

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 16 September 2019

Meeting time: 13.00

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest
13.00

2 Proposed Order in Council – The Government of Wales Act 2006 (Amendment) Order 2019: Evidence session
13.00–13.30 (Pages 1 – 17)

Jeremy Miles AM, Counsel General

Diane Dunning, Welsh Government

Dr Hugh Rawlings, Welsh Government

Angharad C Thomas-Richards, Welsh Government

CLA(5)–24–19 – Briefing 1

CLA(5)–24–19 – Paper 1 – Order in Council

CLA(5)–24–19 – Paper 2 – Explanatory Memorandum (Welsh Government)

CLA(5)–24–19 – Paper 3 – Explanatory Memorandum (UK Government)

3 Wales' Changing Constitution: Evidence session 1
13.30–14.30 (Pages 18 – 47)

Jeremy Miles AM, Counsel General

Diane Dunning, Welsh Government

Dr Hugh Rawlings, Welsh Government

Simon Brindle, Welsh Government

CLA(5)–24–19 – Briefing 2



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

CLA(5)–24–19 – Legal brief

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

14.30–14.35

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CLA(5)–24–19 – Paper 4 – Proposed negative statutory instruments with clear reports

4.1 pNeg(5)31 – The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

5 Proposed negative instruments that raise reporting issues under Standing Order 21.3B

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5.1 pNeg(5)30 – The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019

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CLA(5)–24–19 – Paper 6 – Regulations

CLA(5)–24–19 – Paper 7 – Explanatory Memorandum

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

14.40–14.45

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CLA(5)–24–19 – Paper 8 – Statutory instruments with clear reports

Negative Resolution Instruments

6.1 SL(5)432 – Code of Practice for the Welfare of Cats

6.2 SL(5)436 – The Renting Homes (Fees etc.) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019

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

14.45–14.50

Negative Resolution Instruments

7.1 SL(5)434 – The Education (School Day and School Year) (Wales) (Amendment) Regulations 2019

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CLA(5)–24–19 – Paper 9 – Report

CLA(5)–24–19 – Paper 10 – Regulations

CLA(5)–24–19 – Paper 11 – Explanatory Memorandum

7.2 SL(5)435 – The Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019

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CLA(5)–24–19 – Paper 13 – Order

CLA(5)–24–19 – Paper 14 – Explanatory Memorandum

CLA(5)–24–19 – Paper 15 – Letter from the Minister for Finance and
Trefnydd, 19 July 2019

7.3 SL(5)437 – The Hazardous Waste (Wales) (Amendment) Regulations 2019

(Pages 97 – 108)

CLA(5)–24–19 – Paper 16 – Report

CLA(5)–24–19 – Paper 17 – Regulations

CLA(5)–24–19 – Paper 18 – Explanatory Memorandum

7.4 SL(5)438 – The Plant Health (Wales) (Amendment) (No. 2) Order 2019

(Pages 109 – 121)

CLA(5)–24–19 – Paper 19 – Report

CLA(5)–24–19 – Paper 20 – Order

CLA(5)–24–19 – Paper 21 – Explanatory Memorandum

CLA(5)–24–19 – Paper 22 – Letter from the Minister for Finance and
Trefnydd, 25 July 2019

7.5 SL(5)439 – The Education (Student Finance) (Amendments to Student Eligibility) (Wales) Regulations 2019

(Pages 122 – 137)

CLA(5)–24–19 – Paper 23 – Report

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

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8.1 SL(5)433 – The Cardiff and Valleys Railways (Transfer) Order 2019

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9 Statutory Instruments requiring Assembly consent: Brexit

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9.1 SICM(5)25 – The Plant Health (Amendment etc.) (EU Exit) Regulations 2019

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CLA(5)–24–19 – Paper 31 – Letter from the Minister for Environment, Energy and Rural Affairs, 29 July 2019

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

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11 Written statements under Standing Order 30C

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11.1 WS–30C(5)140 – The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019

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CLA(5)–24–19 – Paper 36 – Written statement

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11.2 WS-30C(5)142 – The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019

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CLA(5)-24-19 – Paper 38 – Written statement

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11.3 WS-30C(5)143 – The Health and Safety (Amendment) (EU Exit) Regulations 2018

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CLA(5)-24-19 – Paper 40 – Written statement

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11.4 WS-30C(5)144 – The Storage of Carbon Dioxide (Amendment and Power to Modify) (EU Exit) Regulations 2018

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CLA(5)-24-19 – Paper 42 – Written statement

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11.5 WS-30C(5)145 – The Animals (Legislative Functions) (EU Exit) Regulations 2019

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CLA(5)-24-19 – Paper 44 – Written statement

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11.6 WS-30C(5)146 – The Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019

