for extensions to combustion plants which will have the effect of increasing the rated electrical output of the plant to 300 megawatts or more), the Secretary of State or the Scottish Ministers (as applicable) must determine whether certain conditions are met relating to the feasibility of CCS. If the conditions are met the order or consent must include requirements or conditions for suitable space to be set aside for equipment necessary to capture and compress all carbon dioxide that would otherwise be emitted from the plant.

4.5 Similar provision is made in the case of applications for changes to development consent orders or variations of section 36 consents where the change or variation would enable a combustion plant to have a rated electrical output of 300 megawatts or more, or in the case of a plant with an existing rated electrical output of 300 megawatts or more would enable an increase in the rated electrical output of that plant.

4.6 These Regulations amend the 2013 Regulations as a result of the devolution of energy consenting functions by the Wales Act 2017 in relation to electricity generating stations in Wales which have or will have a capacity not exceeding 350MW.

4.7 The effect of these Regulations is that before granting a planning permission for the construction of combustion plants with rated electrical output of between 300 and 350 megawatts (and for extensions or alterations to combustion plants which will have the effect of increasing the rated electrical to between 300 and 350 megawatts) the Welsh Ministers or local planning authority (as applicable) must determine whether certain conditions are met

relating to the feasibility of CCS. If the conditions are met the order or consent must include requirements or conditions for suitable space to be set aside for equipment necessary to capture and compress all carbon dioxide that would otherwise be emitted from the plant. Similar provision is made where the Welsh Ministers are considering a change to an existing development consent order which would enable a combustion plant to have a rated electrical output of between 300 and 350 megawatts, or in the case of a plant with an existing rated electrical output of 300 megawatts or more would enable an increase in the rated electrical output of that plant to a maximum of 350 megawatts.

5. Consultation

5.1 The Welsh Government undertook a 12 week consultation from 30 April to 23 July 2018 on changes to the consenting of infrastructure in Wales. The consultation was drawn to the attention of a wide range of stakeholders including LPAs, generating station operators and their representatives, businesses, planning consultants, interest groups and other public sector agencies. A total of 47 responses were received.

5.2 Part 1 of the consultation related to the arrangements for on and offshore generating stations in the short-term and proposed a 'status quo', where possible. The overall consensus of respondents was the proposed changes were proportionate and appropriate in the short-term.

5.3 A summary of the consultation responses is available from the Welsh Government at:

https://beta.gov.wales/changes-approval-infrastructure-development.

6. Regulatory Impact Assessment

6.1 The requirement for a Regulatory Impact Assessment ("RIA") has been assessed against the RIA code for subordinate legislation. In this instance, an RIA was not considered necessary.

6.2 These Regulations are made as a consequence of energy consenting functions by the Wales Act 2017 in relation to electricity generating stations in Wales which have or will have a capacity not exceeding 350MW. The discretion of the Welsh Ministers in relation to the content of the instrument is limited as it is giving effect to the 2010 Directive.

6.3 The Wales Act 2017 was accompanied by an RIA which assessed the costs and benefits of the devolution of energy consenting functions to the Welsh Ministers. The RIA can be found here:

https://webarchive.nationalarchives.gov.uk/20160611073307/https:/www.gov.uk/government/uploads/system/uploads/attachment_data/file/527740/Wales_Bill_impact_assessment.pdf .

Agenda Item 5.3

SL(5)336 – THE COMMON AGRICULTURAL POLICY (MISCELLANEOUS AMENDMENTS)(WALES)(EU EXIT) REGULATIONS 2019

Background and Purpose

These draft Regulations are to be made under paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7, to the European Union (Withdrawal) Act 2018 ("the EUWA"). They seek to address failures of retained EU law to operate effectively, and other deficiencies, arising from the withdrawal of the United Kingdom from the European Union.

They amend four pieces of Wales subordinate legislation in the field of agriculture: the Agricultural Subsidies and Grant Schemes (Appeals) (Wales) Regulations 2006; the Rural Development Programmes (Wales) Regulations 2014; the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014; and the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015. All of these constitute retained EU law under the EUWA.

The provisions are minor, technical and do not change the effect on citizens of the subordinate legislation being amended. The Explanatory Memorandum (EM) is correct in stating that "The current CAP arrangements will continue unchanged" by these Regulations, with one minor exception relating to regulation 4, which is dealt with below.

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

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

Regulation 4 amends the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 (SI 2014/3222 (W. 327)) in several ways.

The only one that appears to produce a change from the current situation is regulation 4(2), which removes references to the "co-ordinating body". European Union legislation (specifically, Regulation (EU) no. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy) requires Member States who appoint more than one paying agency for CAP payments to also designate a body to co-ordinate between those agencies and to act as the single point of contact with the EU Commission. The UK has a separate paying agency for each

of its constituent nations, and a unit within the UK Department for Environment, Food and Rural Affairs (DEFRA) acts as the co-ordinating body. The unit is not a separate legal person from DEFRA.

The amendments made by regulation 4(2) suggest that this unit will no longer exist or will no longer carry out all its current functions, post-Brexit. Most of those functions are EU-facing and therefore will no longer be relevant once the UK leaves the EU. We understand from the Welsh Government that, any remaining functions post-Brexit, will be carried out jointly by the Welsh Ministers, the Scottish Ministers, the relevant Northern Ireland Department and the Secretary of State (in the latter case for England). It would be useful for the Welsh Government to set out further information about this for the benefit of the Assembly and of the public. This matter is not touched on in either the Explanatory Note or the Explanatory Memorandum to the draft Regulations.

Regulation 5 amends the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 (SI 2015/1252 (W. 84)). The preamble to the 2015 Regulations states that all references in the SI to European instruments are to be construed as references to those instruments as amended from time to time (i.e., as amended by the EU bodies with the power to make those EU instruments). In technical terms, the references are ambulatory. We refer to this as "EU-ambulatory".

Under section 3 of, and paragraph 1 of Schedule 8 to, the EUWA, existing ambulatory references, in domestic (including Welsh) legislation, to most EU regulations are no longer to be read in this way. Instead, they are to be read as references to the EU regulations as they applied in EU law immediately before exit day (as defined in the EUWA, i.e., currently, 11pm on 29 March 2019), but references to them will also pick up any amendments to them made by **domestic law** from time to time. Thus, they will remain ambulatory, but not "EU-ambulatory"; they will automatically include amendments made by future domestic law, not changes made by future EU law.

The provision that such references are to be read as including amendments made by domestic law from time to time can be ousted by a contrary intention.

Paragraphs (3) and (4) of regulation 5 amend, in each case, a specific reference to an EU instrument so as to remove its "EU-ambulatory" status. Instead, those references are to be read as references to the EU instrument in question as they applied immediately prior to exit day. It appears to us that this fixes the interpretation of the relevant EU-derived provisions in time, and that they will not be domestically ambulatory either.

The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 contain other references to EU instruments that are not amended in this manner. Therefore, those references will be converted, by Schedule 8 to the EUWA, from "EU-ambulatory" references into domestically ambulatory references and will automatically pick up modifications to those instruments made by domestic law after the EU leaves the UK.

The Welsh Government has explained to us its reasons for making certain provisions (described above) non ambulatory. The explanation is that certain payments were only available in 2015. Therefore, it is necessary to fix the application of the payments at a particular point in time. We are grateful for this indication, but we invite the Welsh Government to explain its rationale fully and publicly. It is of political and legal importance, and of interest to the Assembly, for the reasoning to be made transparent.

Implications arising from exiting the European Union

1 The Regulations demonstrate the difficulty, for the scrutinising body and for those affected by the legislation, of understanding the exact effect of EU Exit-related statutory instruments in the field of the Common Agricultural Policy.

2 Amongst many barriers to understanding, including referential drafting, a particular example, seen in these Regulations, is the extreme difficulty of understanding exactly what version of EU instruments are in force at any particular time as part of domestic law under the EUWA.

3 The already complex interpretative provisions of sections 3 and 6 of , and Schedule 8 to, the EUWA are, we understand, soon to be added to by The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019, currently in draft, which deal with pre-Brexit non-ambulatory references to EU legislation.

4 This opacity derives from the EUWA. However, we consider that it is incumbent on the Welsh Government to seek to explain, better and more fully, to the Assembly and to citizens how each piece of Welsh EU exit legislation fits into the whole picture of UK and EU legislation – current and intended - on the particular subject-matter. The appropriate place for this would appear to be the EM accompanying statutory instruments.

5 However, an additional concern is that end-users of legislation may not be aware of the existence of EMs or able to access them easily, and we would ask the Welsh Government to give consideration to how this situation could be improved, so as also to improve access for the citizens of Wales to the meaning of legislation.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
5 March 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

AGRICULTURE, WALES

The Common Agricultural Policy (Miscellaneous Amendments) (Wales) (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 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations apply in relation to Wales and make miscellaneous amendments to subordinate legislation about the common agriculture policy.

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

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

AGRICULTURE, WALES

The Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Made	***
Coming into force	***

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

In accordance with paragraph 1(9) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

(3) These Regulations apply in relation to Wales.

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

The Agricultural Subsidies and Grants Schemes (Appeals) (Wales) Regulations 2006

2. In regulation 2(1) of, and in the heading of the Schedule to, the Agricultural Subsidies and Grants Schemes (Appeals) (Wales) Regulations 2006(**1**), for "EU legislation", in each place it occurs, substitute "retained EU law".

The Rural Development Programmes (Wales) Regulations 2014

3.—(1) The Rural Development Programmes (Wales) Regulations 2014(**2**) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) in the definition of "approved operation" ("*gweithrediad a gymeradwywyd*"), at the end, insert "(see paragraph (3))";

(ii) in the definition of "authorised person" ("*person awdurdodedig*"), omit the words from ", and includes" to "such an authorised person";

(iii) omit the definition of "the Commission" ("*y Comisiwn*");

(iv) omit the definition of "EU assistance" ("*cymorth yr UE*");

(b) after paragraph (2) insert—

"(3) For the avoidance of doubt, an "approved operation" includes an operation which the Welsh Ministers have approved for the receipt of financial assistance under regulation 4 before exit day."

(3) In regulation 4(2), for "EU" substitute "financial".

(4) In regulation 7(2)(d), for "EU" substitute "financial".

(5) In regulation 10—

(a) omit paragraph (1)(j)(i);

(b) omit paragraph (3).

The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014

4.—(1) The Common Agricultural Policy (Integrated Administration and Control System and Enforcement

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(**1**) S.I. 2006/3342 (W. 303), amended by S.I. 2010/1807 (W. 175); there are other amending instruments but none is relevant.

(**2**) S.I. 2014/3222 (W. 327).

and Cross Compliance) (Wales) Regulations 2014(**1**) are amended as follows.

(2) In regulation 5—

(a) in paragraph (2)(b), omit "or the coordinating body";

(b) omit paragraph (3).

(3) For regulation 7(7) substitute—

"(7) An authorised person entering any land or premises by virtue of this regulation may be accompanied by such other persons as the authorised person considers necessary for any purpose mentioned in paragraph (1)."

(4) For regulation 8(3) substitute—

"(3) Paragraph (1) applies in relation to a person referred to in regulation 7(7) when such a person is acting under the instruction of an authorised person, as if such person were an authorised person."

The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015

5.—(1) The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015(**2**) are amended as follows.

(2) In regulation 3—

(a) omit "and (2)";

(b) for "Article 10(1)(b)" substitute "Article 10(1)".

(3) In regulation 11(1) and (2), after "Direct Payments Delegated Regulation" insert "as it applied immediately prior to exit day".

(4) In regulation 18(1), after "Direct Payments Regulation" insert "as it applied immediately prior to exit day".

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

(**1**) S.I. 2014/3223 (W. 328), to which there are amendments not relevant to these Regulations.
(**2**) S.I. 2015/1252 (W. 84), amended by S.I. 2016/217 (W. 86).

Explanatory Memorandum to Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Rural Payments Wales Common Agricultural Policy legislation Team within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Common Agricultural Policy (Miscellaneous Amendments) (Wales) (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
20 February 2019

PART 1

1. Description

1.1 The Common Agriculture Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ('this Instrument') correct deficiencies in domestic legislation which implements the European Union Common Agriculture Policy continuing to provide Direct Payments for farmers and land managers and Wales' Rural Development Programme.

1.2 The Regulations come into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ('the 2018 Act') defines as 29 March 2019 at 11.00pm.

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

2.1 This Instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act

This Instrument is subject to the affirmative procedure in accordance with paragraph 1(9) of Schedule 7 to the 2018 Act.

3. Legislative background

3.1 This Instrument is being made using the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively, or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

This Instrument is also made under paragraph 21 of Schedule 7 to the 2018 Act.

In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

The domestic legislation is related to the implementation and administration of CAP and farming support in Wales. Its primary aim is to deliver support to the rural economy in Wales through CAP

A summary of the domestic Regulations subject to amendment is set out in the following paragraphs.

The Agricultural Subsidies and Grants Schemes (Appeals) (Wales) Regulations 2006

The Agricultural Subsidies and Grants Schemes (Appeals) (Wales) Regulations 2006 allow the Welsh Ministers to establish appeals procedures for farmers and foresters who dispute decisions taken by it in connection with the funding of elements of CAP and schemes relating to it.

The Rural Development Programmes (Wales) Regulations 2014 ("RD Regulations")

The RD Regulations apply to the Rural Development Programmes established under Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 and Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013. In Wales, these programmes are administered by the Welsh Ministers.

The RD Regulations supplement and provide a domestic framework for the operation of the following EU legislation in Wales:

- 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.

- 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.

- 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 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 Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing 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 introducing transitional provisions.

- Commission Implementing Regulation (EU) No 808/2014 of 17 July 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 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.

The RD Regulations provide the Welsh Ministers with the power to approve operations for the receipt of financial assistance and to pay financial assistance from the European Agricultural Fund for Rural Development. An "operation" is a project, contract, action or group of projects selected by the managing authorities of the programmes concerned, or under their responsibility, that contributes to the objectives of a priority or priorities. The RD Regulations also set out the circumstances in which approval of an operation may be revoked and financial assistance paid to a beneficiary, in respect of that operation, may be withheld or recovered.

The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 ("IACS Regulations")

The IACS Regulations make provision in relation to Wales for the implementation of the following EU legislation relating to the administration of the Common Agricultural Policy:

- 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;

- Commission Delegated Regulation (EU) No 639/2014 supplementing the Direct Payments Regulation;

- Commission Implementing Regulation (EU) No 641/2014 laying down rules for the application of the Direct Payments Regulation;

- Commission Delegated Regulation (EU) No 640/2014 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 908/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy;

- Commission Implementing Regulation (EU) No 809/2014 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;

- Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy;

- 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;

- Commission Delegated Regulation (EU) No 807/2014 supplementing the Rural Development Regulation; and

- Commission Implementing Regulation (EU) No 808/2014 laying down rules for the application of the Rural Development Regulation.

Part 2 sets out provisions on control and enforcement in relation to payments granted directly to farmers under the Direct Payments Regulation ("direct payments") and rural development payments under the Rural Development Regulation ("RD payments").

Part 3 sets out further requirements on beneficiaries of direct payments and certain Rural Development payments relating to the maintenance of standards for good agricultural and environmental conditions.

Part 4 makes provision for revocations and savings.

The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 ("BPS Regulations")

The BPS Regulations make provision in Wales for the administration of the following EU Regulations:

- 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;

- Commission Delegated Regulation (EU) No 639/2014 supplementing the Direct Payments Regulation;

- Commission Implementing Regulation (EU) No 641/2014 laying down rules for the application of the Direct Payments Regulation; and

- Commission Implementing Regulation (EU) No 809/2014 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.

The BPS Regulations make provision in relation to the administration of direct payments to farmers under CAP support schemes. The Regulations set out a number of rules, including the minimum eligible area of a holding in respect of which direct payments may be granted, and the activities a farmer must carry out in order to maintain an agricultural area in a state suitable for grazing or cultivation.

The BPS Regulations also provide the basis on which an increase in direct payments to qualifying farmers aged 40 or less must be calculated (the young farmer schemes

Why is it being changed?

4.5 After EU-Exit, without amendment certain provisions will be inoperable and, as a result, existing law will either be unclear or will not function effectively. This Instrument therefore uses powers in the 2018 Act to make predominantly technical changes to the above legislation to ensure that it remains coherent and continues to function correctly after the UK has left the EU. This will provide clarity to stakeholders.

What will it now do?

4.6 This Instrument will ensure the Welsh regulations relating to the administration and implementation of CAP in Wales will continue to be operable after the UK leaves the EU. The Instrument does not make any change to the way the Welsh regulations operate.

5. Consultation

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

6. Regulatory Impact Assessment (RIA)

6.1 An impact assessment has not been prepared for this instrument because there is no impact anticipated for business, charities, voluntary bodies or the public sector. The current CAP arrangements will continue unchanged.

(ANNEX TO BE INCLUDED IF THE SI IS MADE UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018)

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,	Applies to Ministers of the Crown exercising	A statement to explain the good reasons for making the

	Schedule 7	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	instrument and that what is being done is a reasonable course of action.
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	A statement to explain why it is appropriate to create such a sub-delegated power.

		Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved 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)

Not applicable.

2. Appropriateness statement

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 Common Agriculture Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate”. This is the case because all the changes being made are solely in order to address provisions which will be inoperable as a result of the UK withdrawing from the EU. There is no change to policy. This is in line with government policy.

3. Good reasons

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 there are good reasons for the provisions in this draft instrument, and I have concluded they are a reasonable course of action”. These are that failure to make this legislation would result in Welsh legislation relating to the administration and implementation of CAP failing to operate effectively after the UK leaves the EU.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs has made the following statement(s):

> “This 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:

> "In relation to the draft instrument, I, Lesley Griffiths, the Minister for Environment, Energy and Rural Affairs, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

5. Explanations

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

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

7.1 Not applicable/required,

8. Urgency

8.1 Not applicable/required.

SL(5)337 – The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These draft Regulations are made under paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7, to the European Union (Withdrawal) Act 2018 (**the 2018 Act**). They seek to address failures of retained EU law to operate effectively, and other deficiencies, arising from the withdrawal of the United Kingdom from the European Union.

They amend four pieces of subordinate legislation in the field of animal health and welfare:

- the Registration of Establishments (Laying Hens) (Wales) Regulations 2004;
- the Welfare of Animals (Transport)(Wales) Order 2007;
- the Welfare of Farmed Animals (Wales) Regulations 2007;
- and the Welfare of Animals at the time of killing (Wales) Regulations 2014;

all of which constitute retained EU law under the 2018 Act.

Most of the provisions are minor, technical and do not change the effect of the subordinate legislation being amended. However, regulations 5(4) and 5(5) make more substantive amendments. These are dealt with below.

Procedure

Affirmative (uplifted from proposed negative on the recommendation of the Committee, after scrutiny under Standing Order 21.3B).

Technical Scrutiny

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

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

We consider the way the Explanatory Memorandum explains why regulation 2 refers to EU Regulations is not entirely helpful, either to the Assembly or to the end-user of the legislation.

Paragraph 4.6 (second sub-paragraph) of the EM states that the references "are references to [the EU Regulations] as they will form part of domestic law by virtue of section 3 of the 2018 Act". The Explanatory Memorandum then goes on to say: "Such legal effect is to be provided by the proposed "European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019, to be made by the UK Government shortly".

We consider that this wording is somewhat unhelpful. We would prefer to draw a clearer distinction between:

- section 3 of the 2018 Act doing the job of actually retaining EU Regulations so that they form part of domestic law on exit, and
- the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 doing the job of clarifying that a reference, in domestic legislation, to an EU Regulation is a reference to that EU Regulation as retained in its frozen state on exit (and is not a reference to, for example, the EU Regulation as it may have been amended post-exit by the European Union).

This is a matter of public importance, as the meaning and effect of legislation, including how it interacts with other legislation, should be transparent to those scrutinising it, and, even more importantly, to those affected by it.

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

Regulation 5(4) and (5) remove the provisions whereby a certificate of competence issued to slaughterhouse workers by other Member States is recognised for the purposes of the Welfare of Animals at the time of Killing (Wales) Regulations 2014. This effectively means that people carrying out certain functions in slaughterhouses in Wales will have to apply for a new, UK, certificate.

The arrangement whereby certificates of competence issued in one EU Member State are recognised in all other Member States appears to be a reciprocal arrangement between either the UK and each other EU Member State, or between a UK public authority (in practice, the Food Standards Agency) and authorities in all other EU Member States.

Thus, regulation 5(4) and (5) appear to remove a reciprocal arrangement between Wales (as part of the UK) and EU member States or public authorities in those States. If so, this is removing a reciprocal arrangement of a kind mentioned in section 8(2)(c) or (e) of the 2018 Act, in which case the Welsh Ministers have no power to make regulation 5(4) and (5) unless they have consulted the Secretary of State (see paragraph 4 of Schedule 2 to the 2018 Act).

Neither the preamble nor the Explanatory Memorandum to the Regulations refer to such consultation.

While we have been informed (informally at the time of preparing this report) that the Welsh Government has consulted the Secretary of State as required by the 2018 Act and that the Welsh Government will seek to amend the Explanatory Memorandum to say as much, we wish to emphasise the importance of good legislative practice.

In this context, we believe that good legislative practice requires preambles to statutory instruments to refer expressly to the fulfilment of any statutory conditions (such as a duty to consult) that must be fulfilled before the statutory instrument can be made.

Implications arising from exiting the European Union

The statutory instruments amended by these draft Regulations will constitute "retained EU law" for the purposes of the EUWA. That can have implications for Assembly competence, as the Assembly can be prevented from modifying retained EU law, by means of UK Government regulations under section 12 of the 2018 Act (often referred to as "freezing" regulations).

However, most of the substantive provision made by these draft Regulations could not be "frozen out" of Assembly competence, because the Assembly could have made the equivalent provision under pre-Brexit EU law. An exception would be the provisions in regulation 5, ending the recognition of slaughterhouse-worker certificates issued by other Member States. The Assembly could not have ended such recognition before Brexit, as it would have been in breach of EU law. However, it could restore that recognition in future, as to do so would have been compatible with pre-Brexit EU law – even if the UK Government made freezing regulations to that effect.

We note that the Explanatory Memorandum (paragraph 7.2) recognises that the ending of mutual recognition of certificates of competence for slaughterhouse workers will have practical and financial implications for some individuals in Wales. The Welsh Government states their understanding that only five people in Wales will be affected in this way. The small number of people affected forms the basis of the Welsh Government's decision not to carry out a Regulatory Impact Assessment of the costs and benefits of complying with the Regulations.

We consider that the Welsh Government should explain the basis on which it understands that only five persons will be affected in this way.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
5 March 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (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 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales, in the fields of the registration of laying hen establishments, animal welfare at transport, the welfare of farmed animals and animal welfare at slaughter.

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

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2)

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

In accordance with paragraph 1(9) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

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

(2) These Regulations come into force on exit day.

(3) These Regulations apply in relation to Wales.

The Registration of Establishments (Laying Hens) (Wales) Regulations 2004

2.—(1) The Registration of Establishments (Laying Hens) (Wales) Regulations 2004(**1**) are amended as follows.

(2) In regulation 2—

(a) omit the definitions of "the Directive" and "the National Assembly";

(b) in the definition of "register", for "National Assembly" substitute "Welsh Ministers".

(3) In regulation 4—

(a) in paragraph (1), for "National Assembly" substitute "Welsh Ministers";

(b) in paragraph (2)—

(i) for "National Assembly" substitute "Welsh Ministers";

(ii) for "the Directive" substitute "paragraph (3)";

(c) after paragraph (2) insert—

"(3) The distinguishing number must be composed of the appropriate farming method code determined in accordance with paragraphs (5) to (7), followed by the letters "UK", followed by a unique identification number allocated to the establishment by the Welsh Ministers.

(4) Where it appears appropriate to the Welsh Ministers to do so, they may add further characters to the unique identification number required by paragraph (3) in order to identify single flocks kept in separate buildings of an establishment.

(5) Except where paragraph (6) applies, when the farming method in column A is used, the appropriate farming method code is the corresponding number in column B.

(**1**) S.I. 2004/1432 (W. 145), to which there are amendments not relevant to these Regulations.

Column A	*Column B*
Free Range	1
Barn	2
Cages	3

(6) Where the farming method used in the establishment produces eggs under the conditions set out in Council Regulation (EC) No 834/2007 on organic production and labelling of organic products, the appropriate farming method code is "0".

(7) For the purposes of paragraph (5), the farming method used in an establishment is to be determined in accordance with Commission Regulation (EC) No 589/2008 laying down rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs."

(4) In regulation 6—

(a) in paragraphs (2) and (4), for "National Assembly" substitute "Welsh Ministers";

(b) in paragraph (3), for "National Assembly requires" substitute "Welsh Ministers require".

(5) In regulations 7(1) and 11, for "National Assembly" substitute "Welsh Ministers".

The Welfare of Animals (Transport) (Wales) Order 2007

3.—(1) The Welfare of Animals (Transport) (Wales) Order 2007(**1**) is amended as follows.

(2) In article 2, omit paragraph (5).

(3) For article 20 substitute—

"**The competent authority**

20. The Welsh Ministers are the competent authority for the purposes of Council Regulation (EC) No 1255/97 and Council Regulation (EC) No 1/2005."

(**1**) S.I. 2007/1047 (W. 105).

(4) In article 22—

(a) in paragraphs (1), (3)(c) and (5), for "National Assembly" substitute "Welsh Ministers";

(b) in paragraph (2)(a), for "National Assembly considers" substitute "Welsh Ministers consider";

(c) in paragraph (4)—

(i) for "National Assembly", in the first place where it occurs, substitute "Welsh Ministers";

(ii) for "National Assembly decides" substitute "Welsh Ministers decide".

(5) In article 23—

(a) in paragraphs (1) and (3), for "National Assembly" substitute "Welsh Ministers";

(b) in paragraph (2), for "National Assembly's" substitute "Welsh Ministers'";

(c) in paragraph (4)—

(i) for "National Assembly" substitute "Welsh Ministers";

(ii) for "its", in both places where that word occurs, substitute "their".

(6) In articles 24(9), 26(1)(a), 27(b) and 29(2), for "National Assembly", in each place where it occurs, substitute "Welsh Ministers".

The Welfare of Farmed Animals (Wales) Regulations 2007

4.—(1) The Welfare of Farmed Animals (Wales) Regulations 2007(**1**) are amended as follows.

(2) In Schedule 1, in paragraph 27(2), for "has the meaning given in Article 1(2)(c) of Directive 96/22/EEC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists." substitute "means the administering to an animal, in accordance with regulation 8 of the Veterinary Medicines Regulations 2013(**2**), of veterinary medicinal products having an

(**1**) S.I. 2007/3070 (W. 264), amended by S.I. 2010/2713 (W. 229).

(**2**) S.I. 2013/2033, to which there are amendments not relevant to these Regulations.

oestrogenic, androgenic or gestagenic action for synchronizing oestrus and preparing donors and recipients for the implantation of embryos, after examination of the animal by a veterinary surgeon or someone under the responsibility of a veterinary surgeon."

(3) In Schedule 5A, in paragraph 2—

(a) for sub-paragraph (1) substitute—

"(1) A keeper must hold a recognised certificate.

(1A) In this paragraph, "recognised certificate" means a certificate recognised by the Welsh Ministers attesting to the completion of such training, or the acquisition of experience equivalent to such training, as the Welsh Ministers consider appropriate.";

(b) in sub-paragraph (2), for "certificates recognised by the Welsh Ministers for the purposes of sub-paragraph (1)" substitute "recognised certificates".

The Welfare of Animals at the Time of Killing (Wales) Regulations 2014

5.—(1) The Welfare of Animals at the Time of Killing (Wales) Regulations 2014(**1**) are amended as follows.

(2) In regulation 3—

(a) in paragraph (1), in the definition of "EU Regulation", at the end insert "as amended from time to time";

(b) omit paragraph (4).

(3) In regulation 4(2), omit ", and act as the member State,".

(4) In regulation 11(3), for "England, Scotland, Northern Ireland or another member State of the European Union" substitute "England, Scotland or Northern Ireland".

(5) In regulation 19(1), omit "(including a certificate or temporary certificate granted in another member State)".

(6) In regulation 35, for paragraph (6) substitute—

(**1**) S.I. 2014/951 (W. 92).

"(6) An inspector may be accompanied by such other persons as the inspector considers necessary."

(7) In Schedule 2, in paragraph 3(2), for "any EU obligation" substitute "any retained EU obligation".

Name

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

Date

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (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 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales, in the fields of the registration of laying hen establishments, animal welfare at transport, the welfare of farmed animals and animal welfare at slaughter.

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

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ANIMALS, WALES

The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2)

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

In accordance with paragraph 1(9) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

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

(2) These Regulations come into force on exit day.

(3) These Regulations apply in relation to Wales.

The Registration of Establishments (Laying Hens) (Wales) Regulations 2004

2.—(1) The Registration of Establishments (Laying Hens) (Wales) Regulations 2004(**1**) are amended as follows.

(2) In regulation 2—

(a) omit the definitions of "the Directive" and "the National Assembly";

(b) in the definition of "register", for "National Assembly" substitute "Welsh Ministers".

(3) In regulation 4—

(a) in paragraph (1), for "National Assembly" substitute "Welsh Ministers";

(b) in paragraph (2)—

(i) for "National Assembly" substitute "Welsh Ministers";

(ii) for "the Directive" substitute "paragraph (3)";

(c) after paragraph (2) insert—

"(3) The distinguishing number must be composed of the appropriate farming method code determined in accordance with paragraphs (5) to (7), followed by the letters "UK", followed by a unique identification number allocated to the establishment by the Welsh Ministers.

(4) Where it appears appropriate to the Welsh Ministers to do so, they may add further characters to the unique identification number required by paragraph (3) in order to identify single flocks kept in separate buildings of an establishment.

(5) Except where paragraph (6) applies, when the farming method in column A is used, the appropriate farming method code is the corresponding number in column B.

(**1**) S.I. 2004/1432 (W. 145), to which there are amendments not relevant to these Regulations.

Column A	*Column B*
Free Range	1
Barn	2
Cages	3

(6) Where the farming method used in the establishment produces eggs under the conditions set out in Council Regulation (EC) No 834/2007 on organic production and labelling of organic products, the appropriate farming method code is "0".

(7) For the purposes of paragraph (5), the farming method used in an establishment is to be determined in accordance with Commission Regulation (EC) No 589/2008 laying down rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs."

(4) In regulation 6—

(a) in paragraphs (2) and (4), for "National Assembly" substitute "Welsh Ministers";

(b) in paragraph (3), for "National Assembly requires" substitute "Welsh Ministers require".

(5) In regulations 7(1) and 11, for "National Assembly" substitute "Welsh Ministers".

The Welfare of Animals (Transport) (Wales) Order 2007

3.—(1) The Welfare of Animals (Transport) (Wales) Order 2007(**1**) is amended as follows.

(2) In article 2, omit paragraph (5).

(3) For article 20 substitute—

"**The competent authority**

20. The Welsh Ministers are the competent authority for the purposes of Council Regulation (EC) No 1255/97 and Council Regulation (EC) No 1/2005."

(**1**) S.I. 2007/1047 (W. 105).

(4) In article 22—

(a) in paragraphs (1), (3)(c) and (5), for "National Assembly" substitute "Welsh Ministers";

(b) in paragraph (2)(a), for "National Assembly considers" substitute "Welsh Ministers consider";

(c) in paragraph (4)—

(i) for "National Assembly", in the first place where it occurs, substitute "Welsh Ministers";

(ii) for "National Assembly decides" substitute "Welsh Ministers decide".

(5) In article 23—

(a) in paragraphs (1) and (3), for "National Assembly" substitute "Welsh Ministers";

(b) in paragraph (2), for "National Assembly's" substitute "Welsh Ministers'";

(c) in paragraph (4)—

(i) for "National Assembly" substitute "Welsh Ministers";

(ii) for "its", in both places where that word occurs, substitute "their".

(6) In articles 24(9), 26(1)(a), 27(b) and 29(2), for "National Assembly", in each place where it occurs, substitute "Welsh Ministers".

The Welfare of Farmed Animals (Wales) Regulations 2007

4.—(1) The Welfare of Farmed Animals (Wales) Regulations 2007(**1**) are amended as follows.

(2) In Schedule 1, in paragraph 27(2), for "has the meaning given in Article 1(2)(c) of Directive 96/22/EEC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists." substitute "means the administering to an animal, in accordance with regulation 8 of the Veterinary Medicines Regulations 2013(**2**), of veterinary medicinal products having an

(**1**) S.I. 2007/3070 (W. 264), amended by S.I. 2010/2713 (W. 229).

(**2**) S.I. 2013/2033, to which there are amendments not relevant to these Regulations.

oestrogenic, androgenic or gestagenic action for synchronizing oestrus and preparing donors and recipients for the implantation of embryos, after examination of the animal by a veterinary surgeon or someone under the responsibility of a veterinary surgeon."

(3) In Schedule 5A, in paragraph 2—

(a) for sub-paragraph (1) substitute—

"(1) A keeper must hold a recognised certificate.

(1A) In this paragraph, "recognised certificate" means a certificate recognised by the Welsh Ministers attesting to the completion of such training, or the acquisition of experience equivalent to such training, as the Welsh Ministers consider appropriate.";

(b) in sub-paragraph (2), for "certificates recognised by the Welsh Ministers for the purposes of sub-paragraph (1)" substitute "recognised certificates".

The Welfare of Animals at the Time of Killing (Wales) Regulations 2014

5.—(1) The Welfare of Animals at the Time of Killing (Wales) Regulations 2014(**1**) are amended as follows.

(2) In regulation 3—

(a) in paragraph (1), in the definition of "EU Regulation", at the end insert "as amended from time to time";

(b) omit paragraph (4).

(3) In regulation 4(2), omit ", and act as the member State,".

(4) In regulation 11(3), for "England, Scotland, Northern Ireland or another member State of the European Union" substitute "England, Scotland or Northern Ireland".

(5) In regulation 19(1), omit "(including a certificate or temporary certificate granted in another member State)".

(6) In regulation 35, for paragraph (6) substitute—

(**1**) S.I. 2014/951 (W. 92).

"(6) An inspector may be accompanied by such other persons as the inspector considers necessary."

(7) In Schedule 2, in paragraph 3(2), for "any EU obligation" substitute "any retained EU obligation".

Name

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

Date

SL(5)338 – The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

Background and Purpose

These Regulations are made under the Regulation and Inspection of Social Care (Wales) Act 2016 ("the Act") and set out the regulatory requirements and related provisions for providers of regulated adoption services and for those persons who are designated as the "responsible individuals" for such services.

Procedure

Affirmative.

Technical Scrutiny

Two points are 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(1) includes the following definition:

> "approved by the service" means approved by the service as suitable to be an adoptive parent in accordance with the Adoption Agencies (Wales) Regulations 2005.

The term "approved by the service" is used in several places in the Regulations, for example, paragraph 30 of Schedule 3 states:

> 30. Any serious complaint about a prospective adopter approved by the service where a child is placed for adoption with that prospective adopter by the service.

However, it is unclear how "the service" can approve in this context. (This also raises the question of the use of "the service" at the end of that paragraph, which also arises in several other places in the Regulations.)

Failure to notify the area authority of the circumstances in paragraph 30 of Schedule 3 is a criminal offence. We therefore emphasise the need for clarity.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 7(4) deals with the issue of a "responsible individual" being unable to fulfil their duties. According to regulation 7(4)(c), where the responsible individual is unable to fulfil their duties, the service provider must ensure there are arrangements in place for the service to comply with the requirements of **Parts 3 to 10** of the Regulations.

However, Parts 11 to 15 of the Regulations impose very important requirements on responsible individuals. We therefore wonder why regulation 7(4)(c) does not require the service provider to ensure there are arrangements in place for the service to comply with the requirements of **Parts 3 to 15** of the Regulations?

(We note that in the equivalent place in the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, there is reference to Parts 3 to 15 of those Regulations.)

The same issue arises in respect of regulation 8(3) of these Regulations.

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

The Explanatory Memorandum to these Regulations states:

> Section 27(4) of the Regulation and Inspection of Social Care Act (RISCA) provides that "Before making regulations under this section the Welsh Ministers must—(a) consult any persons they think appropriate, and (b) publish a statement about the consultation." To discharge this requirement, a summary of the responses, together with a list of respondents will be published on the Welsh Government website:
>
> **https://beta.gov.wales/new-regulatory-framework-adoption-services**

However, that webpage does not provide a summary of responses and does not list the respondents. At the time of preparing this report, the webpage includes the original consultation documents and was last updated on 27 November 2018, i.e. the day the consultation closed.

Implications arising from exiting the European Union

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

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
5 March 2019

Draft Regulations laid before the National Assembly for Wales under section 187(2)(b), (f), (g), (j) and (k) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Regulation and Inspection of Social Care (Wales) Act 2016 ("the Act") and set out the regulatory requirements and related provisions for providers of regulated adoption services and for those persons who are designated as the "responsible individuals" for such services.

The Act introduced a new concept of "regulated services" which is defined in section 2 of that Act.

A person who wants to provide a regulated service must make an application for registration to the Welsh Ministers (in the exercise of their regulatory functions) specifying the regulated service that the person wants to provide.

Section 2(1)(d) of the Act provides that an adoption service is a regulated service, which is defined in Schedule 1 to that Act as meaning a service provided in Wales by (a) an adoption society within the meaning of the Adoption and Children Act 2002 ("the 2002 Act") which is a voluntary organisation within the meaning of that Act, or (b) an adoption support agency within the meaning given by section 8 of that Act. A person who is registered to provide an

adoption service is referred to in these Regulations as a “service provider”.

Section 27 of the Act provides that regulations may impose requirements on a service provider in relation to a regulated service. Section 28 further provides that regulations may impose requirements on a responsible individual designated by a service provider.

Section 30 of the Act enables the Welsh Ministers to make regulations about a service provider who is liquidated, with section 31 allowing regulations to be made about a provider who has died.

The Welsh Ministers may make regulations to provide that it is an offence for a service provider (section 45 of the Act) and for a responsible individual (section 46) to fail to comply with specified provisions.

Part 1 of these Regulations contains definitions of certain terms used in the Regulations. An adoption service is referred to as a “service” and “support” includes the support which an adoption society is required to provide in the course of making arrangements for adoption or after adoptions have been arranged as well as the adoption support services which may be provided by either an adoption society or an adoption support agency.

Part 2 covers exceptions. The regulation in Part 2 is made under powers in section 2(3) of the Act which enable the Welsh Ministers to prescribe things which, despite Schedule 1 to the Act (which sets out the definitions of regulated services), are not to be treated as a regulated service.

Part 3 sets out the general requirements on the service provider as to the way in which the service is provided, including requirements in relation to the statement of purpose, the arrangements for monitoring and improvement, the support to be provided to the responsible individual, the steps to be taken to ensure the financial sustainability of the service and the policies and procedures which must be in place.

Part 3 also describes various requirements in relation to the designation of a responsible individual. Under section 6 of the Act, a person who wants to provide a regulated service must make an application for registration to the Welsh Ministers in which a person is designated as the responsible individual.

Part 4 covers the requirements as to the steps to be taken before the service provider agrees to provide support to an individual. A service provider must not

agree to provide support unless they have first determined that the service is suitable to meet the individual's needs. Regulation 12 sets out the steps that must be taken and the matters which must be taken into account when making this determination. Where there is no care and support plan, adoption support plan, or placement plan in place, the steps to be taken include carrying out an assessment of the individual's need for support.

Part 5 deals with the requirements as to the information to be provided to individuals on the commencement of the provision of support. Regulation 13 requires that this information must be in the form of a written guide and sets out detailed requirements about the guide, including its contents and format. More detail of the information it is expected the guide would usually contain is in the guidance issued under section 29 of the Act.

Part 6 contains requirements as to the standard of support to be provided. These include overarching requirements as well as more detailed requirements relating to the provision of information, meeting individuals' language and communication needs and treating individuals with respect and sensitivity.

Part 7 contains specific requirements in relation to ensuring individuals are safe and protected from abuse, neglect and improper treatment. As well as requiring policies and procedures to be in place in relation to safeguarding, the regulations in this Part place specific requirements as to the action to be taken in the event of an allegation or evidence of abuse.

Part 8 contains requirements as to staffing, which include general requirements as to the deployment of sufficient numbers of staff and specific requirements as to the fitness of individuals working at the service. These requirements apply not just to employees but extend also to volunteers and to other persons working at the service. The fitness requirements include a requirement for specific information and documentation to be available in respect of persons working at the service, as set out in Schedule 1.

Other requirements contained in Part 8 include requirements relating to supporting and developing staff, providing information to staff and the operation of a suitable disciplinary procedure. To ensure that employees report incidents of abuse to an appropriate person, the regulations in this Part require the provider's disciplinary procedure to provide that a failure to report would itself be grounds for disciplinary proceedings.

Part 9 ensures that premises to be used in relation to adoption services are adequate for the supervision of staff and secure storage of records.

Part 10 contains miscellaneous requirements on service providers, including requirements as to the keeping of records and the making of notifications to the service regulator and other bodies. Schedule 2 sets out the records which are required to be kept and Schedule 3 sets out the specific notifications which are required to be made.

Parts 11 to 15 contain the requirements imposed on responsible individuals. The regulations in these Parts are made under section 28 of the Act.

Part 11 sets out requirements on responsible individuals which relate to the effective management of the service. The responsible individual has a general duty to supervise the management of the service and specific duties to appoint a fit person to manage the service. The responsible individual must also put arrangements in place for the management of the service when the manager is absent.

Part 12 contains requirements on responsible individuals for ensuring the effective oversight of the service. By placing these requirements on the responsible individual, the regulations in this Part ensure that a person of an appropriately senior level in the organisation is accountable for service quality and compliance. The responsible individual is also required to make reports to the service provider on the adequacy of resources and on other matters. The responsible individual must make arrangements for engagement with individuals and others so that their views on the quality of support provided can be taken into account by the provider.

Part 13 sets out the duty of the responsible individual for ensuring compliance of the service with other requirements, including requirements as to the notification of incidents and complaints and the keeping of records. The responsible individual must also ensure that the policies and procedures of the service provider are kept up to date.

Part 14 covers the responsible individual's responsibilities in relation to monitoring and reviewing the quality of the service, and making a report to the service provider.

Part 15 covers other requirements on the responsible individual, including requirements to make certain notifications to the service regulator contained in Schedule 4.