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11.7 WS-30C(5)147 – The Food and Drink (Amendment) (EU Exit) Regulations 2019

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CLA(5)-24-19 – Paper 48 – Written statement

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11.8 WS–30C(5)148 – The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019

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CLA(5)–24–19 – Paper 50 – Written statement

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11.9 WS–30C(5)150 – The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

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CLA(5)–24–19 – Paper 52 – Written statement

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11.10 WS–30C(5)149 – The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019

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CLA(5)–24–19 – Paper 54 – Written statement

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12 Interparliamentary Forum on Brexit: Update

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CLA(5)–24–19 – Paper 56 – Media release

CLA(5)–24–19 – Paper 57 – Letter from the Chair of the Public Administration and Constitutional Affairs Committee, 5 September 2019

13 Paper(s) to note

15.15–15.20

13.1 Letter from the Minister for Finance and Trefnydd: WS–30C(5)134 – The European Grouping of Territorial Cooperation (EU Exit) Regulations 2019

(Pages 272 – 273)

CLA(5)–24–19 – Paper 58 – Letter from the Minister for Finance and Trefnydd, 17 July 2019

13.2 Letter from the Chair of the Finance Committee to the Llywydd and the Counsel General: Senedd and Elections (Wales) Bill

(Pages 274 – 275)

CLA(5)–24–19 – Paper 59 – Letter from the Chair of the Finance Committee to the Llywydd and the Counsel General, 17 July 2019

13.3 Letter from the Minister for Finance and Trefnydd: WS–30C(5)133 – The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019

(Pages 276 – 277)

CLA(5)–24–19 – Paper 60 – Letter from the Minister for Finance and Trefnydd, 23 July 2019

13.4 Letter from the Llywydd to the Chair of the Equality, Local Government and Communities Committee: Voting rights for prisoners

(Pages 278 – 280)

CLA(5)–24–19 – Paper 61 – Letter from the Llywydd to the Chair of the Equality, Local Government and Communities Committee, 23 July 2019

13.5 Letter from the Minister for Environment, Energy and Rural Affairs: Legislative Consent Memorandum on the Agriculture Bill

(Pages 281 – 288)

CLA(5)–24–19 – Paper 62 – Letter from the Minister for Environment, Energy and Rural Affairs, 25 July 2019

13.6 Letter from the Minister for Finance and Trefnydd: Forthcoming subordinate legislation

(Pages 289 – 290)

CLA(5)–24–19 – Paper 63 – Letter from the Minister for Finance and Trefnydd, 26 July 2019

13.7 Letter from the Chair of the Equality, Local Government and Communities Committee to the Llywydd: Voting rights for prisoners

(Pages 291 – 298)

CLA(5)–24–19 – Paper 64 – Letter from the Chair of the Equality, Local Government and Communities Committee, 26 July 2019

13.8 Letter from the Chair of the Equality, Local Government and Communities Committee to the Minister for Housing and Local Government: Voting rights for prisoners

(Pages 299 – 303)

CLA(5)–24–19 – Paper 65 – Letter from the Chair of the Equality, Local Government and Communities Committee, 26 July 2019

13.9 Letter from the Counsel General: EU Exit SIs

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CLA(5)–24–19 – Paper 66 – Letter from the Counsel General, 26 July 2019

13.10 Letter from the Future Generations Commissioner: Future Generations Report

(Pages 306 – 307)

CLA(5)–24–19 – Paper 67 – Letter from the Future Generations Commissioner, 9 August 2019

13.11 Letter from the Llywydd: Senedd and Elections (Wales) Bill

(Pages 308 – 315)

CLA(5)–24–19 – Paper 68 – Letter from the Llywydd, 13 August 2019

13.12 Letter from the Llywydd to the Chair of the Finance Committee: Senedd and Elections (Wales) Bill

(Pages 316 – 325)

CLA(5)–24–19 – Paper 69 – Letter from the Llywydd to the Chair of the Finance Committee, 13 August 2019

13.13 Letter from the First Minister: Statutory Instrument Consent Memorandums

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13.14 Letter from the Minister for Finance and Trefnydd: Finance Ministers' Quadrilateral

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CLA(5)–24–19 – Paper 71 – Letter from the Minister for Finance and Trefnydd, 29 August 2019

**13.15 Letter from the Counsel General to the Chair of the Finance Committee:
Senedd and Elections (Wales) Bill**

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CLA(5)-24-19 – Paper 72 – Letter from the Counsel General to the Chair of
the Finance Committee, 3 September 2019

**13.16 Letter from the Counsel General: Meeting of the Joint Ministerial Committee
(EU negotiations)**

(Pages 330 – 331)