Part 16 covers offences. Regulation 54 is made under the powers in section 45 of the Act and provides that a failure of a service provider to comply with the requirements of specified provisions in these Regulations is an offence. In addition, where a service provider fails to comply with certain other requirements, regulation 54(3) provides that this is also an offence if the failure to comply results in a child being exposed to avoidable harm or significant risk of such harm or suffering a loss of money or property as a result of theft, misuse or misappropriation.

Part 16 also provides that a failure of a responsible individual to comply with the requirements of specified provisions in these Regulations is an offence. This regulation is made under section 46 of the Act.

Part 17 specifies the responsibilities on the "appointed person" in the event of the insolvency of the service provider. Part 17 also sets out steps to be taken by the personal representatives of the deceased in the event of the death of a service provider who is an individual. It enables the personal representatives to act in the capacity of the provider and modifies the Act so that in these circumstances, the personal representatives are not required to register as provider, and one of the personal representatives can be designated as the responsible individual.

Part 18 sets out the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of section 21(2) of the Act not being met in respect of the individual. This regulation is made under section 21(5) of the Act.

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 Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 187(2)(b), (f), (g), (j) and (k) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

Made	*****
Coming into force	*29 April 2019*

CONTENTS

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 2(3), 21(5), 27, 28, 30, 31, 45, 46 and 187(1) of the

Regulation and Inspection of Social Care (Wales) Act 2016(**1**) ("the Act").

The Welsh Ministers have consulted such persons as they think appropriate, as required by sections 27(4)(a) and 28(4) of the Act and published a statement about the consultation as required by section 27(4)(b) of that Act. The Welsh Ministers have laid the statement before the National Assembly for Wales as required by section 27(5) of that Act.

A draft of these Regulations was laid before the National Assembly for Wales under section 187(2)(b), (f), (g), (j) and (k) of the Act and has been approved by a resolution of the National Assembly for Wales.

PART 1

General

Title and commencement

1.—(1) The title of these Regulations is the Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

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

Interpretation

2.—(1) In these Regulations—

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

"the 2002 Act" ("*Deddf 2002*") means the Adoption and Children Act 2002(**2**);

"adoption agency" ("*asiantaeth fabwysiadu*") means an adoption society or a local authority adoption service;

"adoption society" ("*cymdeithas fabwysiadu*") has the meaning given in section 2(5) of the 2002 Act, which is a voluntary organisation within the meaning of that Act;

(**1**) 2016 anaw 2; see section 189 for the definition of "prescribed".

(**2**) 2002 c. 38.

"adoption support agency" ("*asiantaeth cymorth mabwysiadu*") has the meaning given in section 8 of the 2002 Act;

"adoption support plan" ("*cynllun cymorth mabwysiadu*") means the plan which sets out the adoption support services the local authority has decided to provide for the child and the adoptive family, how these will be provided and by whom (if applicable);

"adoption support services" ("*gwasanaethau cymorth mabwysiadu*") has the meaning given in section 2(6) of the 2002 Act and regulation 3 of the Adoption Support Services (Wales) Regulations 2019(**1**);

"adoptive child" ("*plentyn mabwysiadol*") has the meaning given in regulation 2 of the Adoption Support Services (Wales) Regulations 2019;

"adoptive parent" ("*rhiant mabwysiadol*") has the meaning given in regulation 2 of the Adoption Support Services (Wales) Regulations 2019;

"approved by the service" ("*a gymeradwywyd gan y gwasanaeth*") means approved by the service as suitable to be an adoptive parent in accordance with the Adoption Agencies (Wales) Regulations 2005(**2**);

"care and support plan" ("*cynllun gofal a chymorth*") means a plan for the child made under section 54 or section 83 of the 2014 Act(**3**);

"child" ("*plentyn*") means a person who is aged under 18;

"clinical commissioning group" ("*grwp comisiynu clinigol*") means a body established under section 14D of the National Health Service Act 2006(**4**);

"DBS certificate" ("*tystysgrif GDG*") means a certificate of a type referred to in paragraph 2 or 3 of Schedule 1;

"the Disclosure and Barring Service" ("*y Gwasanaeth Datgelu a Gwahardd*") and "DBS"

(**1**) S.I. 2019/286 (W.66).

(**2**) S.I. 2005/1313 (W. 95).

(**3**) "The 2014 Act" is defined in section 189 of the Act as the Social Services and Well-being (Wales) Act 2014 (dccc 4).

(**4**) 2006 c. 41.

("*GDG*") mean the body formed by section 87(1) of the Protection of Freedoms Act 2012(**1**);

"employee" ("*cyflogai*") has the same meaning as in section 230(1) of the Employment Rights Act 1996(**2**);

"guardian" ("*gwarcheidwad*") has the meaning given to it in section 5 of the Children Act 1989(**3**);

"individual" ("*unigolyn*") means, unless the context indicates otherwise—

(a) in the case of an adoption society in the course of arranging an adoption or after an adoption has been arranged—

(i) a child who may be adopted, their parent or guardian;

(ii) a person wishing to adopt a child, or

(iii) an adopted person, their parent, birth parent or former guardian,

who is receiving support of the type which an adoption society is required to provide in accordance with the Adoption Agencies (Wales) Regulations 2005 or the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005(**4**);

(b) in the case of an adoption support agency, or an adoption society in the course of providing adoption support services, any person who is receiving adoption support services;

"local authority adoption service" ("*gwasanaeth mabwysiadu awdurdod lleol*") has the meaning given in regulation 2(1) of the Local Authority Adoption Services (Wales) Regulations 2019(**5**);

"local authority in England" ("*awdurdod lleol yn Lloegr*") means—

(a) a county council in England,

(b) a district council for an area in England for which there is no county council,

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(**1**) 2012 c. 9.

(**2**) 1996 c. 18.

(**3**) 1989 c. 41.

(**4**) S.I. 2005/2689 (W. 189).

(**5**) S.I. 2019/291 (W.69).

(c) a London borough council, or

(d) the Common Council of the City of London;

"the National Health Service Commissioning Board" ("*Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol*") means the body established under section 1H of the National Health Service Act 2006;

"placement plan" ("*cynllun lleoliad*") has the meaning given in regulation 36(2) of the Adoption Agencies (Wales) Regulations 2005;

"reasonable adjustments" ("*addasiadau rhesymol*") means such reasonable adjustments as would be required under the Equality Act 2010(**1**);

"regulated adoption service" ("*gwasanaeth mabwysiadu rheoleiddiedig*") means an adoption service which is regulated under the Act;

"related person" ("*person perthynol*") has the meaning given in regulation 2 of the Adoption Support Services (Wales) Regulations 2019;

"representative" ("*cynrychiolydd*") means any person having legal authority, or the consent of the individual, to act on the individual's behalf;

"the service" ("*y gwasanaeth*"), unless otherwise indicated, means an adoption service(**2**) which is provided in relation to a specified area;

"service provider" ("*darparwr gwasanaeth*") means an adoption service provider who is registered under section 7 of the Act;

"the service regulator" ("*y rheoleiddiwr gwasanaethau*") means the Welsh Ministers in the exercise of their regulatory functions(**3**);

"specified area" ("*ardal benodedig*") means an area specified in a condition to the service provider's registration as a place in relation to which the service is to be provided;

"staff" ("*staff*") includes—

(**1**) 2010 c. 15, section 20.

(**2**) "adoption service" has the meaning given in paragraph 4 of Schedule 1 to the Act.

(**3**) "Regulatory functions" is defined in section 3(1)(b) of the Act.

(a) persons employed by the service provider to work at the service as an employee or a worker, and

(b) persons engaged by the service provider under a contract for services,

but does not include persons who are allowed to work as volunteers;

"the statement of purpose" ("*y datganiad o ddiben*") means the document containing the information which must be provided in accordance with regulation 3(c) of and Schedule 2 to the Regulated Services (Registration) (Wales) Regulations 2017(**1**) for the place in relation to which the service is to be provided(**2**);

"worker" ("*gweithiwr*") has the same meaning as in section 230(3) of the Employment Rights Act 1996.

(2) In these Regulations, where used in relation to the support provided to an "individual" as defined in this regulation, "support" includes—

(a) the support which an adoption society is required to provide to individuals in the course of arranging an adoption, or after an adoption has been arranged, in accordance with the Adoption Agencies (Wales) Regulations 2005 or the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005, or

(b) the adoption support services which may be provided by an adoption society or adoption support agency.

(**1**) S.I. 2017/1098 (W. 278).

(**2**) Regulation 3(c) of the Regulated Services (Registration) (Wales) Regulations 2017 requires a person who wants to provide an adoption service to provide a statement of purpose for each place from which the service is to be provided.

PART 2

Exceptions

Exceptions

3.—(1) The following services are not to be treated as an adoption service, despite paragraph 4 of Schedule 1 to the Act (regulated services: definitions, adoption service)—

(a) the provision of a service in relation to adoption by a person, in the course of a legal activity (within the meaning of the Legal Services Act 2007(**1**)), who is—

(i) an authorised person for the purposes of that Act, or

(ii) a European lawyer (within the meaning of the European Communities (Services of Lawyers) Order 1978(**2**));

(b) the provision of services to enable groups of adoptive children, adoptive parents and birth parents or former guardians of an adoptive child to discuss matters relating to adoption;

(c) the provision of respite care to an adoptive child or an adoptive parent by a care home service or domiciliary support service in respect of which a person is registered under chapter 2 of the Act;

(d) the provision of respite care in relation to an adoptive child consisting of child minding or day care within the meaning in Part 2 of the Children and Families (Wales) Measure 2010(**3**) and in respect of which a person is registered for child minding or day care under that Part of that Measure;

(e) the provision of adoption support services by a person who provides those services—

(i) otherwise than in partnership with others, and

(ii) under a contract for services with—

(**1**) 2007 c. 29.

(**2**) S.I. 1978/1910.

(**3**) 2010 nawm 1.

(aa) a regulated adoption service, or

(bb) a local authority adoption service.

(2) In paragraph (1)(e), a person does not include the plural and is not a corporate body.

PART 3

General requirements on service providers

Requirements in relation to the provision of the service

4. The service provider must ensure that the service is provided with sufficient care, competence and skill, having regard to the statement of purpose.

Requirements in relation to the statement of purpose

5.—(1) The service provider must provide the service in accordance with the statement of purpose.

(2) The service provider must—

(a) keep the statement of purpose under review, and

(b) where appropriate, revise the statement of purpose.

(3) Unless paragraph (4) applies the service provider must notify the persons listed in paragraph (6) of any revision to be made to the statement of purpose at least 28 days before it is to take effect.

(4) This paragraph applies in cases where it is necessary to revise the statement of purpose with immediate effect.

(5) If paragraph (4) applies the service provider must without delay notify the persons listed in paragraph (6) of any revision made to the statement of purpose.

(6) The persons who must be notified of any revision to the statement of purpose in accordance with paragraph (3) or (5) are—

(a) the service regulator,

(b) the individuals, and

(c) any representatives, unless it is not appropriate to do so or would be inconsistent with the well-being of an individual.

(7) The service provider must provide the up to date statement of purpose to any person on request, unless it is not appropriate to do so or would be inconsistent with the well-being of an individual.

Requirements in relation to monitoring and improvement

6.—(1) The service provider must ensure that there are effective arrangements in place for monitoring, reviewing and improving the quality of the service.

(2) Those arrangements must include arrangements for seeking the views of—

(a) individuals;

(b) any representatives, unless this is not appropriate or would be inconsistent with the individual's well-being;

(c) any local authority or local authority in England which has arranged for the provision of adoption support services by the service;

(d) staff,

on the quality of the service and how this can be improved.

(3) When making any decisions on plans for improvement of the quality of the service, the service provider must—

(a) take into account the views of those persons consulted in accordance with paragraph (2), and

(b) have regard to the quality of service report prepared by the responsible individual in accordance with regulation 49(4).

Requirements in relation to the responsible individual

7.—(1) This regulation does not apply to a service provider who is an individual.

(2) A service provider to whom this regulation applies must ensure that the person who is designated as the responsible individual—

(a) is supported to carry out their duties effectively, and

(b) undertakes appropriate training.

(3) In the event that the service provider has reason to believe that the responsible individual has not

complied with a requirement imposed by the regulations in Parts 11 to 15, the provider must—

(a) take such action as is necessary to ensure that the requirement is complied with, and

(b) notify the service regulator.

(4) During any time when the responsible individual is unable to fulfil their duties, the service provider must ensure that there are arrangements in place for—

(a) the effective management of the service,

(b) the effective oversight of the service,

(c) the compliance of the service with the requirements imposed by the regulations in Parts 3 to 10, and

(d) monitoring, reviewing and improving the quality of support provided.

(5) If the responsible individual is unable to fulfil their duties for a period of more than 28 days, the service provider must—

(a) notify the service regulator, and

(b) inform the service regulator of the interim arrangements.

Requirements in relation to the responsible individual where the service provider is an individual

8.—(1) This regulation applies where the service provider is an individual.

(2) If this regulation applies, the individual must undertake appropriate training for the proper discharge of the individual's duties as the responsible individual.

(3) During any time when the individual is absent, the individual must ensure that there are arrangements in place for—

(a) the effective management of the service,

(b) the effective oversight of the service,

(c) the compliance of the service with the requirements of the regulations in Parts 3 to 10, and

(d) monitoring, reviewing and improving the quality of support provided.

(4) If the individual is unable to fulfil their duties as a responsible individual for a period of more than 28 days, the individual must—

(a) notify the service regulator, and

(b) inform the service regulator of the interim arrangements.

Requirements in relation to the financial sustainability of the service

9.—(1) The service provider must take reasonable steps to ensure that the service is financially sustainable for the purpose of achieving the aims and objectives set out in the statement of purpose.

(2) The service provider must maintain appropriate and up to date accounts for the service.

(3) The service provider must provide copies of the accounts to the Welsh Ministers within 28 days of being requested to do so.

(4) The Welsh Ministers may require accounts to be certified by an accountant.

Requirements to provide the service in accordance with policies and procedures

10.—(1) The service provider must ensure that the following policies and procedures are in place for the service—

(a) commencement of the service (see regulation 12);

(b) safeguarding (see regulation 20);

(c) supporting and developing staff (see regulation 24);

(d) staff discipline (see regulation 27);

(e) complaints (see regulation 33);

(f) whistleblowing (see regulation 34).

(2) The service provider must also have such other policies and procedures in place as are reasonably necessary to support the aims and objectives of the service set out in the statement of purpose.

(3) The service provider must ensure that the content of the policies and procedures which are required to be in place by virtue of paragraphs (1) and (2) is—

(a) appropriate to the needs of individuals for whom support is provided,

(b) consistent with the statement of purpose, and

(c) kept up to date.

(4) The service provider must ensure that the service is provided in accordance with those policies and procedures.

Duty of candour

11. The service provider must act in an open and transparent way with—

(a) individuals;

(b) any representatives of those individuals.

PART 4

Requirements on service providers as to the steps to be taken before agreeing to provide support

Suitability of the service

12.—(1) The service provider must not provide support for an individual unless the provider has determined that the service is suitable to meet the individual's need for support.

(2) The service provider must have in place a policy and procedures on commencement of the service.

(3) The determination under paragraph (1) must take into account—

(a) any up to date plan;

(b) any health or other relevant assessments;

(c) the individual's views, wishes and feelings;

(d) any risks to the individual's well-being;

(e) any risks to the well-being of other individuals to whom support is provided;

(f) the individual's religious persuasion, racial origin, cultural and linguistic background, sexual orientation and gender identity;

(g) any reasonable adjustments which the service provider could make to enable the individual's need for support to be met;

(h) the service provider's policy and procedures on commencement of the service.

(4) In a case where the individual does not have a plan, the service provider must assess the individual's need for support.

(5) The assessment required by paragraph (4) must be carried out by a person who—

(a) has the skills, knowledge and competence to carry out the assessment, and

(b) has received training in the carrying out of assessments.

(6) In making the determination in paragraph (1), the service provider must involve the individual and any representative. But the service provider is not required to involve a representative if—

(a) the individual is an adult or a child aged 16 or over and the individual does not wish the representative to be involved, or

(b) involving the representative would not be consistent with the individual's well-being.

(7) In this regulation "plan" may include—

(a) an adoption support plan,

(b) a care and support plan, or

(c) a placement plan.

PART 5

Requirements on service providers as to the information to be provided to individuals on commencement of the provision of support

Information about the service

13.—(1) The service provider must prepare a written guide to the service.

(2) The guide must be—

(a) dated, reviewed at least annually and updated as necessary;

(b) in an appropriate language, style, presentation and format, having regard to the statement of purpose for the service;

(c) given to any individual who is receiving support;

(d) made available to others on request, unless this is not appropriate or would be inconsistent with the well-being of an individual.

(3) The guide must contain information about—

(a) how to raise a concern or make a complaint;

(b) the availability of advocacy services;

(c) the role and contact details for the Children's Commissioner for Wales.

(4) The service provider must ensure that an individual receives such assistance as is necessary to enable the individual to understand the information contained in the guide.

Service agreement

14.—(1) The service provider must ensure that every individual who receives support is given a signed copy of any agreement relating to—

(a) the support provided to the individual;

(b) any other services provided to the individual.

(2) The service provider must ensure that the individual receives such assistance as is necessary to enable the individual to understand the information contained in any such agreement.

PART 6

Requirements on service providers as to the standards of support to be provided

Standards of support – overarching requirements

15.—(1) The service provider must ensure that support is provided in a way which protects, promotes and maintains the safety and well-being of individuals.

(2) The service provider must ensure that support is provided in a way which—

(a) maintains good personal and professional relationships with individuals and staff, and

(b) encourages and assists staff to maintain good personal and professional relationships with individuals.

Information

16.—(1) The service provider must put arrangements in place to ensure that an individual has the information they need to make or participate in assessments, plans and day to day decisions about the way support is provided to them.

(2) Information provided must be available in the appropriate language, style, presentation and format, having regard to—

(a) the nature of the service as described in the statement of purpose;

(b) the level of the individual's understanding and ability to communicate;

(c) in the case of a child, the child's age.

(3) The service provider must ensure that the individual receives such assistance as is necessary to enable them to understand the information provided.

Language and communication

17. The service provider must take reasonable steps to meet the language and communication needs of an individual.

Respect and sensitivity

18.—(1) The service provider must ensure that individuals are treated with respect and sensitivity.

(2) This includes, but is not limited to—

(a) respecting the individual's privacy and dignity;

(b) respecting the individual's rights to confidentiality;

(c) promoting the individual's autonomy and independence;

(d) having regard to any relevant protected characteristics (as defined in section 4 of the Equality Act 2010) of the individual.

PART 7

Requirements on service providers – safeguarding

Safeguarding - overarching requirement

19. The service provider must provide the service in a way which ensures that individuals are safe and are protected from abuse, neglect and improper treatment.

Safeguarding policies and procedures

20.—(1) The service provider must have policies and procedures in place—

(a) for the prevention of abuse, neglect and improper treatment, and

(b) for responding to any allegation or evidence of abuse, neglect or improper treatment.

(2) In this regulation, such policies and procedures are referred to as safeguarding policies and procedures.

(3) The service provider must ensure that their safeguarding policies and procedures are operated effectively.

(4) In particular, where there is an allegation or evidence of abuse, neglect or improper treatment, the service provider must—

(a) act in accordance with their safeguarding policies and procedures,

(b) take immediate action to ensure the safety of all individuals for whom support is provided,

(c) make appropriate referrals to other agencies, and

(d) keep a record of any evidence or the substance of any allegation, any action taken and any referrals made.

Interpretation of Part 7

21. In this Part—

"abuse" ("*camdriniaeth*") means physical, sexual, psychological, emotional or financial abuse and, in relation to a child, any other harm.

For the purposes of this definition—

(a) "financial abuse" ("*camdriniaeth ariannol*") includes—

(i) having money or other property stolen;

(ii) being defrauded;

(iii) being put under pressure in relation to money or other property;

(iv) having money or other property misused;

(b) "harm" ("*niwed*") has the same meaning as in section 197(1) of the 2014 Act;

"improper treatment" ("*triniaeth amhriodol*") includes discrimination or unlawful restraint, including inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005(**1**);

"neglect" ("*esgeulustod*") has the same meaning as in section 197(1) of the 2014 Act.

PART 8

Requirements on service providers as to staffing

Staffing - overarching requirements

22.—(1) The service provider must ensure that at all times a sufficient number of suitably qualified, trained, skilled, competent and experienced staff are deployed to work at the service, having regard to—

(a) the statement of purpose for the service,

(b) the individuals' need for support,

(c) assisting individuals to meet their need for support,

(d) the need to safeguard and promote the health and welfare of children, and

(e) the requirements of these Regulations.

(2) The service provider must ensure that suitable arrangements are made for the support and development of staff.

(**1**) 2005 c. 9.

Fitness of staff

23.—(1) The service provider must not—

(a) employ a person under a contract of employment to work at the service unless that person is fit do so;

(b) allow a volunteer to work at the service unless that person is fit to do so;

(c) allow any other person to work at the service in a position in which that person may, in the course of duties, have regular contact with individuals who are receiving support or with other persons who are vulnerable unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to work at the service unless—

(a) the person is of suitable integrity and good character;

(b) the person has the qualifications, skills, competence and experience necessary for the work that person is to perform;

(c) the person is able by reason of their health, after reasonable adjustments are made, to properly perform the tasks which are intrinsic to the work for which that person is employed or engaged;

(d) the person has provided full and satisfactory information or documentation, as the case may be, in respect of each of the matters specified in Part 1 of Schedule 1 and this information or documentation is available at the service for inspection by the service regulator;

(e) where the person is employed by the service provider to manage the service, from 1 April 2022, the person is registered as a social care manager(**1**) with SCW(**2**).

(3) An appropriate DBS certificate must be applied for by, or on behalf of the service provider, for the purpose of assessing the suitability of a person for the post referred to in paragraph (1). But this requirement

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(**1**) *See* section 79(1)(b) of the Act for the definition of a "social care manager".

(**2**) *See* section 67(3) of the Act for the definition of Social Care Wales as "SCW".

does not apply if the person working at the service is registered with the Disclosure and Barring Service update service (referred to in this regulation as "the DBS update service").

(4) Where a person being considered for a post referred to in paragraph (1) is registered with the DBS update service, the service provider must check the person's DBS certificate status for the purpose of assessing the suitability of that person for that post.

(5) Where a person appointed to a post referred to in paragraph (1) is registered with the DBS update service, the service provider must check the person's DBS certificate status at least annually.

(6) Where a person appointed to a post referred to in paragraph (1) is not registered with the DBS update service, the service provider must apply for a new DBS certificate in respect of that person within three years of the issue of the certificate applied for in accordance with paragraph (3) and thereafter further such applications must be made at least every three years.

(7) If any person working at the service is no longer fit to work at the service as a result of one or more of the requirements in paragraph (2) not being met, the service provider must—

(a) take necessary and proportionate action to ensure that the relevant requirements are complied with;

(b) where appropriate, inform—

(i) the relevant regulatory or professional body;

(ii) the Disclosure and Barring Service.

Supporting and developing staff

24.—(1) The service provider must have a policy in place for the support and development of staff.

(2) The service provider must ensure that any person working at the service (including a person allowed to work as a volunteer)—

(a) receives an induction appropriate to their role;

(b) is made aware of their own responsibilities and those of other staff;

(c) receives appropriate supervision and appraisal;

(d) receives core training appropriate to the work to be performed by them;

(e) receives specialist training as appropriate;

(f) receives support and assistance to obtain such further training as is appropriate to the work they perform.

(3) The service provider must ensure that any person employed to work at the service as a manager is supported to maintain their registration with SCW.

Compliance with code of practice

25. The service provider must adhere to the code of practice on the standards of conduct and practice expected of persons employing or seeking to employ social care workers, which is required to be published by SCW under section 112(1)(b) of the Act.

Information for staff

26.—(1) The service provider must ensure that all persons working at the service (including any person allowed to work as a volunteer) are provided with information about the service and the way it is provided.

(2) The service provider must ensure that there are arrangements in place to make staff aware of any codes of practice about the standards of conduct expected of social care workers, which are required to be published by SCW under section 112(1)(a) of the Act.

Disciplinary procedures

27.—(1) The service provider must put in place and operate a disciplinary procedure.

(2) The disciplinary procedure must include—

(a) provision for the suspension, and the taking of action short of suspension, of an employee, in the interests of the safety or well-being of individuals;

(b) provision that a failure on the part of an employee to report an incident of abuse, or suspected abuse, to an appropriate person, is grounds on which disciplinary proceedings may be instituted.

(3) For the purpose of paragraph (2)(b), an appropriate person is—

(a) the service provider,

(b) the responsible individual,

(c) an officer of the service regulator,

(d) an officer of the local authority for the area where the service is provided,

(e) in the case of an incident of abuse or suspected abuse of a child, an officer of the National Society for the Prevention of Cruelty to Children, or

(f) a police officer,

as the case may be.

PART 9

Requirements on service providers as to premises

Overarching requirement

28. The service provider must ensure that the premises are suitable for the service, having regard to the statement of purpose for the service.

Adequacy of premises

29. The service provider must ensure that the premises used for the operation of the service have adequate facilities for—

(a) the supervision of staff;

(b) the secure storage of records.

PART 10

Other requirements on service providers

Records

30.—(1) The service provider must keep and maintain the records specified in Schedule 2.

(2) The service provider must—

(a) ensure that records specified in Schedule 2 are accurate and up to date;

(b) keep the records securely;

(c) make suitable arrangements for the records to continue to be kept securely in the event the service closes;

(d) make the records available to the service regulator on request;

(e) where an adoption order has been made in relation to a child, retain records relating to the child and the child's adopter for at least 100 years from the date of the adoption order;

(f) where adoption support services are provided to an individual, retain records relating to the individual for at least 100 years from the date of the last entry;

(g) in a case which does not fall within sub-paragraph (e) or (f) retain—

(i) records relating to adults for 3 years from the date of the last entry:

(ii) records relating to children for 15 years from the date of the last entry;

(h) ensure that individuals who use the service—

(i) can have access to their records, and

(ii) are made aware they can access their records.

Notifications

31.—(1) The service provider must notify the service regulator of the events specified in Part 1 of Schedule 3.

(2) In the case of a service provided by an adoption society, the service provider must notify—

(a) the Local Health Board, or clinical commissioning group and the National Health Service Commissioning Board, of the events specified in Part 2 of Schedule 3;

(b) the placing agency of the event specified in Part 4 of Schedule 3;

(c) the area authority of the events specified in Part 5 of Schedule 3;

(d) the placing authority of the events specified in Part 6 of Schedule 3;

(e) the police of the event specified in Part 9 of Schedule 3.

(3) In the case of a service provided by an adoption support agency or an adoption society which provides adoption support services the service provider must notify—

(a) the Local Health Board, or clinical commissioning group and the National Health Service Commissioning Board, of the event specified in Part 3 of Schedule 3;

(b) the placing authority of the events specified in Part 7 of Schedule 3;

(c) the relevant authority of the event specified in Part 8 of Schedule 3;

(d) the police of the event specified in Part 9 of Schedule 3.

(4) The notifications required by this regulation must include details of the event.

(5) Unless otherwise stated, notifications must be made without delay and in writing.

(6) Notifications must be made in such manner and in such form as may be required by the service regulator.

(7) In this regulation—

(a) "Local Health Board", "clinical commissioning group" and the "National Health Service Commissioning Board" means the Local Health Board, or the clinical commissioning group and the National Health Service Commissioning Board in whose area the child—

(i) is placed for adoption by the service, or

(ii) who has died or sustained serious accident or injury in the course of receiving adoption support services was living at the time of the incident;

(b) "area authority" means the local authority or local authority in England for the area in which a child is placed, or is to be placed, where this is different from the placing authority;

(c) "placing agency" means the adoption agency that placed the child for adoption with the prospective adopter;

(d) "placing authority" means, in relation to a child who is or was looked after by a local authority or local authority in England, that local authority;

(e) "relevant authority" means the local authority in whose area the service is located and any other local authority on behalf of

whom the service is providing adoption support services to that child by virtue of section 3(4)(a) of the 2002 Act.

Conflicts of interest

32. The service provider must have effective arrangements in place to identify, record and manage potential conflicts of interest.

Complaints policy and procedure

33.—(1) The service provider must have a complaints policy in place and ensure that the service is operated in accordance with that policy.

(2) The service provider must have effective arrangements in place for dealing with complaints including arrangements for—

(a) identifying and investigating complaints,

(b) giving an appropriate response to a person who makes a complaint, if it is reasonably practicable to contact that person,

(c) ensuring that appropriate action is taken following an investigation, and

(d) keeping records relating to the matters in sub-paragraphs (a) to (c).

(3) The service provider must provide a summary of complaints, responses and any subsequent action taken to the service regulator within 28 days of being requested to do so.

(4) The service provider must—

(a) analyse information relating to complaints and concerns, and

(b) having regard to that analysis, identify any areas for improvement.

Whistleblowing

34.—(1) The service provider must have arrangements in place to ensure that all persons working at the service (including any person allowed to work as a volunteer) are able to raise concerns about matters that may adversely affect the health, safety or well-being of persons for whom the service is provided.

(2) These arrangements must include—

(a) having a whistleblowing policy in place and acting in accordance with that policy, and

(b) establishing arrangements to enable and support people working at the service to raise such concerns.

(3) The service provider must ensure that the arrangements required under this regulation are operated effectively.

(4) When a concern is raised, the service provider must ensure that—

(a) the concern is investigated,

(b) appropriate steps are taken following an investigation, and

(c) a record is kept relating to the matters in sub-paragraphs (a) and (b).

PART 11

Requirements on responsible individuals for ensuring effective management of the service

Supervision of the management of the service

35. The responsible individual must supervise the management of the service.

Duty to appoint a manager

36.—(1) The responsible individual must appoint a person to manage the service. But this requirement does not apply if the conditions in paragraph (2) or (3) apply.

(2) The conditions are—

(a) the service provider is an individual,

(b) the service provider proposes to manage the service,

(c) the service provider is fit to manage the service,

(d) subject to paragraph (6), the service provider is registered as a manager with SCW, and

(e) the service regulator agrees to the service provider managing the service.

(3) The conditions are—

(a) the service provider is a partnership, body corporate or unincorporated body,

(b) the service provider proposes that the individual designated as the responsible individual for the service is to be appointed to manage the service,

(c) that individual is fit to manage the service,

(d) subject to paragraph (6), that individual is registered as a manager with SCW, and

(e) the service regulator agrees to that individual managing the service.

(4) For the purposes of paragraph (2)(c), the service provider is not fit to manage the service unless the requirements of regulation 23(2) (fitness of staff) are met in respect of the service provider.

(5) The duty in paragraph (1) is not discharged if the person appointed to manage the service is absent for a period of more than three months.

(6) The condition in paragraphs (2)(d) and (3)(d) only applies after 1 April 2022.

Fitness requirements for appointment of manager

37.—(1) The responsible individual must not appoint a person to manage the service unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to manage the service unless the requirements of regulation 23(2) (fitness of staff) are met in respect of that person.

Restrictions on appointing a manager for more than one service

38.—(1) The responsible individual must not appoint a person to manage more than one service, unless paragraph (2) applies.

(2) This paragraph applies if—

(a) the service provider has applied to the service regulator for permission to appoint a manager for more than one service, and

(b) the service regulator is satisfied that the proposed management arrangements—

(i) will not have an adverse impact on the provision of the service, and

(ii) will provide reliable and effective oversight of each service.

Duty to report the appointment of manager to service provider

39. On the appointment of a manager in accordance with regulation 36(1), the responsible individual must give notice to the service provider of—

(a) the name of the person appointed, and

(b) the date on which the appointment is to take effect.

Duty to report the appointment of manager to SCW and the service regulator

40.—(1) On the appointment of a manager in accordance with regulation 36(1), the responsible individual must give notice to SCW and the service regulator of—

(a) the name, date of birth and SCW registration number of the person appointed, and

(b) the date on which the appointment is to take effect.

(2) In a case where the service provider is an individual and the service regulator has agreed to the service provider managing the service, the service provider must give notice to SCW of—

(a) the name, date of birth and SCW registration number of the service provider, and

(b) the date from which the service provider is to manage the service.

Arrangements when manager is absent

41.—(1) The responsible individual must put suitable arrangements in place to ensure that the service is managed effectively at any time when there is no manager or when the manager is not present at the service.

(2) If there is no manager or the manager is not present at the service for a period of more than 28 days, the responsible individual must—

(a) notify the service provider and the service regulator, and

(b) inform them of the arrangements which have been put in place for the effective management of the service.

Visits

42.—(1) The responsible individual must—

(a) visit the premises from which the service is provided,

(b) meet with members of staff who are employed to provide a service from each place in respect of which the responsible individual is designated, and

(c) meet with individuals or any representatives of individuals for whom a service is being provided from each such place.

(2) The frequency of such visits and meetings is to be determined by the responsible individual having regard to the statement of purpose, but must be at least every 3 months.

PART 12

Requirements on responsible individuals for ensuring effective oversight of the service

Oversight of adequate resources

43.—(1) The responsible individual must report to the service provider on the adequacy of the resources available to provide the service in accordance with the requirements of these Regulations.

(2) Such reports must be made on a quarterly basis.

(3) But this requirement does not apply where the service provider is an individual.

Other reports to the service provider

44.—(1) The responsible individual must, without delay, report to the service provider—

(a) any concerns about the management or provision of the service;

(b) any significant changes to the way the service is managed or provided;

(c) any concerns that the service is not being provided in accordance with the statement of purpose for the service.

(2) But this requirement does not apply where the service provider is an individual.

Engagement with individuals and others

45.—(1) The responsible individual must put suitable arrangements in place for obtaining the views of—

(a) individuals,

(b) any representatives of those individuals,

(c) any local authority or local authority in England which has arranged for the provision of support by the service, and

(d) staff employed at the service,

on the quality of support provided and how this can be improved.

(2) The responsible individual must report the views obtained so that these views can be taken into account by the service provider when making any decisions on plans for improvement of the quality of support provided by the service.

PART 13

Requirements on responsible individuals for ensuring compliance of the service

Duty to ensure there are systems in place to record incidents and complaints

46. The responsible individual must ensure that there are effective systems in place to record incidents, complaints and matters on which notifications must be made in accordance with regulations 31and 53.

Duty to ensure there are systems in place for keeping of records

47. The responsible individual must ensure that there are effective systems in place in relation to the keeping of records, which include systems for ensuring the accuracy and completeness of records which are required to be kept by regulation 30.

Duty to ensure policies and procedures are up to date

48. The responsible individual must put suitable arrangements in place to ensure that the service provider's policies and procedures are kept up to date, having regard to the statement of purpose.

PART 14

Requirements on responsible individuals for monitoring, reviewing and improving the quality of the service

Quality of service review

49.—(1) The responsible individual must put suitable arrangements in place to establish and maintain a system for monitoring, reviewing and improving the quality of the service.

(2) The system established under paragraph (1) must make provision for the quality of the service to be reviewed as often as required but at least every 6 months.

(3) As part of any review undertaken, the responsible individual must make arrangements for—

(a) considering the outcome of the engagement with individuals and others, as required by regulation 45 (engagement with individuals and others);

(b) analysing the aggregate data on incidents, notifiable incidents, safeguarding matters, whistleblowing, concerns and complaints;

(c) reviewing any action taken in relation to complaints;

(d) considering the outcome of any audit of the accuracy and completeness of records.

(4) On completion of a review of the quality of service in accordance with this regulation, the responsible individual must prepare a report to the service provider which must include—

(a) an assessment of the standard of support provided, and

(b) recommendations for the improvement of the service.

(5) But the requirement in paragraph (4) does not apply where the service provider is an individual.

Statement of compliance with the requirements as to standards of support

50.—(1) The responsible individual must prepare the statement required to be included in the annual return under section 10(2)(b) of the Act, in so far as it

relates to the place or places in respect of which the responsible individual has been designated.

(2) When preparing the statement, the responsible individual must have regard to the assessment of the standard of support which is contained in a report prepared in accordance with regulation 49(4).

PART 15

Other requirements on responsible individuals

Support for staff raising concerns

51. The responsible individual must ensure that the provider's whistleblowing policy is being complied with and that the arrangements to enable and support people working at the service to raise such concerns are being operated effectively.

Duty of candour

52. The responsible individual must act in an open and transparent way with—

(a) individuals, and

(b) any representatives of those individuals.

Notifications

53.—(1) The responsible individual must notify the service regulator of the events specified in Schedule 4.

(2) The notifications required by paragraph (1) must include details of the event.

(3) Unless otherwise stated, notifications must be made without delay and in writing.

(4) Notifications must be made in such manner and in such form as may be required by the service regulator.

PART 16

Offences

Offences – service providers

54.—(1) It is an offence for a service provider to fail to comply with a requirement of any of the provisions specified in paragraph (2)(**1**).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations—

(a) 5(3) (requirements in relation to statement of purpose);

(b) 5(5) (requirements in relation to statement of purpose);

(c) 9(3) (requirements in relation to financial sustainability of the service);

(d) 10(1) (requirements to provide the service in accordance with policies and procedures);

(e) 13(1) (information about the service);

(f) 13(2) (information about the service);

(g) 13(3) (information about the service);

(h) 14(1) (service agreement);

(i) 23(1) (fitness of staff);

(j) 26(1) (information for staff);

(k) 30(1) (records);

(l) 30(2) (records);

(m) 31(1) (notifications);

(n) 31(2) (notifications);

(o) 31(3) (notifications);

(p) 31(5) (notifications).

(3) A service provider commits an offence if the provider fails to comply with a requirement of any of the provisions specified in paragraph (4) and such failure results in—

(**1**) For penalties upon conviction for an offence under this regulation, *see* section 51(1) of the Act.

(a) avoidable harm (whether of a physical or psychological nature) to an individual,

(b) an individual being exposed to a significant risk of such harm occurring, or

(c) in a case of theft, misuse or misappropriation of money or property, any loss by an individual of the money or property concerned.

(4) The provisions specified for the purposes of paragraph (3) are the provisions of regulations—

(a) 4 (requirements in relation to the provision of the service);

(b) 5(1) (requirements in relation to the statement of purpose);

(c) 10(4) (requirements to provide the service in accordance with policies and procedures);

(d) 12(1) (requirement to ensure suitability of the service);

(e) 12(3) (requirement to ensure suitability of the service);

(f) 15(1) (standards of support – overarching requirements);

(g) 19 (safeguarding – overarching requirement);

(h) 22 (staffing – overarching requirements).

Offences – responsible individuals

55.—(1) It is an offence for the responsible individual to fail to comply with a requirement of any of the provisions specified in paragraph (2)(**1**).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations—

(a) 36(1) (duty to appoint a manager);

(b) 37(1) (fitness requirements for appointment of manager);

(c) 40(1) (duty to report the appointment of manager to SCW and the service regulator);

(d) 40(2) (duty to report the appointment of manager to SCW and the service regulator);

(**1**) For penalties upon conviction for an offence under this regulation, *see* section 51(1) of the Act.

(e) 42(1) (visits);

(f) 42(2) (visits);

(g) 43(1) (oversight of adequacy of resources);

(h) 43(2) (oversight of adequacy of resources, frequency of reports);

(i) 44(1) (other reports to the service provider);

(j) 49(4) (quality of service review);

(k) 50(1) (statement of compliance with the requirements as to standards of support);

(l) 53(1) (notifications);

(m) 53(3) (notifications).

PART 17

Service providers who are liquidated etc. or who have died

Appointment of liquidators etc.

56. An appointed person(**1**) must—

(a) without delay, give written notification to the service regulator of their appointment and the reasons for their appointment;

(b) within 28 days of their appointment, notify the service regulator of their intentions regarding the future operation of the service.

Death of service provider

57.—(1) Where a service provider who is an individual has died, the personal representatives of the individual must—

(a) without delay, give written notification of the death to the service regulator;

(b) within 28 days of the death, notify the service regulator of their intentions regarding the future operation of the service.

(2) The personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer

(**1**) *See* section 30 of the Act for the definition of "appointed person".

period (not exceeding one year) as the service regulator may agree.

(3) Where the personal representatives are acting in the capacity of the service provider in accordance with paragraph (2), Part 1 of the Act applies with the following modifications—

(a) section 5 (requirement to register) does not apply;

(b) section 21(2) (responsible individuals) is to be read as if after paragraph (a), there is inserted—

"(aa) where the personal representatives of a service provider who has died are acting in the capacity of the service provider, be one of the personal representatives;".

(4) In this regulation, "the service" means the service or services which the service provider who has died was registered to provide at the time of their death.

PART 18

Regulations under section 21(5) of the Act

Designation of responsible individual by Welsh Ministers

58. The Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual, despite the requirements of section 21(2) of the Act not being met in respect of the individual, in the following circumstances—

(a) the service provider is an individual who has died and the personal representatives of the service provider have notified the service regulator that they do not intend to make an application under section 11(1)(c) of the Act;

(b) the service provider is an individual and they have notified the service regulator—

(i) that they are no longer able to comply with their duties as a responsible individual, and

(ii) the reasons for this being the case;

(c) the service provider is a corporate body or partnership and they have notified the service regulator—

(i) that the individual designated by the service provider as the responsible individual is no longer able to comply with their duties as a responsible individual,

(ii) the reasons for this being the case, and

(iii) that there is no other individual who is eligible to be a responsible individual and who is able to comply with the duties of a responsible individual.

Julie Morgan

Deputy Minister for Health and Social Services under authority of the Minster for Health and Social Services, one of the Welsh Ministers

Date

SCHEDULE 1

Regulations 2(1) and 23

PART 1

Information and documentation to be available in respect of persons working in regulated services

1. Proof of identity including a recent photograph.

2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997(**1**), a copy of a valid criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006(**2**) (provision of barring information on request).

3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of a valid enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children (within the meaning of section 113BA(2) of that Act) or suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act).

4. Two written references, including a reference from the last employer, if any.

5. Where a person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable verification of the reason why the employment or position ended.

6. Documentary evidence of any relevant qualification.

(**1**) 1997 c. 50.

(**2**) 2006 c. 47. Sections 30 to 32 of the Safeguarding Vulnerable Groups Act 2006 as originally enacted are to be replaced by new sections 30A and 30B as a result of substitutions made by section 72(1) of the Protection of Freedoms Act 2012. Section 72(1) is to be commenced on a day to be appointed.

7. Where relevant, documentary evidence of registration with SCW.

8. A full employment history, together with a satisfactory written explanation of any gaps in employment.

9. Evidence of satisfactory linguistic ability for the purposes of providing support to those individuals for whom the worker is to provide support.

10. Details of registration with or membership of any professional body.

PART 2

Interpretation of Part 1

11. For the purposes of paragraphs 2 and 3 of Part 1 of this Schedule—

(a) if the person to whom the certificate relates is not registered with the DBS update service, a certificate is only valid if—

(i) it has been issued in response to an application by the service provider in accordance with regulation 23(3) or (6) (fitness of staff), and

(ii) no more than three years have elapsed since the certificate was issued;

(b) if the person to whom the certificate relates is registered with the DBS update service, the certificate is valid regardless of when it was issued.

SCHEDULE 2

Regulations 2(1) and 30

Records to be kept

1. In respect of each individual—

(a) full name;

(b) date of birth;

(c) whether the person is—

(i) a child who may be adopted, their parent or guardian;

(ii) a person wishing to adopt a child;

(iii) an adopted person, their parent, birth parent, former guardian or related person;

(d) description of support requested;

(e) description of need for support along with any assessment of that need;

(f) description of support provided;

(g) whether the support is provided on behalf of a local authority under regulations made under section 3(4)(b) of the 2002 Act;

(h) plans including—

(i) adoption support plans;

(ii) care and support plans;

(iii) placement plans;

(i) reviews of plans referred to in sub-paragraph (h).

2. A record of any charges by the service provider to individuals for the provision of support and any additional services.

3. A record of all complaints made by individuals or their representatives or by persons working at the service about the operation of the service, and the action taken by the service provider in respect of any such complaint.

4. A record of all persons working at the service, which must include the following matters—

(a) full name and home address;

(b) date of birth;

(c) qualifications relevant to, and experience of, working with individuals;

(d) the dates on which the person commences and ceases to be so employed;

(e) whether the person is employed by the service provider under a contract of service, a contract for services, or otherwise than under contract, or is employed by someone other than the service provider;

(f) the position the person holds at the service, the work the person performs and the number of hours for which the person is employed each week;

(g) a copy of the person's birth certificate and passport (if any);

(h) a copy of each reference obtained in respect of the person;

(i) training undertaken by the person, their supervision and appraisal;

(j) records of disciplinary action and any other records in relation to the person's employment;

(k) a record of the date of the person's latest DBS certificate and whether there was any action taken as a result of the content of the certificate.

SCHEDULE 3 Regulation 31

Notifications by the service provider

PART 1

Notifications to the service regulator

1. Any revision to the statement of purpose, 28 days prior to the revised statement of purpose coming into effect.

2. Where the service provider (individual or organisation) changes their name.

3. Where the service provider is a company, any change in the directors of the company.

4. Where the service provider is an individual, the appointment of a trustee in bankruptcy in relation to that individual.

5. Where the service provider is a body corporate or partnership, the appointment of a receiver, manager, liquidator or provisional liquidator in relation to that company or partnership.

6. Where the service provider is a partnership, death of one of the partners.

7. Where the service provider is a partnership, any change in the partners.

8. Expected absence of the responsible individual for 28 days or more, 7 days prior to commencement of the absence.

9. The unexpected absence of the responsible individual, no later than 7 days after the commencement of the absence.

10. Unexpected absence of the responsible individual for 28 days or more, where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.

11. Return from absence of the responsible individual.

12. The responsible individual ceases, or proposes to cease, being the responsible individual for the service.

13. Any abuse or allegation of abuse in relation to an individual that involves the service provider and/or a member of staff or volunteer.

14. Service provider, responsible individual or appointed manager convicted of criminal offence.

15. Any allegation of misconduct by a member of staff.

16. Any incident reported to the police.

17. Any events which prevent, or could prevent, the provider from continuing to provide the service safely.

18. Any proposal to change the address of the principal office, 28 days prior to the change taking place.

19. Any referral to the DBS pursuant to the Safeguarding Vulnerable Groups Act 2006.

20. Where the service provider, responsible individual or appointed manager is charged with any offence specified in the Schedule to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009(**1**), notice of the offence charged and the place of charge.

21. Any incident of child sexual or criminal exploitation or suspected child sexual or criminal exploitation.

22. The death of a child placed for adoption by the service.

23. The instigation and outcome of any child protection enquiry involving a child placed for adoption by the service.

PART 2

Notification to the Local Health Board/clinical commissioning group and National Health Service Commissioning Board by the provider of an adoption society

24. Death of a child placed for adoption by the service.

25. Any serious accident or injury sustained by a child placed for adoption by the service.

(**1**) S.I. 2009/37.

PART 3

Notification to the Local Health Board/clinical commissioning group and National Health Service Commissioning Board by the provider of an adoption support agency or of an adoption society which provides adoption support services

26. The death, serious accident or injury of a child in the course of receiving adoption support services from the service.

PART 4

Notification to the placing agency

27. Any serious complaint about a prospective adopter approved by the agency where a child is placed for adoption with that prospective adopter by another adoption agency.

PART 5

Notifications to the area authority

28. The death of a child placed for adoption by the service.

29. Any serious accident or injury sustained by a child placed for adoption by the service.

30. Any serious complaint about a prospective adopter approved by the service where a child is placed for adoption with that prospective adopter by the service.

31. Any serious complaint about a prospective adopter approved by the service where a child is placed for adoption with that prospective adopter by another adoption agency (if not notified as the placing agency).

32. The instigation and outcome of any child protection enquiry involving a child placed for adoption by the service.

PART 6

Notifications to the placing authority by the provider of an adoption society

33. The death of a child placed for adoption by the service.

34. Any serious accident or injury sustained by a child placed for adoption by the service.

35. Any serious complaint about a prospective adopter approved by the service where a child is placed for adoption with that prospective adopter by another adoption agency.

36. The instigation and outcome of any child protection enquiry involving a child placed for adoption by the service.

PART 7

Notifications to the placing authority by the provider of an adoption support agency or adoption society which provides adoption support services

37. The death of a child in the course of receiving adoption support services from the service.

38. Any serious accident or injury sustained by a child in the course of receiving adoption support services from the service.

39. The instigation and outcome of any child protection enquiry involving a child receiving adoption support services from the service.

PART 8

Notification to the relevant authority

40. Death or any serious accident or injury sustained by a child in the course of receiving adoption support services.

PART 9

Notification to the police

41. Any incident of child sexual or criminal exploitation or suspected child sexual or criminal exploitation.

SCHEDULE 4 Regulation 53

Notifications by the responsible individual

1. The appointment of a manager (see regulation 37(1)).

2. The expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence.

3. The unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence.

4. The unexpected absence of appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.

5. Return from absence of appointed manager.

6. Interim arrangements where the manager is absent for longer than 28 days.

7. Someone other than the appointed manager is proposing to manage or is managing the service.

8. The appointed manager ceases, or proposes to cease, managing the service.

Explanatory Memorandum to The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and The Local Authority Adoption Services (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Health and Social Services Department 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 Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and
- The Local Authority Adoption Services (Wales) Regulations 2019.

I am satisfied that the benefits justify the likely costs.

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

Part 1 – OVERVIEW

1. Description

In 2011 the Welsh Government published the White Paper *Sustainable Social Services: A Framework for Action*, which set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last assembly term the Welsh Government made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') and the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act').

The 2014 Act provides the legal framework for improving the well-being of people who need care and support, and carers who need support. It also enables the Welsh Ministers to put in place regulations, publish guidance and issue codes of practice.

The 2016 Act reforms the regulation and inspection regime for social care in Wales, and 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 regulations, publish guidance and issue codes of practice.

In relation to local authorities, the Adoption and Children Act 2002 ('the 2002 Act') provides the legal framework for domestic and inter-country adoptions in Wales and includes a duty on local authorities to maintain an adoption service and to provide adoption support services. Section 9 of the 2002 Act enables the Welsh Ministers to put in place regulations in relation to local authorities.

This Explanatory Memorandum relates to The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and The Local Authority Adoption Services (Wales) Regulations 2019 (referred to collectively in this Explanatory Memorandum as the "2019 Regulations"), which it is proposed will come into force on 29 April 2019. These regulations impose requirements on regulated adoption services providers and local authority adoption service providers, respectively.

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

<u>The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019</u>

The powers enabling these Regulations to be made are contained in a number of sections within the 2016 Act. They are, as follows:

- Section 21(5) - the circumstances in which the Welsh Ministers (instead of service providers) may designate a responsible individual
- Section 27 – Regulations about regulated services
- Section 28 – Regulations about responsible individuals
- Section 30 – Regulations about service providers who are liquidated etc.
- Section 31 – Regulations about service providers who have died
- Section 45 – Regulations which provide for offences in the event of failure by a service provider to comply with specified requirements in regulations under section 27
- Section 46 – Regulations which provide for offences in the event of failure by a responsible individual to comply with specified requirements in regulations under section 28

These Regulations will be laid under the affirmative procedure.

These Regulations apply to regulated adoption services. A "regulated adoption service" means an adoption service which is regulated under the 2016 Act. This is defined within Schedule 1 of the 2016 Act as:

> "a service provided in Wales by:
>
> a) an adoption society within the meaning of the Adoption and Children Act 2002 (c.38) which is a voluntary organisation within the meaning of that Act, or
> b) an adoption support agency within the meaning given by section 8 of that Act".

Statutory Guidance

Statutory guidance has been developed to accompany the Regulations (as required under section 29 of the 2016 Act). The guidance, which was published for consultation at the same time as the Regulations, has been revised and will be published in draft on the Welsh Government website in February 2019, to aid scrutiny of these Regulations. The statutory guidance will then be finalised and published in April 2019.

<u>The Local Authority Adoption Services (Wales) Regulations 2019</u>

The powers enabling these Regulations to be made are contained within section 9 of the Adoption and Children Act 2002.

These Regulations will be laid under the negative procedure.

These Regulations apply to local authority adoption services. This means the discharge by a local authority of the functions under the 2002 Act, 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 the 2002 Act and set out in The Adoption Support Services (Local Authorities) (Wales) Regulations 2005.

Code of Practice

A code of practice to accompany the Regulations, under section 145 of the 2014 Act, has been revised following consultation and it is proposed that this will be laid before the National Assembly in February 2019.

4. Purpose & intended effect of the legislation

The purpose of both sets of Regulations is to ensure that regulated adoption services providers and local authority adoption services providers provide services to the required standards to ensure that the well-being and safety of children being placed for adoption is promoted and maintained; and the needs of individuals in receipt of support are met consistently across all providers of adoption services in Wales.

5. Consultation

A 12-week consultation ran between 4 September and 27 November 2018, with 9 responses received in total (including one composite response, co-ordinated by the National Adoption Service). All responses have been analysed and considered by officials, who have taken into account feedback received at the consultation events (held on 6 November in Cardiff and 8 November in Wrexham) and through wider engagement with the sector. Prior to consultation, the draft Regulations were developed and tested with the assistance of a stakeholder technical group which met several times in autumn/winter 2017-18.

The following is a list of the key changes made to the draft regulations following the consultation and stakeholder events:

- Use of the term ‘support’ instead of the original term ‘care and support’ to describe those activities which must be regulated and delivered in compliance with the regulations., reflecting the fact that none of the adoption services that will be caught by the new regulatory regime will have a ‘care’ component.
- Use of the word ‘assistance’ in place of ‘support’ when ‘support’ is used in the general sense – for example in ‘such support as necessary to enable the individual to understand the information’, which will become ‘such assistance as necessary...’
- Clarification on the extent of the exception regarding individuals who are working alone (ie not as part of a partnership or other group) and providing adoption support services under contract to an adoption service.
- Amending ‘quality of care review’ to ‘quality of service review’ in order to align the terminology with that already used by adoption services.
- Harmonizing the retention periods for adoption records at 100 years for records relating to the child and the child’s adopter where an adoption order is made and for records where adoption support services are provided; otherwise requiring records in relation to adults to be kept for 3 years and 15 years in relation to children.
- Refining regulations around the suitability of the service to take account of other changes to terminology and language throughout the regulations.
- Changes to address other minor clarification and consistency issues throughout the regulations.

- Additionally there was a call from stakeholders for further detail to support the regulations which officials have addressed through expanding on statutory guidance.

Section 27(4) of the Regulation and Inspection of Social Care Act (RISCA) provides that "Before making regulations under this section the Welsh Ministers must—(a) consult any persons they think appropriate, and (b) publish a statement about the consultation." To discharge this requirement, a summary of the responses, together with a list of respondents will be published on the Welsh Government website:

https://beta.gov.wales/new-regulatory-framework-adoption-services

PART 2 – REGULATORY IMPACT ASSESSMENT

REGULATED ADOPTION SERVICES

In respect of regulated adoption services providers, we have identified two main options:

Option 1: as far as possible, replicate in regulations the requirements placed on voluntary adoption agencies and adoption support agencies (regulated adoption service providers) under the Voluntary Adoption Agencies and Adoption Agencies (Miscellaneous Amendments) Regulations 2003 ("the 2003 Regulations"), the Adoption Support Agencies (Wales) Regulations 2005 ("the 2005 Regulations") and the relevant National Minimum Standards under the Care Standards Act 2000. This is the 'Do Minimum' option and represents the baseline against which the additional costs and benefits of the alternative option are assessed.

Option 2: harmonise, as far as possible, the requirements on regulated adoption services providers with those placed on other services regulated under the 2016 Act, with bespoke and/or additional requirements as necessary.

Preferred option: Option 2 is the preferred option.

Under Option 2, requirements on regulated adoption services providers would, so far as practicable, be consistent across all regulated services, in line with the policy intent of the 2016 Act.

The 2016 Act made some fundamental changes to the way care and support services are regulated, inspected and delivered; it is therefore difficult to compare and contrast the regulations made under the 2000 Act and the proposed regulations under the 2016 Act. With regard to regulation, the intention of the 2016 Act was to create a consistent set of requirements that would apply across all regulated services, rather than each type of service having its own set of regulations and National Minimum Standards (NMS). The benefit of this approach is that it moves away from focusing on minimum standards to an emphasis on achieving continual improvement.

The National Minimum Standards (NMS) for Adoption Support Agencies and Voluntary Adoption Agencies will, therefore, no longer apply. Instead, statutory guidance has been developed alongside the regulations to give further detail to regulated service providers about how they may comply with the requirements set out in the regulations. This guidance has been developed by Welsh Government and the cost has already been met.

Under phase 2 of implementation of the 2016 Act, requirements were placed upon providers of care home services (including care homes for children), domiciliary support services, residential family centre services and secure accommodation services. The key regulations were the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 ('the 2017 Regulations'). Under this option, the 2017 Regulations provide the model for the regulations being made under Phase 3 for fostering, adoption, adult placement and advocacy services, with bespoke changes made to each of the Phase 3 regulations as required to fit the particular characteristics of each service.

A significant difference between the 2017 Regulations and the approach to regulating regulated adoption services proposed in this option is that regulated adoption services providers do not provide 'care and support' to individuals, unlike those services covered by the 2017 Regulations. None of the regulated adoption services that will be caught by the new regulatory regime will have a 'care' component. The 2014 Act contains duties to assess and meet needs for care and support. However, the Adoption and Children Act 2002 only contains a duty to assess, not to meet the care need. These new regulations do not seek to add to the duties on adoption services to provide 'care and support'. Instead, they use the term 'support', to describe those activities which must be regulated and delivered in compliance with the regulations.

LOCAL AUTHORITY ADOPTION SERVICE PROVIDERS

In respect of local authority adoption service providers, we have identified two options:

Option 1: as far as possible, replicate in regulations made under Section 9 of the Adoption and Children Act 2002 the requirements placed on local authority adoption services providers under The Local Authority Adoption Service (Wales) Regulations 2007 ('the 2007 Regulations') and the relevant National Minimum Standards under the Care Standards Act 2000. This is the 'Do Minimum' option and represents the baseline against which the additional costs and benefits of the alternative option are assessed.

Option 2: place a new set of requirements on local authority adoption service providers in regulations made under Section 9 of the Adoption and Children Act 2002 which follow, so far as practicable and appropriate, the requirements being placed on voluntary adoption agencies and adoption support agencies (regulated adoption services providers) under the 2016 Act.

The requirements placed upon responsible individuals of regulated services under section 28 of the 2016 Act will not be relevant for local authority providers, as these are not a regulated service under the 2016 Act. Instead, regulations proposed under this option would place a requirement upon local authority providers to appoint an adoption services manager, setting out the requirements of that role.

Preferred Option: Option 2 is the preferred option.

The rationale for this is that it would not be desirable for local authority adoption services to have a different regulatory framework to that for adoption services provided by voluntary adoption agencies and adoption support agencies (regulated adoption services), given that the outcomes all sectors are seeking to achieve relating to adoption are the same and that the nature of adoption itself is the same. It is the same children that are being placed by local authorities, whether with their own adoption services or via the regulated sector. Also, some of the improvements which the 2016 Act sought to drive in relation to regulated services, with their associated benefits, are also pertinent to local authority adoption services, and we want to ensure that any new requirements upon local authority providers are equally robust.

It is, however, accepted that there will be some important differences between the regulatory regime for regulated adoption services and local authorities. The main

difference is that it would be inappropriate to try to replicate the responsible individual (RI) role within local authorities, given the different accountability structures within local authorities. Instead we would propose to place a requirement upon local authority providers to appoint an adoption services manager.

Costs: The role of adoption services manager already exists and therefore the requirement does not carry any additional costs.

Requirements on service providers

Requirements on services providers – general

These requirements will be placed on both regulated adoption services providers and local authority adoption services providers.

For regulated adoption services providers, the general requirements would include those relating to the statement of purpose, monitoring and improvement, the responsible individual, financial sustainability, policies and procedures, and the duty of candour.

For local authority providers, the general requirements would replicate those above, with the exception of those requirements relating to the responsible individual and financial sustainability, due to the different accountability structures within local authorities.

The main differences from the 2003 Regulations, 2005 Regulations and 2007 Regulations are:

- STATEMENT OF PURPOSE

These requirements will be placed upon regulated adoption service providers and local authority adoption services providers.

Providers would be required to provide the service in accordance with the statement of purpose, keep the statement under review and revise it where appropriate.

Under the 2003 Regulations, providers and managers have to provide a copy of the statement of purpose to the Welsh Ministers, and make it available on request for inspection by:

a) Any person working for the purposes of the agency;
b) Children who may be adopted, their parents and guardians;
c) Persons wishing to adopt a child;
d) Adopted persons, their parents, natural parents and former guardians;
e) Any local authority

They must also notify the Welsh Ministers of any revision within 28 days.

Under the 2005 Regulations providers and managers have to provide a copy of the statement of purpose to the Welsh Ministers, and make it available on request for inspection by:

a) Any person working for the purposes of the agency;
b) Any person receiving adoption support services or acting on behalf of a child receiving such services from the agency;
c) Any person making enquiries about receiving adoption support services from the agency on his or her own or a child's behalf;
d) Any local authority.

They must also notify the Welsh Ministers of any revision within 28 days.

Under the 2007 Regulations each local authority must provide a copy of the statement of purpose to the Welsh Ministers and make it available on request for inspection by:

a) children who may be adopted, their parents and guardians;
b) persons wishing to adopt a child;
c) adopted persons, their parents, natural parents and former guardians;
d) persons who are seeking an assessment of their needs for the provision of adoption support services by the authority;
e) every person working for the purposes of the adoption service.

They must also notify the Welsh Ministers of any revision within 28 days.

Both sets of new regulations would impose a requirement on providers to notify individuals of any revision to be made to their statements of purpose at least 28 days before it is to take effect.

In the Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, which apply to adoption services (both adoption societies and adoption support agencies), "individuals" is defined as:

(a) in the case of an adoption society in the course of arranging an adoption or after an adoption has been arranged—

(i) a child who may be adopted, their parent or guardian;
(ii) a person wishing to adopt a child, or
(iii) an adopted person, their parent, birth parent or former guardian,

who is receiving support of the type which an adoption society is required to provide in accordance with the Adoption Agencies (Wales) Regulations 2005 or the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005;

(b) in the case of an adoption support agency, or an adoption society in the course of providing adoption support services, any person who is receiving adoption support services.

In the Local Authority Adoption Services (Wales) Regulations 2019, "individuals" is defined as:

(a) a child who may be adopted, their parent or guardian,
(b) a person wishing to adopt a child, or

(c) an adopted person, their parent, birth parent or former guardian,

who is receiving support of the type which a local authority adoption service is required to provide in accordance with the Adoption Agencies (Wales) Regulations 2005 or the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005, or

(d) any person receiving adoption support services;

In both sets of regulations, the provider must notify the service regulator, individuals and any representatives of any revision to the statement of purpose at least 28 days before it is to take effect, but if it necessary to revise the statement of purpose immediately these persons must be notified without delay.

Costs: The requirement to notify in advance of making revisions to the statement of purpose should have no additional cost for providers.

Risks: No risks have been identified.

- RESPONSIBLE INDIVIDUAL

These requirements will be placed upon regulated adoption services providers only.

Requirements relating to the responsible individual (RI) would include the need for the RI to be supported and appropriately trained, action to take when the RI fails to meet requirements placed upon them by the regulations, and what to do when the RI is unable to fulfil their duties. There would also be similar requirements on providers who are individuals and therefore also act as RI.

The role of the RI across the services regulated under the 2016 Act is much greater and attracts a higher level of accountability as compared to the equivalent role in the 2003 Regulations and the 2005 Regulations. Discussion of this role and its regulatory implications can be found below.

- LOCAL AUTHORITY MANAGER

These requirements will be placed upon local authority services providers only.

The existing requirement for a local authority to appoint one of its officers to manage the adoption service will remain. The manager would need to meet the general requirements set out in relation to fitness of staff at the service, and the local authority provider must ensure that the manager is supported to carry out their duties effectively, and undertakes appropriate training. The local authority provider must also take such action as is necessary in the event that the manager has not complied with a requirement, and put suitable arrangements in place when the manager is absent. Discussion of this role and its regulatory implications can be found below.

- POLICIES AND PROCEDURES

These requirements will be placed upon both regulated adoption services providers and Local Authority adoption services providers.

Providers will need to have policies and procedures in place covering:

- safeguarding
- supporting and developing staff
- staff discipline
- complaints
- whistleblowing

In addition, Regulated Adoption Services providers will have to have a policy and procedures in relation to commencement of the service.

The 2003 Regulations, the 2005 Regulations and the 2007 Regulations do not have a dedicated regulation on policies and procedures but do have regulations on Complaints, Staffing, Staff disciplinary procedure, and Arrangements for the protection of children, whilst the applicable National Minimum Standards include provision relating to whistleblowing.

Costs: There should be no significant additional costs in drawing up and implementing this list of polices and procedures as providers should already have policies and procedures in place in relation to these areas.

The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete the annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information as might be expected in a more complex policy or procedure, such as safeguarding. Other policies or procedures are likely to be simpler. It is therefore estimated that the requirements above will entail a cost of up to £392 per policy for each setting (variable depending on the salary of the person producing the policy/procedure). The actual additional cost for an individual provider will depend on the provider and the policies and procedures they currently have in place. Additional commentary on key policies is provided under the relevant sections below.

Risks/Benefits: There are no identified risks. Benefits include improved accountability at senior level within the service and better support for staff through access to a more comprehensive range of policies.

- DUTY OF CANDOUR

These requirements would be placed upon regulated adoption services providers and local authority providers.

The duty of candour would require providers to act in an open and transparent way with individuals and representatives of those individuals. This is a new requirement.

Costs: There should be no additional costs associated with this duty. Providers should already be acting in an open and transparent way with those to whom they provide services.

Risks: No risks have been identified.

Requirements on regulated adoption services providers as to the steps to be taken before agreeing to provide support - Suitability of the service

These requirements will be placed upon regulated adoption services providers only.

The provider must only decide to provide support after assessing whether the service is suitable to meet the individual's needs.

Requirements on service providers as to the information to be provided to individuals on commencement of the provision of support - Information about the service

These requirements will be placed upon regulated adoption services providers and local authority providers.

The requirements would require the providers to prepare a written guide to the service in a language and format suitable for any individual who is receiving support. It will need to be reviewed at least annually and updated as necessary.

The guide will include a summary of relevant policies and procedures, as well as information on how to make complaints and raise concerns. The provider will also have to ensure that the guide contains information about the availability of advocacy services.

These requirements go beyond the 2003 Regulations, the 2005 Regulations and the 2007 Regulations, which require the registered person or the local authority to prepare a guide for children but not for other individuals.

Costs: There may be some minimal additional costs for providers in adapting the children's guide for all individuals. However, some regulated adoption services providers already provide an information pack for adults, even though there is no regulatory requirement for them to do so.

Risks/Benefits: No risks have been identified. The benefit would be to improve accessibility of information for any individual who is receiving support.

Requirements on service providers as to the standard of support to be provided

The following requirements would be placed upon regulated adoption services providers and local authority providers:

- Standards of support to be provided

  Providers would be required to ensure that support is provided in a way that maintains, protects and promotes the safety and well-being of individuals.

- Information for individuals

There would be requirements regarding the information individuals need in order to make or participate in assessments, plans and day to day decisions about the way support is provided to them and on how they are helped to meet their needs for support.

This is a new requirement, in line with the principle underpinning the 2014 Act and the 2016 Act that the new legislation will promote greater choice and control by children and adults who are receiving 'support' as defined within the regulations.

- Language and communication

  Providers must take reasonable steps to meet the language and communication needs of an individual. Providers would be required to take reasonable steps to meet the language needs of the individual, and to ensure that individuals are provided with access to the communication aids and equipment they need in order to communicate with others.

  This is a new requirement on the face of the regulations, although the importance of taking into account the language needs of children was already referred to in the National Minimum Standards (NMS 2 on Matching). The communication aids and equipment may be provided by the NHS, social services or via other means. There is no expectation that they will be provided by the adoption service: the duty is to ensure that the child is able to access these.

- Respect and sensitivity

  The service provider must ensure that individuals are treated with respect and sensitivity which includes respecting the individual's privacy and dignity; respecting their rights to confidentiality; promoting their autonomy and independence; and having regard to any relevant protected characteristics (as defined in the Equality Act 2010).

Costs: There will be no additional costs to providers in implementing these requirements; the new requirements in relation to information for individuals and language and communications relate to new ways of doing things which are more inclusive of the individual, rather than new products/processes (and, in the case of .language and communications, reinforce what is already in the National Minimum Standards).

Risks/Benefits: No risks have been identified.

The purpose of these requirements (and therefore benefit) is to mitigate the risk of placement breakdown and to ensure that an individual's needs for support are met.

<u>Requirements on service providers – safeguarding</u>

These requirements will be placed upon regulated adoption services providers and local authority providers.

The 2019 Regulations would require adoption service providers to put arrangements in place to ensure individuals are safe and protected from abuse, neglect and improper treatment. This includes what a provider must do when an allegation is made or evidence

comes to light. In keeping with the approach taken in the 2016 Act, the new regulations will be more explicit about the overarching requirements – e.g. to put arrangements in place, and to ensure that safeguarding policies and procedures are operated effectively. The regulations and guidance will reflect current best practice around safeguarding.

The 2003 Regulations, 2005 Regulations and 2007 Regulations specifically mention 'Arrangements for the protection of children' which include the preparation and implementation of a written policy and set out the procedure to be followed in the event of any allegation of abuse or neglect.

Costs: There may be some small costs to adapt policies to ensure that all individuals, not just children, are safeguarded

Risks/Benefits: No risks have been identified. Putting these requirements in place will benefit individual using the service, through embodying best practice around safeguarding.

Requirements on service providers – staffing

These requirements will be placed upon regulated adoption services providers and local authority providers.

The 2019 Regulations strengthen and expand upon the 2003 Regulations, 2005 Regulations and 2007 Regulations by requiring the service provider to ensure that a sufficient number of staff (including those working as volunteers) are suitably trained (core and specialised) and skilled, as well as qualified, competent and experienced.
The service provider must ensure that from 1 April 2022 all managers are supported to maintain their registration as social care managers with Social Care Wales.

The requirements in the 2003 Regulations, 2005 Regulations and 2007 Regulations with respect to staffing will be maintained. These cover the fitness of staff, support and development of staff, and the need for a disciplinary procedure. The new regulations will place a greater emphasis on staff having regard to individuals' needs for support and assisting individuals to meet their needs for support in line with the ethos of the 2014 Act and the 2016 Act.

The 2019 Regulations will reflect the new Disclosure and Barring Service arrangements, including allowing for the use of the update service.

There will be a new requirement to ensure that all employees and volunteers are provided with information about the service and are made aware of any codes of practice about the standards of conduct required of social workers published by Social Care Wales under the 2016 Act.

In addition, regulated adoption service providers will be required to adhere to the code of practice on the standards of conduct and practice expected of person employing social care workers, also under the 2016 Act.

Costs: No additional costs have been identified; the new/strengthened elements of the

requirements relate to new ways of doing things which are more inclusive of the individual, rather than to new products/processes. Likewise the requirements to provide information/make employees and volunteers aware and adhere to the code of practice on the standards of conduct and practice expected of person employing social care workers should have minimal implications for providers, as reflecting existing good practice.

Risks: No risks have been identified.

Requirements on service providers – premises.

These requirements will be placed upon regulated adoption services providers and local authority providers.

The requirements in the 2003 Regulations, 2005 Regulations and 2007 Regulations with respect to premises (secure storage of records) will be retained. These apply to the premises from which the adoption service is operated. The new regulations also place requirements on providers with respect to premises used for the supervision of staff. These requirements are currently covered in the NMS (Standard 29 Premises).

Costs: No additional costs have been identified.

Risks: No risks have been identified.

Requirements on service providers – other requirements

The following miscellaneous requirements will be placed upon regulated adoption service providers and local authority providers.

- RECORDS

The 2019 Regulations require records to be kept securely. These records refer to individuals, charges for the provision of adoption support and additional services, complaints (and action taken), and all persons working at the service.

Where an adoption order has been made, records must be retained for 100 years if they relate to the adopted child or the child's adopter (from the date of the adoption order) and for 100 years where adoption support services are provided to an individual (from the date of the last entry). Where no adoption order has been made, records relating to adults (which include staff) must be retained for three years from the date of last entry and records relating to children must be kept for fifteen years from the date of last entry.

Service providers must make individuals aware that they can have access to their records.

- CONFLICTS OF INTEREST

There would be a requirement to have effective arrangements in place to identify, record

and manage potential conflicts of interest.

- COMPLAINTS

Providers would be required to have in place a policy and procedures for dealing with complaints. These largely replicate existing requirements.

- WHISTLEBLOWING

Providers would be required to put effective whistleblowing policies and procedures in place. This is a new requirement in regulations, reflecting the development of whistleblowing policy and practice since the 2003 Regulations, 2005 Regulations and 2007 Regulations were drawn up.

In addition, there will also be requirements placed upon regulated adoption services providers in respect of:

- NOTIFICATIONS

The notification requirements for local authorities would remain the same as in the 2007 Regulations. For regulated adoption services providers, the notification requirements would broadly be the same as in the 2003 Regulations and 2005 Regulations with the following main additions:

- in the case of a service provided by an adoption society, the provider must notify the placing authority of:
  - the death of a child placed for adoption by the service.
  - any serious accident or injury sustained by a child placed for adoption by the service.
  - any serious complaint about a prospective adopter approved by the service where a child is placed for adoption with that prospective adopter by another service.
  - the instigation and outcome of any child protection enquiry involving a child placed for adoption by the service.

- Where the service is provided by an adoption support agency or an adoption society which provides adoption support services, the provider must notify the placing authority of:
  - the death of a child in the course of receiving adoption support services from the service;
  - any serious accident or injury sustained by a child in the course of receiving adoption support services from the service;
  - the instigation and outcome of any child protection enquiry involving a child receiving adoption support services from the service.

- in the case of a service provided by an adoption society or adoption support agency, the provider must notify the police of any incident of child sexual or criminal exploitation or suspected child sexual or criminal exploitation;

Costs: No additional costs have been identified in respect of any of the above

requirements. The changes simply update and tighten up procedures in the light of existing good practice.

Risks: No risks have been identified. All the changes to the existing regulations reflect good practice and are designed to mitigate risks.

Requirements on responsible individuals

In the 2003 Regulations and 2005 Regulations where the provider is an organisation, the 'responsible individual' is defined as 'an individual…. who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the agency'. Under the current system the responsible individual must be of integrity and good character; be physically and mentally fit to carry on the agency; must provide proof of identity and documentary evidence of any relevant qualification; and must provide an appropriate criminal record certificate.

These requirements will be placed upon regulated adoption services providers.

Section 21 of the 2016 Act expands on the requirements as to who is eligible to be a responsible individual (RI).

The new requirements would place greater responsibility on the RI within the service.

The key additions to the RI role are set out below:

Visits

There would be a requirement on the RI to visit the premises from which the service is provided, and meet with members of staff and individuals or any representatives of individuals for whom a service is being provided. Visits must be at least every three months.

Oversight of adequacy of resources

The RI would be required to report to the service provider, on a quarterly basis, on the adequacy of the resources available to provide the service in accordance with the requirements in the regulations. This requirement does not apply where the service provider is an individual.

Other reports to the service provider

The RI would also be required to report on any concerns about or significant changes to the management or provision of the service, or any concerns that the service is not being provided in accordance with the statement of purpose. This requirement does not apply where the service provider is an individual.

Engagement with individuals and others

The RI would have responsibility for ensuring suitable arrangements are in place for

obtaining the views on the quality of service provided and how this can be improved. Views must be sought from individuals (the guidance sets out that this is a sample of individuals using the service); any representatives of those individuals; any local authority or local authority in England which has arranged for the provision of adoption support by the service; and staff employed at the service.

Compliance

The RI would be responsible for ensuring that there are systems in place to record incidents and complaints, for the keeping of records, and that the policies and procedures are kept up to date. The RI would also have to prepare the statement of compliance to be included in the annual return under section 10(2)(b) of the 2016 Act. When preparing the statement the RI must have regard to the assessment of the standard of support which is contained in a report prepared in accordance with regulation 49(4).

Quality of service review

The RI would have to ensure suitable arrangements are in place for monitoring, reviewing and improving the quality of the service at least every six months.

Notifications

The RI would also be required to make the following notifications:

- the appointment of a manager;
- the expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence;
- the unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence;
- the unexpected absence of the appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence;
- return from absence of the appointed manager;
- interim arrangements where the manager is absent for longer than 28 days;
- someone other than the appointed manager is proposing to manage or is managing the service; and
- the appointed manager ceases, or proposes to cease, managing the service;

Duty of candour

The RI must act in an open and transparent way with individuals; and any representatives of those individuals.

Placing greater responsibilities on the RI will support the policy intention of ensuring accountability for service quality and compliance is held at the most appropriate level within an organisation. By placing specific duties on the RI, the regulator can ensure that the provider takes an active interest in the services provided. Whilst managers and service providers will retain accountability for their own role, the statutory role of RI ensures that a clear chain of accountability is established, which includes the corporate

responsibility of the board, the responsible individual and the service manager.

Costs: It is not anticipated that there will be significantly greater costs to providers in placing these requirement upon RIs. Many RIs are already very involved in their services and many will be undertaking the duties set out under this option already.

There are, however, some additional requirements which may result in some additional costs. These are:

Visits

Using the ONS data from the Annual Survey of Hours and Earnings, which states that the gross hourly earnings for managers and directors in Social Services in 2017 was £19.29, it is estimated that, assuming RIs spend most of their working day (8 hours) at a service during their visit, this would give a total cost, including on-costs, of £201 per visit. It is required that visits should take place at least every 3 months which would mean an annual cost of around £804 for each of the services.

Quarterly reporting on the adequacy of resources

To comply with this requirement, the responsible individual should have systems and processes in place that provide information about the service and any areas that may need closer observation/consideration and/or improvement.

Service providers should already have governance systems in place to monitor the running of the service. This requirement ensures the responsible individual takes greater ownership of the governance of the service and is proactive in reporting concerns to the service provider (this would not apply if the service provider is an individual). There may be a small increase in staff time to undertake this more formal monitoring; however the cost should be negligible as there should already be systems in place.

Quality of service review every 6 months

It is existing practice for providers to frequently undertake reports on the management and outcomes of the services of the adoption agency. This duty would be placed on the responsible individual with the intention that it should be a responsive and on-going process rather than a one-off annual requirement.

The responsible individual must put suitable arrangements in place to establish and maintain a system for monitoring and improving the quality of the service. To complete this quality review the RI must take into account:

- the outcome of engagement with individuals, any representatives of individuals and staff employed by the service
- aggregated data on notifications, safeguarding matters, whistleblowing concerns and complaints
- any action taken in relation to complaints
- the outcome of any audit of the accuracy and completeness of records.

Where this requirement corresponds to the date on which the service provider's annual

return is due, much of the information from the quality of service review can be used to complete the relevant section of the annual return in order to avoid unnecessary duplication.

Costs to service providers in submitting the quality of service review report are anticipated to be comparable to the preparation of the annual return. There may be some additional initial costs in moving to six monthly reports, but the quality of service review process should become embedded in the ongoing quality assurance process the provider has in place.

The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete an annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information to the quality of service review but as the quality of service review draws from existing monitoring information this should not take as long to complete. A reasonable estimation for this would be more like 2 working days, therefore incurring a cost of around £196 for each service, every six months. As providers are currently required to undertake similar reviews on an annual basis, the additional cost (of moving to six-monthly) should only be £196 per annum. However, this figure will vary depending on the salary of the person undertaking the review and may vary according to the size of the provider.

Risks: Consideration was given to the risks regarding the increased RI role during Phase 2 of implementation of the 2016 Act. The same considerations are relevant to the new requirement with respect to the RIs of adoption services, as a common approach is being taken to RIs across all regulated services under the 2016 Act.

The relevant section from the RIA on the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 reads as follows:

> *The impact of the duties on RIs will, therefore, vary depending on the organisational model. During the consultation we became aware of risks regarding the duties as they relate to registered charities and RIs of larger organisations.*
>
> *We were advised that, because trustees of charities (unincorporated bodies) are unpaid volunteers, they may not necessarily be willing, suitable or have the relevant expertise and understanding of the care and support service to take on the responsibility of the RI role. We were also advised that the option of paid officers/senior managers within the charity (which is where they suggest that the RI role should be placed) joining the board is not possible.*
>
> *Larger organisations providing a number of regulated services in Wales have also identified challenges with the requirement for the RI to be a director. Their concerns focus on the duties being placed on RIs – including the requirement to visit the service – and the extent to which these duties can be delegated. They advised that the directors of larger organisations are too removed from the service and the provision of care and support services and may not be suitably experienced or qualified to carry out the*

duties of the RI effectively. Similarly, they advised that the number of services these organisations provide would make it impossible for the directors to carry out this role. Furthermore, they suggested that this may deter future investment in Wales. There is therefore a risk here in terms of the RI role being carried out properly, consistent with the policy intent.

This risk will be mitigated by applying a wide interpretation to the term 'or similar officer' so that this could include the Chief Executive or a very senior level employee. This would provide a pragmatic solution for both charities and larger organisations without overly compromising the policy intent. The RIs would still be designated as part of the registration of the service and therefore the service regulator will have the opportunity to test their suitability for this role. The regulator would ensure a consistency of approach and an appropriate level of seniority within the organisation by applying the following criteria:

- authority to hire and fire managers and any other staff working in care services;
- authority to set pay rates for all staff working directly within the care services;
- authority to decide on investment decisions for the care services;
- oversight of the health and safety within the relevant care services;
- accountability for determining assurance arrangements and setting any benchmarks.

The proposed approach set out in this advice, coupled with the amendments to the RI duties as set out in the draft regulations, is intended to provide a workable solution without compromising the policy intent.

This will ensure that the application and interpretation of section 21 of the 2016 Act by the service regulator is consistent, equitable across different types of organisations and consistent with the policy intent.

Risks/Benefits: No risks have been identified. The benefits of the requirements will be around securing better oversight of, and therefore greater accountability for, quality of service at senior level within the provider organisation, so driving service improvement.

Requirements on local authority managers

The following requirements will be placed upon local authority providers in respect of local authority managers:

- oversight of adequacy of resources
- other reports to the local authority provider
- engagement with individuals and others
- duty to ensure there are systems in place to record complaints
- duty to ensure there are systems in place for keeping of records
- duty to ensure policies and procedures are up to date
- quality of service review

- support for raising concerns

These requirements are the same as those placed upon the responsible individual (RI) of a regulated service provider. Local authority managers will already be undertaking most of these duties.

Consideration of **costs** and **risks/benefits** is as under Responsible Individuals above.

Offences

These requirements will be placed upon regulated adoption services providers.

Section 45 of the 2016 Act is a regulation-making power which allows the Welsh Ministers to provide that it is an offence for a service provider to fail to comply with a specified provision of the regulations made under section 27 of the 2016 Act (duties on service providers). Section 46 is a regulation-making power which allows the Welsh Ministers to provide that it is an offence for a responsible individual to fail to comply with a specified provision made under section 28 (duties on responsible individuals). Breaches of these requirements can be dealt with via a criminal prosecution.

The offences under sections 45 and 46 are intended to ensure that there is a proportionate approach to the creation of offences to enable CIW to take criminal action when it is appropriate to do so – both when a breach is sufficiently serious and when there is enough evidence to meet the threshold to commence legal proceedings.

During Phase 1 of implementation of the 2016 Act, consideration was given as to whether to specify that breach of all the requirements in regulations under section 27 and 28 should be categorised as offences. This would have broadly replicated the approach taken under the Care Standards Act 2000. It was decided that, for regulated services under the 2016 Act, the regulations would specify that breach of only the key requirements in regulations made under section 27 and 28 would be offences.

The regulations would therefore specify which requirements made under section 27 and 28 would give rise to offences if breached.

The benefits, costs and risks associated with this option were set out in the RIA for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017[1].

Service providers who are liquidated

These requirements will apply to independent service providers.

Section 30(1) of the 2016 Act contains a power for Welsh Ministers to place requirements upon an appointed person. Section 30(2) states that an 'appointed person' means a person appointed as:

(a) a receiver or administrative receiver of the property of a service provider who

[1] http://www.assembly.wales/laid%20documents/sub-ld11277-em/sub-ld11277-em-e.pdf

is a body corporate or a partnership;

(b) a liquidator, provisional liquidator or administrator of a service provider who is a body corporate or a partnership;

(c) a trustee in bankruptcy of a service provider who is an individual or a partnership.

The regulations would require an appointed person to give the Welsh Ministers notice, without delay, of when liquidators have been appointed and the reasons for it; and to inform the Welsh Ministers within 28 days of the appointment, of their intentions regarding the future operation of the service.

These are in line with the requirements already placed upon care homes, domiciliary care providers and other services regulated under the 2016 Act. An analysis of the benefits, costs and risks of this option are set out in the RIA for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (See previous footnote).

Death of service provider who is an individual

These requirements apply to Regulated Adoption Services providers who are individuals.

Section 31 of the 2016 Act gives the Welsh Ministers the power to make regulations placing requirements on a personal representative of an individual service provider who has died to notify the Welsh Ministers of the provider's death.

The regulations would also state that, where a service provider who is an individual has died, the personal representatives of the individual must, without delay, give written notification of the death to the Welsh Ministers, and within 28 days of the death, notify the Welsh Ministers of their intentions regarding the future operation of the service.

The regulation would also state that the personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer period (not exceeding one year) as the Welsh Ministers may agree.

These provisions are in line with the requirements already placed in relation to individual providers of care homes, domiciliary care providers and other services regulated under the 2016 Act. An analysis of the benefits, costs and risks of this option are set out in the RIA for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (see footnote on previous page).

Competition Assessment

The competition filter test	
Question	**Answer yes or no**
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
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 regulation, 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 firms?	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 categorised 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

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore we do not consider it necessary to undertake a detailed competition assessment for these Regulations since they will not affect the business sector in any significant way.

Post implementation review

As set out in the RIA for the 2016 Act the Welsh Government has two clear aims for the regulation and inspection of social care, the Act and, as such, these regulations. They are to:

- secure the well-being of citizens
- improve the quality of social care.

The 2016 Act also makes provision for a number of key reporting mechanisms which will offer a set of clear evidence to inform the post implementation review and establish how successful the Act has been in achieving both of these aims. The reporting mechanisms include:

- annual returns from service providers
- annual reports from local authorities and the review of those reports as undertaken in the Annual Review of Performance and Evaluation of Performance by the service regulator
- the annual report from the Welsh Ministers in their role as the service regulator
- the annual report of the workforce regulator.

CIW will monitor the implementation of these Regulations following their coming-into-force date of 29 April 2019.

SL(5)356 – The Transmissible Spongiform Encephalopathies (Wales) (Amendment) Regulations 2019

Background and Purpose

These Regulations correct a minor drafting error in the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018 ("the 2018 Regulations"). The Explanatory Memorandum to these Regulations provides that paragraph 9(3)(a) of Schedule 7 to the 2018 Regulations (concerning ovine and caprine animals in a slaughterhouse) currently reads:

'*remove the spinal cord at the slaughterhouse without delay following the post-mortem inspection*'

These Regulations substitute the word 'following' with 'before'.

The Explanatory Memorandum confirms that the amendment does not affect the Transmissible Spongiform Encephalopathies controls practiced or their delivery.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

Implications arising from exiting the European Union

The 2018 Regulations, which were made under section 2(2) of the European Communities Act 1972, implement and enforce EU obligations in respect of animal health. Therefore, they will form part of retained EU law after exit day.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
27 February 2019

Agenda Item 7.1

SL(5)349 – Code of Practice: Local Authority Adoption Services

Background and Purpose

The guidance in this code sets out how local authority service providers and managers may comply with the Local Authority Adoption Services (Wales) Regulations 2019 ('the Regulations'). These requirements are contained within Parts 2 to 13 of the Regulations.

However, local authority service providers and managers will be responsible for deciding how the requirements within the Regulations will be met, taking into account the needs of individuals using the service and the statement of purpose for the service.

Care Inspectorate Wales will use this code of practice to inform decisions about the extent to which local authority service providers and managers are meeting the requirements set out in the Regulations, and as a basis for their inspections of local authority adoption services.

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
21 February 2019

SL(5)350 – Code of Practice: Local Authority Fostering Services

Background and Purpose

The guidance in this code sets out how local authority fostering services providers and local authority managers may comply with the requirements imposed by The Local Authority Fostering Services (Wales) Regulations 2018 ('the Regulations'). These requirements are contained within Parts 2 to 11 of the Regulations.

However, local authority fostering services providers will be responsible for deciding how the requirements will be met, taking into account the needs of children using the service and the statement of purpose for the service.

Care Inspectorate Wales will use this code of practice to inform decisions about the extent to which local authority fostering services providers are meeting the requirements set out in the Regulations, and as a basis for their inspections of local authority fostering services.

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
21 February 2019

Agenda Item 7.3

SL(5)352 – Statutory Guidance for the Commissioning of VAWDASV Services in Wales

Background and Purpose

This guidance applies to the commissioning of Violence against Women, Domestic Abuse and Sexual Violence ("VAWDASV") and related services by relevant authorities under the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 ("the Act"). Relevant authorities are defined as local authorities, local health boards, fire and rescue authorities and NHS Trusts. The guidance will become statutory from 1 April 2019 and will be issued under section 15 of the Act ('power to issue statutory guidance').

In order to achieve a joined-up and collaborative approach, this guidance is intended to assist the commissioning of any other related services by commissioners from relevant authorities, Welsh and UK Government departments and the criminal justice system working to achieve the purposes of the Act. To that extent it is issued under section 60 of the Government of Wales Act 2006.

Procedure

The procedure for issuing guidance is set out in section 16 of the Act. A draft of the guidance 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 guidance then the Welsh Ministers must not issue the guidance.

If no such resolution is made before the end of that period, the Welsh Ministers must issue the guidance in the form of the draft.

Scrutiny under Standing Order 21.7

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

Implications arising from exiting the European Union

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

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
28 February 2019

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Food (Amendment) (EU Exit) Regulations 2019**
DATE	**19 February 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Food (Amendment) (EU Exit) Regulations 2019

Policy overview of the SI
Principally, these Regulations will correct the deficiencies in the retained direct EU legislation which sets the framework for the display of mandatory food information/labelling, its presentation, as well as procedures where food businesses voluntarily decide to display information.

This retained direct EU legislation allows consumers to make informed choices and to make safe use of food. It includes rules on:

- legibility of labels,
- clear presentation of allergens on prepacked foods, non-prepacked food.
- Clear indication of 'formed meat', 'formed fish' or defrosted products.

This SI also makes consequential amendments to the Weights and Measures Act 1985 in relation to displaying net quantity, and to retained direct EU law on the use of activated alumina in the treatment of natural mineral water and spring water. The changes are minimal and technical and there is no policy change.

The retained EU law which is being amended

- Commission Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters
- Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers
- Weights and Measures Act 1985

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The SI only makes minor technical amendments to the retained EU law and involves no transfer of European Commission functions. Consequently, there is no impact on the Welsh Ministers' executive competence or the National Assembly's legislative competence.

The purpose of the amendments
The principal purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union regulating the provision of food information to consumers. They will make minimal, technical amendments to the retained direct EU law, such as:

- replacing 'Union' with 'UK;
- 'Union provisions' with 'EU-derived domestic legislation and retained direct EU legislation'
- removing references to EU institutions and other Member States.

The Regulations also make technical amendments, which make no substantive policy change, to provision about the language of compulsory food labelling.

The Regulations also make technical amendments to cross-references to Directives in Regulation 115/2010 on the use of activated alumina for the removal of fluoride from nautral mineral water and spring water.

The Regulations also make consequential amendments to section 31A of the Weights and Measures Act 1985 to reflect changes made to two Articles of Regulation 1169/2011. There is no substantive policy change.

This SI doesn't transfer any European Commission functions and therefore it is proposed as negative.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-food-amendment-eu-exit-regulation-2019

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

UK MINISTERS ACTING IN DEVOLVED AREAS

118 - The Food (Amendment) (EU Exit) Regulations 2019
Laid in the UK Parliament: 13 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	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	4 March 2019
Written statement under SO 30C:	Paper 22
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 of the European Union (Withdrawal) Act 2018.

These Regulations make minor and technical amendments to relevant primary and retained direct European Union legislation, to address deficiencies in retained EU law arising from the UK's departure from the EU.

The effect of the Regulations is to ensure that the legal framework in the area of food labelling will still function after exit day.

Legal Advisers agree with the statement laid by the Welsh Government dated 19 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 Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019**
DATE	**1 March 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 ("2019 Regulations")

The law which is being amended

Amendment of secondary legislation

- Regulation 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products
- Regulation (EU) No 510/2014 of the European Parliament and of the Council laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products
- Commission Regulation (EC) No 566/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less
- 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 1295/2008 on the importation of hops from third countries
- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy

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

Functions transferred to the Secretary of State

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.

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 2019 Regulations make amendments to direct EU legislation which forms part of UK law relating to the organisation of common markets in agriculture and agricultural products. They correct deficiencies arising from the UK's withdrawal from the EU and ensure legal operability post EU Exit. They also transfer various regulatory functions.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://beta.parliament.uk/work-packages/W1TU9Qdr

Why consent was not given

Despite the Welsh Government's position that CMO and CAP are devolved and not reserved matters under any heading of the Reserved Matters Schedule in the GOWA 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 Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 achieves the Welsh Ministers' overarching policy objectives of securing and maintaining the effective functioning of agricultural markets in the UK.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (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	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 24
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8 of, 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.

These Regulations address operability issues created by the United Kingdom leaving the EU relating to reserved policy areas in the CMO to ensure that the CMO can continue to operate effectively after EU exit.

These Regulations also make amendments to various existing EU legislation which forms part of UK law relating to the CMO, and provide operability fixes to the following policy areas:

- recognition of producer organisations,
- written contracts in the dairy sector,
- rules of appeal surrounding protection of geographical indicators,
- facilitating and regulating the import of certain meats,
- wines and other foodstuffs, and
- the granting of export refunds for processed agricultural goods.
-

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 1 March 2019 regarding the effect of these Regulations:

1. 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 GOWA 2006.* ***A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UKG****.* ***[emphasis added]***
    - *(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. [emphasis added]***"
2. 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". Legal Advisers' view is that the sentences from highlighted above from the Welsh Government's statement 'suggest' rather than 'specify'.
3. The Welsh Government, in its written statement, has indicated that there has been disagreement with the UK Government as to whether CMO and CAP are devolved or reserved.
4. As the UK Government considers these matters to be reserved, from its perspective the matters are not subject to the terms of the

Intergovernmental Agreement and as such it has not sought Welsh Ministerial consent. The Welsh Government considers the matters to be devolved.

5. The Welsh Government has requested an explanation of the UK Government's legal position but has received no response.
6. Despite the disagreement on whether the matters are devolved or reserved, the Welsh Government has stated that it is content that the effect of these Regulations achieves the Welsh Ministers' overarching policy objectives of securing and maintaining the effective functioning of agricultural markets in the UK.

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

Legal Advisers draw attention to paragraphs 3, 4 and 5 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 Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019**
DATE	**1 March 2019**
BY	**Rebecca Evans AM, Minister for Finance and Trefnydd**

The Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

European Directly Applicable Instruments

- Commission Delegated Regulation (EU) 2018/2034 establishing a discard plan for certain demersal fisheries in North-Western waters for the period 2019-2021.
- Commission Delegated Regulation (EU) 2018/2035 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021.
- Commission Delegated Regulation (EU) No 1395/2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea.
- Council Regulation (EU) 2018/2025 fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks.
- Council Regulation (EU) 2019/124 fixing for 2019 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

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 SI will extend the Welsh Ministers' executive powers. It will transfer the European Commission's current powers to Welsh Ministers in relation to Wales. These Regulations contain provisions which enable the Welsh Ministers to exercise administrative functions in relation to Wales without encumbrance.

This SI will have no impact on the Assembly's legislative competence.

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. Examples of the technical changes made by this SI include amending references from the "European Union" to "the United Kingdom"; and "Member State" to "fisheries administration", to enable the Welsh Ministers as Fisheries Administration in relation to Wales to carry out their specific functions post-Exit. Similarly, references to Union or Member State vessels and waters will be amended to UK vessels and waters.

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/TRhsL5IM

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

The Common Fisheries Policy (Amendment etc.) (EU Exit) (No.2) Regulations 2019

Laid in the UK Parliament: 28 February 2019

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 26
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

The EU's Common Fisheries Policy (CFP) regulates fishing activities and the enforcement of those activities in UK waters. The CFP comprises approximately 100 EU Regulations which impose a common approach to the sustainable management of fisheries across the EU and its waters. The Regulations have direct effect in UK law.

These Regulations make technical amendments to address deficiencies within CFP legislation. They substitute references to the UK for references to the EU and provide implementation powers for the 'fisheries administrations', which include the Welsh Ministers in relation to Welsh waters and vessels.

Legal Advisers agree with the statement laid by the Welsh Government dated 1 March 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.

Eluned Morgan AC/AM
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/EM/0222/19

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

01 March 2019

Dear Mick,

I am writing to bring your attention to an SI laid in Parliament, The Conformity Assessments (Mutual Recognition) Regulations 2019. This SI relates to EU Exit, but it is made under s.2(2) of the European Communities Act 1972 and therefore does not fall within the scope of SO30C. Therefore I am writing to you instead of laying a written statement, in the spirit of keeping the Committee informed of developments.

This SI is a trade related SI concerning product safety, which is a reserved matter. However the SI has a broad scope, which extends to some products within devolved competence, specifically blood products and biocides. The Welsh Ministers are not designated to make regulations under s.2(2) for the products within devolved competence that would be affected by this SI.

It would not be possible for the Welsh Ministers to make this legislation in Wales, due to the reserved nature of product safety. This SI does not transfer any functions, nor does it amend any existing operational delivery systems. As this SI legislates in a reserved area, it does not affect the legislative competence of the National Assembly. Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility, wrote to me as a courtesy, seeking my agreement to proceed with this SI because of its potential impact on areas devolved to Wales. I have written in return confirming that the Welsh Ministers have no objections to this SI being laid in Parliament.

This instrument will provide explicit recognition in UK legislation for conformity assessment (product safety approval) against EU regulations carried out by bodies in third countries that have entered into a Mutual Recognition Agreement (MRA), or a trade agreement including provisions on conformity assessment (collectively referred to as Agreements), with the European Union. The countries with Agreements covered by this measure are Australia, New Zealand, Canada, USA, Japan, Switzerland, Turkey, South Korea and Israel.

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The purpose of product safety legislation is to ensure that products that are placed on the market are safe and compliant. To this end, UK legislation places obligations on economic operators throughout the supply chain (manufacturers, importers, distributors and authorised representatives). The key obligations are that products are safe or accurate and meet certain requirements. Sometimes there is a requirement that products are assessed (conformity assessments) to demonstrate compliance with the relevant regulations prior to being placed on the market. Should products be found to be unsafe or otherwise non-compliant, corrective action will be required and they ultimately may have to be withdrawn from the market.

In the case of product-specific legislation, UK legislation follows a framework developed at EU level and applied with adaptations to many product areas. This SI forms part of maintaining that framework after EU Exit, as an interim measure until more permanent measures are put in place with the third countries in question.

In order to reduce potential disruption to businesses and consumers, the UK Government has decided to adopt a continuity approach for goods which meet EU regulations in a no deal scenario. This means that the UK will continue to accept goods made and assessed by EU bodies against EU regulations for a time-limited period. This SI states that results of conformity assessment by bodies covered by the Agreements should be treated as if issued by an EU body. This will ensure that the continuity approach described above also applies to conformity assessment carried out by specific third country bodies in a no deal scenario. This will mean that products that follow this process will be recognised as valid for sale on the UK market. This SI will also recognise existing Authorised Representatives (legal entities that perform certain statutory functions on behalf of a manufacturer) based in Switzerland and Turkey, where the respective Agreements allow for this.

Without this instrument there could be legal uncertainty for these third countries, meaning it is possible that the availability of products from these countries in the UK could diminish. A reduction in the availability of biocides would negatively affect the Welsh farming industry. A reduction in the availability of blood products could be detrimental to the health and wellbeing of individuals who rely on these products, as well as increase costs for the Welsh health services. Failing to make this SI by exit day would disadvantage citizens in Wales. It is also in line with the Welsh Government's policies of continuity after exit day.

Yours sincerely,

Eluned Morgan AC/AM
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

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Ein cyf/Our ref MA-L/FM/0117/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
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05 March 2019

Dear Mick,

I am writing to you in your capacity as Chair of CLAC, to bring The Challenges to Validity of EU Instruments (EU Exit) Regulations 2019 to your attention.

Chris Heaton-Harris MP, Parliamentary Under Secretary of State at DExEU, wrote to me regarding this SI as a courtesy, to notify the Welsh Ministers of plans to confer new functions on them. I have written to him acknowledging this SI, and confirming that the Welsh Ministers do not object to the conferral of these new functions. I am also laying a written statement in the National Assembly regarding this SI.

This SI legislates in a reserved area, and as such the Intergovernmental Agreement does not apply nor do the requirements of Standing Order 30C. However, unusually, this SI confers new functions on the Welsh Ministers. In the interests of transparency, and to give a more complete picture for CLAC's scrutiny of the UK EU Exit SI programme, I considered it appropriate to draw your attention to the SI.

Currently, UK courts and tribunals can make a preliminary reference to the Court of Justice of the European Union ('CJEU') where a decision on a question is necessary to enable the court or tribunal to give judgment. A reference can be made for a ruling on whether the relevant EU law is actually valid. Following the UK's exit from the EU, UK courts and tribunals will no longer be able to make preliminary references to the CJEU. Therefore, in the UK, the CJEU will have no role in questions of interpretation or validity with regard to retained EU law after exit and consequentially.

Paragraph 1 of Schedule 1 to the EU (Withdrawal) Act provides that, after the UK's departure from the EU, there will be no right in domestic law to challenge retained EU law on the basis that, immediately before exit day, an EU instrument was invalid. However, there is a power conferred on a Minister of the Crown to make regulations which, notwithstanding the general prohibition, allow for certain types of challenges to retained EU law.

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The Welsh Government's preferred position is that where cases have begun before exit day it is important that they are able to continue where possible. This is in line with the Welsh Government's general policy of continuity. This is also the policy position of the UK Government for court cases that will fall into these circumstances. Consequently, the Regulations under paragraph 1 of Schedule 1 make transitional provision so that UK courts and tribunals can consider the validity of EU law instead of the CJEU.

This approach is pragmatic. It avoids the possibility of cases getting caught in a legal limbo, whereby they cannot progress until a UK court or tribunal receives a ruling from the CJEU that will never arrive.

The draft regulations propose giving Welsh Ministers a power to intervene in cases. This reflects the fact that there may be cases where validity challenges are made concerning EU law with an impact in or on Welsh devolved matters. The likelihood of this power needing to be exercised is very low, but the existence of this power is essential should such a challenge be made before exit day. Additionally for parity, and to ensure all devolved administrations are treated equally, the regulations specify that where a court or tribunal is planning on issuing a declaration of invalidity, it must notify Welsh Ministers, as well as UK Ministers, Scottish Ministers and a Northern Ireland department.

As this SI legislates in relation to a reserved matter, there are no implications for the legislative competence of the National Assembly.

These powers would be time limited to deal only with cases that are already in progress before exit. There are only two current pending cases which would definitely be caught by these proposals if the UK's exit were taking place today. We cannot know how many other validity challenges will be made before exit day, but as there have only been ten such references in the last four years, it is unlikely to be a large number.

Yours sincerely,

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig

National Assembly for Wales
Climate Change, Environment and Rural Affairs Committee

Mark Drakeford AM
First Minister of Wales
National Assembly for Wales

28 February 2019

Dear First Minister of Wales

Scrutiny of Legislative Consent Memorandums

Since November 2018, the Committee has undertaken scrutiny of three Legislative Consent Memorandums, two of which are Brexit-related. Given you have overall responsibility for constitutional affairs, the Committee agreed I should write to you:

- seeking clarification on how the Welsh Government determines whether or not it is appropriate for the UK Government to legislate in areas of devolved competence, and

- seeking clarity about the Welsh Government's legislative programme for the rest of this Assembly and whether it is your intention to make time available for Welsh legislation arising from Brexit.

On 11 January, you wrote to the Llywydd explaining that the Welsh Ministers are seeking delegated powers under Brexit-related UK Bills in preference to bringing forward Bills to the Assembly. This is because the Welsh Government "would not have been able to bring this volume of legislation before the Assembly in such a compressed time period". You point out that if all Brexit legislation in devolved areas was to be made in Wales, "then between September 2018 and March 2019 it would have required an additional…4-6 Bills to be laid in the Assembly."

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We would like to raise a number of points in relation to the above.

Firstly, it appears that this assertion is based on the premise that all of the legislative provisions within these Bills would be required for exit day. We do not believe this is correct. In the case of the UK Agriculture Bill, any legislative gap arising from Brexit would occur after the 2020 CAP scheme year. Consequently, primary legislation is not required by March 2019. Similarly, the UK Fisheries Bill contains provisions that go beyond those necessary to establish a UK common approach before Brexit.

For both UK Bills, it is not necessary for all of their provisions to be passed before Brexit. The provisions that go beyond those necessary to ensure continuity in the immediate post Brexit period could have been captured in Welsh Bills. It is clear, therefore, that there was no requirement for these Bills to be laid in the Assembly before the end of March 2019.

Secondly, during its recent scrutiny of several LCMs, the Committee has found it difficult to discern a rationale for the Welsh Government's decision that it is appropriate for the UK Government to legislate in an area of devolved competence. For example, the Welsh Government has sought to use the UK Agriculture Bill as a vehicle to introduce fundamental and wide-ranging changes to the system of financial support for agriculture. Conversely, the Animal Welfare (Service Animals) Bill includes narrow, non-contentious provisions that could have been brought forward in a Welsh Bill.

I would be grateful if you could clarify whether the Welsh Government's approach to the use of the Legislative Consent process is underpinned by any principles and, if so, what they may be.

What actions are you planning to take if the UK Agriculture and Fisheries Bills, which you state must be passed by Parliament by the end of March 2019, are not passed by that date?

The second matter the Committee wishes to address relates to the Welsh Government's Legislative Programme.

In your predecessor's Statement on the Legislative Programme in July 2018, he gave a commitment "to continue to keep under review the need for Brexit-related Bills over the coming 12 months". He also said that "there has been space created in the legislative programme to ensure that there is room to develop Brexit Bills".

The Minister for Environment, Energy and Rural Affairs has assured the Committee she intends for Welsh Bills in relation to Agriculture and Fisheries to be introduced and to have been passed by the end of the Fifth Assembly. The Minister has also given a commitment to bring forward legislation to address the environmental governance gap arising from Brexit at the first opportunity.

The Committee would be grateful if you could confirm that the Welsh Government's position has not changed on this matter and that time will be made available to bring forward Welsh Bills arising from Brexit before the end of this Assembly.

I am copying this letter to the Llywydd and the Chair of the Constitutional and Legislative Affairs Committee.

I look forward to receiving a response from you in due course.

Yours sincerely,

Mike Hedges AM
Chair of Climate Change, Environment and Rural Affairs Committee
cc Llywydd and the Chair of Constitutional and Legislative Affairs Committee

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/0239/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
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28 February 2019

Dear Mick,

The Welsh Government's Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill

Following my letter to Stephen Hammond MP of 12 February 2019, the UK Government has agreed to the additional wording I requested be included in the Memorandum of Understanding to underpin the Healthcare (International Arrangements) Bill. An amendment to the Bill to place a requirement to consult devolved administrations will be made at Lords Report Stage. On that basis I am content to recommend that the National Assembly provides consent to the Bill.

The MoU now sets out:

- That Welsh Government will be consulted on the negotiation of agreements, with a role from the initial scoping through to the conclusion of a draft agreement;
- That Welsh Government will be consulted on the initial development and subsequent drafting of regulations under the Bill which implement these agreements, with the UK Government making every effort to proceed by consensus with the devolved administrations;
- That Welsh Government will be consulted where an agreement applies to or has implications for Wales, and on regulations giving effect to that agreement;
- That the UK Government will not normally make regulations without securing agreement from Devolved Administration Ministers beforehand;
- A process for exchanging Ministerial letters in the event of Devolved Administration agreement not being reached where regulations under Clause 2 intersect with devolved competence; and

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- That these letters be made available to both Houses of Parliament in the event that the regulations proceed to be made by the Secretary of State for Health and Social Care.

These assurances give Welsh Government a meaningful role in the development of future reciprocal healthcare policy. I am attaching a copy of the agreed Memorandum of Understanding.

I would like the restate my thanks for the work the Committee has done on this issue. While despite strenuous efforts, we were unable to achieve the consent provision on the face of the Bill which your Committee recommended, I hope you agree with me that the combination of the amendment and the MoU represent a positive development in this policy area.

Yours sincerely,

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.

2. The Healthcare (International Arrangements) Bill (the "Bill") was introduced in the House of Commons on 26 October 2018 and can be found at: Bill documents — Healthcare (International Arrangements) Bill 2017-19 — UK Parliament

Policy Objectives

3. The UK Government's stated policy objectives are to enable the Government to respond to the wider range of possible outcomes of EU Exit in relation to reciprocal healthcare including the implementation of new reciprocal healthcare agreements. This Bill forms part of the UK Government's legislative response to EU Exit. Although the Bill is being introduced as a result of the decision to leave the EU, the legislation could also be used to give effect to healthcare agreements with other third countries.

Summary of the Bill

4. The Bill is sponsored by the Department of Health and Social Care.

5. The Bill makes provision:

   - To provide the Secretary of State with powers to fund and arrange healthcare outside the UK:
   - To make regulations to give effect to healthcare agreements between the UK and other countries, territories or international organisations, such as the European Union (EU); and
   - To enable the designation of authorised persons for the purpose of data processing, which is necessary to underpin these arrangements and agreements.

Changes to the Bill since the publication of the first Legislative Consent Memorandum

6. The Welsh Government laid a Legislative Consent Memorandum in respect of the Bill on 15 November 2018, based on the version of the Bill introduced to Parliament on 26 October 2018.

7. The Memorandum confirmed that the Welsh Government would not be able to recommend to the Assembly that it gives consent to the Bill as drafted at that stage. The Welsh Government explained that, while it believed there to be benefits to a UK-wide approach to reciprocal healthcare arrangements, there were concerns about the extent to which the Welsh Government would be involved in informing and shaping the arrangements made under the Bill.

8. Since the publication of the first Memorandum, the UK Government has committed to amend the Bill to address the Welsh Government's concerns. The Minister of State for Health announced in Lords Committee on 21 February that the Bill would be amended at Report Stage. This Supplementary Memorandum explains how the Bill will be amended and how the Welsh Government's concerns have been addressed. Annex 1 sets out the intended effect of the UK Government amendment.

9. The proposed amendment will place a requirement on the Secretary of State to consult with the Devolved Administrations, including the Welsh Ministers, before making regulations under Clause 2 that are within devolved competence. In addition to that requirement, a Memorandum of Understanding has been developed between the Devolved Administrations and the UK Government to underpin the amendment. The Memorandum of Understanding was agreed with the Minister of State for Health on 20 February 2019.

10. **Requirement for consultation -** Clause 2 of the Bill provides the Secretary of State with powers to make regulations in relation to Clause 1, in connection with the provision of healthcare outside the UK, and to give effect to healthcare agreements. It is envisaged that should the UK exit the EU in a deal scenario, this power would enable the implementation of future healthcare arrangements with the EU as a whole or individual Member States from January 2021 onwards or with third countries. In a no deal scenario, the Bill would enable the UK Government to give effect to new reciprocal healthcare arrangements on or after exit day. Whilst it is for the UK to make bilateral or multilateral agreements with other territories and international organisations, the Assembly may legislate for the purpose of observing and implementing the UK's international obligations relating to devolved matters, such as healthcare. The amendment tabled by the UK Government will require the Secretary of State to consult with the Welsh Ministers (and other Devolved Administrations) before making any regulations under Clause 2 that contain provision that is within the legislative competence of the National Assembly for Wales.

11. **Memorandum of Understanding** - the Welsh Government's position is that in order to provide the necessary assurance in respect of its involvement in reciprocal healthcare arrangements, the Memorandum agreed with the UK Government would need to state that:

    - the Welsh Government would be consulted on the negotiation of agreements, with a role from the initial scoping through to the conclusion of a draft agreement;
    - the Welsh Government would be consulted on the initial development and subsequent drafting of regulations under the Bill which implement these agreements, with the UK Government making every effort to proceed by consensus with the devolved administrations; and
    - the Welsh Government would be consulted where an agreement applied to or had implications for Wales, and on regulations giving effect to that agreement.

12. In addition to fully meeting these points the Memorandum also states:

    - the UK Government would not normally make regulations without securing agreement from Devolved Administration Ministers beforehand;
    - a process for exchanging Ministerial letters in the event of Devolved Administration agreement not being reached where regulations under Clause 2 intersect with devolved competence; and
    - that these letters be made available to both Houses of Parliament in the event that the regulations proceed to be made by the Secretary of State for Health and Social Care.

13. The Memorandum of Understanding is being provided at Annex 2.

14. The first Legislative Consent Memorandum set out that it is considered that Clauses 1, 2, 4 and 5 of the Bill require consent on the basis that they are making provision for a purpose that is either partially or wholly within the Assembly's legislative competence as they relate to health. (Clause 5 supplements and clarifies powers exercised under Clause 2. Clauses 3 and 6 make provision about interpretation, extent and commencement for the purposes of the other clauses in the Bill for which consent is required.) The detail of the clauses can be found in the first Memorandum at http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=23365

15. In addition, the new clause which is to be inserted after Clause 4 is making provision for a purpose that is within the Assembly's legislative competence. Consent is therefore required.

Reasons for making these provisions for Wales in the Healthcare (International Arrangements) Bill

16. As set out in the first Legislative Consent Memorandum, the Welsh Government agrees that following EU Exit, legislation is necessary to make provision for reciprocal healthcare arrangements to give certainty and assurance to UK residents. These arrangements allow individuals to travel, work and receive treatment outside of the UK where this may not be otherwise possible. In the case of a no deal exit from the EU, it will be important to provide assurances for residents as soon as possible. There is, therefore, urgency to the timing of the Bill and the legislation made under it.

17. While the Welsh Government believes that there are benefits to having a UK-wide approach, any healthcare agreement entered into on behalf of the UK will affect the NHS in Wales and this legislation will therefore have a significant impact on a devolved policy area.

Welsh Government position on the Bill as amended

18. The importance of Welsh Government being involved in informing and shaping the healthcare agreements to be delivered under the Bill which will impact on the NHS in Wales has not changed. Welsh Government made it clear to the Department of Health and Social Care that legislative and non-legislative assurances from the UK Government were necessary to ensure that the Welsh Government is involved in matters that affect devolved areas in Wales. That assurance has been provided through the UK Government amendment to the Bill and the underpinning Memorandum of Understanding.

19. The Minister for Health and Social Services has stated that taken together, the amendment tabled by the UK Government and the underpinning Memorandum of Understanding are sufficient to enable the Welsh Government to recommend to the National Assembly to give its legislative consent to the Bill.

20. The proposed amendment and the Memorandum of Understanding ensure that Welsh Government will be meaningfully engaged in the development of new healthcare agreements and that UK Government will look to proceed on the basis of consensus. Where agreement on regulations cannot be reached there are strong mechanisms for the Welsh Ministers to express their views. This is a good outcome providing a strong role and flexibility for the Welsh Ministers following extensive and highly collaborative working between Governments. It provides a valuable model which could be used in other areas where intergovernmental cooperation is needed and demonstrates both governments' commitment to collaboration.

Financial implications

21. There are financial costs associated with reciprocal healthcare arrangements. These costs relate to arranging to pay for the treatment of UK residents abroad and to providing healthcare for non residents in the UK. There could be increased or decreased costs depending on the number of countries with which the UK establishes reciprocal healthcare arrangements and the nature of these agreements.

22. Lord O'Shaughnessy wrote to the Cabinet Secretary for Health and Social Services on 26 October 2018 to give assurances that there will be no additional costs to the devolved administrations associated with the Bill. This was clarified in discussion that any arrangements made at a UK level to pay for the provision of treatment to UK residents abroad would be met by the UK Government. However the costs of treatment by the Welsh NHS to UK citizens returning to the UK as ordinarily resident or for healthcare which is exempt from charging for non-residents would have to be met by the Welsh Government as is currently the case.

Conclusion

23. This Supplementary Legislative Consent Memorandum describes the relevant changes to be made to the Healthcare (International Arrangements) Bill since introduction, and confirms the Welsh Government position is now to recommend that consent to the Assembly.

Vaughan Gething AM
Minister for Health and Social Services
March 2019

ANNEX 1 – SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM: HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

PROPOSED GOVERNMENT AMENDMENT FOR LORDS REPORT

Clause amended	Effect
New Clause inserted	Places a requirement on the Secretary of State to consult with relevant devolved authorities before making regulations under Clause 2 only where those regulations contain provision which is within the devolved competence of a devolved legislature. Defines devolved authorities. Defines devolved legislature. Defines provisions that are within the legislative competence of devolved authorities.

ANNEX 2 – MEMORANDUM OF UNDERSTANDING FOR CONSULTATION UNDER SECTION 5 OF THE HEALTHCARE (INTERNATIONAL ARRANGEMENTS) ACT

A. Introduction and overarching principles

1. This Memorandum of Understanding sets out the arrangements agreed between the Department of Health and Social Care ("DHSC") and the devolved administrations to support meaningful consultation in line with Section 5 of the Healthcare (International Arrangements) Act ("HIA Act"). DHSC recognises that the devolved administrations have a significant role to play where arrangements to facilitate treatment outside the UK and implement healthcare agreements relate to devolved matters.

2. The UK Government and the devolved administrations are committed to delivering a reciprocal healthcare policy that works for all parts of the UK. DHSC will work with the devolved administrations, involving the Territorial Offices as appropriate, to achieve this objective.

3. The UK Government and devolved administrations will make every effort to proceed on the basis of consensus in order to achieve a consistent reciprocal healthcare system.

4. Section 5 of HIA Act requires the Secretary of State to consult the relevant devolved authority before making regulations under Section 2 that contain provision within the legislative competence of a devolved legislature.

5. Section B of this Memorandum of Understanding is not limited to consultation in line with Section 5 of HIA Act. Section C relates to the consultation requirement in Section 5 of HIA Act.

6. The arrangements set out in this Memorandum of Understanding will be underpinned by regular engagement between DHSC's and the devolved administrations' officials, which will support Ministerial engagement. It is acknowledged that these arrangements will rely for their effectiveness on mutual respect for the confidentiality of information exchanged.

7. This Memorandum of Understanding as far as it relates to reciprocal healthcare agreements, will apply where DHSC is the lead UK government department negotiating such an agreement. The principles of this Memorandum of Understanding will also apply to healthcare agreements which do not require the Secretary of State to make regulations under Section 2 of the Act. This Memorandum of Understanding is not legally

binding and the arrangements it sets out do not extend the statutory consultation duty in Section 5 of HIA Act.

8. This Memorandum of Understanding does not affect any healthcare agreements or arrangements entered into and/or to be entered into by a Minister of the Northern Ireland Executive with the Republic of Ireland.[1]

B. Policy Formation and Negotiations

9. DHSC will discuss with DA officials its policy proposals on the strategic direction for new reciprocal healthcare arrangements and any projected quantitative impact assessments of those proposals. Such engagement will occur as soon as possible at a formative stage of policy development. DHSC Ministers will write to DA Ministers to set out the policy proposals they endorse in order to build consensus on the direction to be taken in negotiations. Sharing this policy does not bind UK Government decisions.

10. To support policy formation, the devolved administrations will provide DHSC with timely comments on the documents shared and any relevant information or analysis to inform DHSC's evaluations of existing arrangements and its projected impact assessments.

11. DHSC will seek the devolved administrations' input on its negotiating positions for new healthcare agreements insofar as they relate to matters within devolved competence. DHSC Ministers and DA Ministers should be prepared for short notice intergovernmental engagement to meet international deadlines.

12. DHSC will discuss any model agreements or initial drafts of agreements drafted by DHSC with the devolved administrations before they are shared with third countries.

13. DHSC will provide updates to the devolved administrations on the progress of negotiations.

14. DHSC will share relevant information pertaining to an agreement, once it has been reached, with the devolved administrations, to ensure appropriate and successful implementation.

15. DHSC officials will notify the DA officials as early as possible should any of its policy proposals or any healthcare agreements require the Secretary of

[1] In accordance with participation in the North South Ministerial Council, the British Irish Council or in relation to the activities of North South Implementation Bodies established on the basis of Strand Two of the Belfast Agreement.

State to make regulations under Section 2 of the Act and set out its reasons.

16. DHSC will discuss any proposals for the review or amendment of implemented healthcare agreements with the devolved administrations in accordance with the arrangements set out above. The devolved administrations will provide DHSC with timely comments and relevant data, information and analysis to inform reviews.

C. Drafting of Regulations under Section 2 of HIA Act

17. DHSC officials will share draft versions of any regulations to which Section 5 applies with devolved administrations prior to finalisation to provide the opportunity to discuss the content and drafting of the provisions that would be within the legislative competence of a devolved legislature.

18. A final draft of the regulations to which Section 5 applies, will be shared with the relevant DA Ministers as early as possible and before they are laid.

19. UK Government will make every effort in the making of regulations to which Section 5 of HIA Act applies to proceed on the basis of consensus and will not normally make regulations that have not been agreed with Ministers from the devolved administrations.

20. In the event that agreement cannot be reached, there will be an exchange of letters between Ministers. This would provide the opportunity for a devolved administration to set out its position, and for the Secretary of State to explain the reasons for the final form of the regulations and how the UK Government has sought to reach agreement. If the Secretary of State decides to proceed with making the regulations, and guided by the principles of the Intergovernmental Agreement, the exchange of letters should be made available to both Houses of Parliament when the regulations are laid.

D. Regulations made by the Devolved Administrations

21. The application of the principles in Section B of this Memorandum of Understanding will ensure that the devolved administrations are aware of any complementary regulations that will have to be made alongside the regulations made by the Secretary of State under Section 2 of HIA Act. Accordingly, the devolved administrations will make the required necessary legislative changes to ensure that there is a consistent reciprocal healthcare system.

22. To ensure UK-wide consistency where possible, the devolved administrations officials will discuss with DHSC officials the content and drafting of any regulations they intend to make to implement a reciprocal healthcare agreement as early as practicable before the regulations are laid.

E. Operational Implementation

23. DHSC officials will liaise with the DA officials to ensure that the operational implementation of reciprocal healthcare policy works for all parts of the UK. This may for example include developing and coordinating bespoke packages of communications to inform individuals and healthcare providers about new reciprocal healthcare agreements.

F. Review

24. This Memorandum of Understanding will be reviewed within 24 months of the date it is agreed, with any subsequent reviews to be scheduled in the course of the review. This review will be conducted by officials and agreed by Ministers.

Department of Health & Social Care

Stephen Hammond MP
Minister of State for Health

39 Victoria Street
London
SW1H 0EU

020 7210 4850

Vaughan Gething AM
Minister for Health and Social Services
5th Floor, Tŷ Hywel
Cardiff Bay CF99 1NA

27 FEB 2019

Dear Vaughan,

HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

I would like to reiterate my gratitude for your continued positive engagement with both myself and at official level in relation to the Healthcare (International Arrangements) Bill.

I am writing to assist with the Welsh Assembly's legislative consent process by confirming that the Government will be tabling an amendment to the Bill for Report Stage in the House of Lords on 12 March 2019.

As we have previously discussed, this amendment will place a statutory duty on the UK Government to consult the Devolved Administrations (DAs) where regulations under Clause 2 of the Bill would be within the DA's legislative competence. A Memorandum of Understanding (MoU) will underpin the amendment to the Bill, as agreed between the UK and Welsh Government. For ease of reference, I have attached these two documents as annexes.

The Government is committed to ensuring that arrangements will be conducive to the development of a reciprocal healthcare system that operates effectively across the whole of the UK and I look forward to continuing to work closely with you and at official level to achieve this.

I am copying this letter to the Scottish Government Cabinet Secretary for Health and Sport and the Northern Ireland Permanent Secretary for the Department of Health.

With best wishes

STEPHEN HAMMOND

Healthcare (International Arrangements) Bill

AMENDMENTS

TO BE MOVED

AT REPORT

After Clause 4

BARONESS BLACKWOOD

Insert the following new Clause—

"Requirement for consultation with devolved authorities

(1) Before making regulations under section 2 that contain provision which is within the legislative competence of a devolved legislature, the Secretary of State must consult the relevant devolved authority on that provision.

(2) In this section—

"devolved authority" means the Scottish Ministers, the Welsh Ministers or a Northern Ireland department;

"devolved legislature" means the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

(3) A provision is within the legislative competence of a devolved legislature if—

(a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament;

(b) it would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly (including any provision that could only be made with the consent of a Minister of the Crown); or

(c) the provision, if it were contained in an Act of the Northern Ireland Assembly—

(i) would be within the legislative competence of the Assembly, and

(ii) would not require the consent of the Secretary of State."

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/0239/19

Stephen Hammond MP
Minister of State for Health
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

28 February 2019

Dear Stephen,

HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

Thank you for your letters of 20 and 27 February notifying me that the proposed additional wording to the Memorandum of Understanding to underpin the intended amendment to the Healthcare (International Arrangements) Bill has been agreed.

I welcome this confirmation and wish to take the opportunity to echo your recognition of the positive working relationships between your Department and the Welsh Government which has enabled us to reach this position. I very much look forward to this approach continuing in relation to the development of healthcare agreements and any regulations giving effect to these agreements.

In the light of the agreement on the proposed amendment to the Bill and the MoU, I can confirm that arrangements are in hand for a Supplementary Legislative Consent Memorandum and Motion to be laid which will recommend that the National Assembly gives consent to the Bill. The Supplementary Legislative Consent Memorandum is due to be laid on 1 March 2019 and the debate on the Motion is scheduled for 12 March 2019. My officials will notify your Department of the outcome of the debate.

I would note that any statutory instrument which amends Welsh primary legislation would of course be subject to a Statutory Instrument Consent Motion in the Assembly, and it would be for the National Assembly for Wales to decide whether to recommend that consent be given.

I am copying this letter to the First Minister, the Scottish Government Cabinet Secretary for Health and Sport, the Northern Ireland Permanent Secretary for the Department for Health, the Secretary of State for Wales and the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office.

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Yours sincerely,

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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Agenda Item 13

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