CLA(5)-24-19 – Paper 73 – Letter from the Counsel General, 11 September
2019

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

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**15 Legislative Consent Memorandum on the Birmingham
Commonwealth Games Bill: Draft report**

15.20–15.30

(Pages 332 – 342)

CLA(5)-24-19 – Paper 74 – Draft report

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16 Briefing on a procedure for consolidation bill scrutiny

15.30–16.30

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CLA(5)-24-19 – Briefing 3

CLA(5)-24-19 – Paper 76 – Letter from the Business Committee, including
draft Standing Order

Date of the next meeting – 23 September 2019

Document is Restricted

DRAFT STATUTORY INSTRUMENTS

2019 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

The Government of Wales Act 2006 (Amendment) Order 2019

Made - - - - - ***

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order has been laid before, and approved by a resolution of, each House of Parliament and the National Assembly for Wales in accordance with section 109(4) of the Government of Wales Act 2006(a).

Her Majesty, in exercise of the powers conferred by sections 109 and 157(2) of that Act(b), is pleased, by and with the advice of Her Privy Council, to order as follows:

Title and commencement

1.—(1) This Order may be cited as the Government of Wales Act 2006 (Amendment) Order 2019.

(2) It comes into force on the day after the day on which it is made.

Amendments to Part 1 of Schedule 7B to the Government of Wales Act 2006

2.—(1) Part 1 of Schedule 7B to the Government of Wales Act 2006 (general restrictions) is amended as follows.

(2) In paragraph 9(6), after paragraph (c), insert—

(a) 2006 c. 32. Section 109(4) was amended by section 69(1) of, and paragraphs 1, 3(1) and (3) of Part 1 of Schedule 6 to, the Wales Act 2017 (c. 4).
(b) Sections 109(1) and (5) were amended by section 69(1) of, and paragraphs 1, 3(1) and (respectively) (2) and (4) of Part 1 of Schedule 6 to, the Wales Act 2017.

“(d) an electoral registration officer (within the meaning of section 8 of the Representation of the People Act 1983(a)).”

(3) In paragraph 10(2), after paragraph (l), insert—

“(m)an electoral registration officer (within the meaning of section 8 of the Representation of the People Act 1983).”

Welsh Ministers (Transfer of Functions) Order 2018

3.—(1) On the date on which this Order comes into force, ERO functions are to be treated as transferred to the Welsh Ministers by article 45 of, and Schedule 1 to, the 2018 Order (transfer of functions in relation to electoral legislation).

(2) Paragraph (3) of article 45 of the 2018 Order applies in relation to ERO functions as if the reference to the coming into force of that article were a reference to the coming into force of this Order.

(3) In this article—

“the 2018 Order” means the Welsh Ministers (Transfer of Functions) Order 2018(b);

“ERO functions” means functions—

- (a) which were not transferred to the Welsh Ministers by article 45 of, and Schedule 1 to, the 2018 Order, but
- (b) which would have been so transferred if the amendments made by article 2 of this Order had been in force on the date on which article 45 of the 2018 Order came into force.

Name
Clerk to the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends paragraphs 9 and 10 of Part 1 of Schedule 7B to the Government of Wales Act 2006 (c. 32) (“the 2006 Act”). The effect of the amendments is to disapply the restrictions contained in paragraphs 8 and 10 of that Schedule in relation to electoral registration officers.

Electoral registration officers are defined in section 8 of the Representation of the People Act 1983 (c. 2). They exercise functions in relation to, amongst other things, parliamentary elections, police and crime commissioner elections, local government elections and, in Wales, elections to the National Assembly for Wales. Parliamentary elections and police and crime commissioner elections are reserved matters under the 2006 Act (see paragraphs 20 and 42 of Schedule 7A to the 2006 Act).

Accordingly, because electoral registration officers in Wales exercise some of their functions in relation to reserved matters, they do not meet the criteria of a “devolved Welsh authority” (as defined under section 157A of the 2006 Act). As such, the National Assembly for Wales cannot make provisions of the kind referred to in paragraphs 8 and 10 of Schedule 7B to the 2006 Act in relation to electoral registration officers in Wales (in relation to their non-reserved functions) without the consent of a UK minister (see the definition of “appropriate Minister” in paragraph 8(5) of Schedule 7B to the 2006 Act).

(a) 1983 c. 2. Section 8 was amended by: section 66(6) and (8) of, and paragraph 68(1) of Schedule 16 to, and Schedule 18 to, the Local Government (Wales) Act 1994 (c. 19); section 11(4) of the Parliamentary Voting System and Constituencies Act 2011 (c. 1); and section 180(1) of, and paragraph 130(2) of Schedule 13 to, the Local Government etc. (Scotland) Act 1994 (c. 39).

(b) S. I. 2018/644.

These amendments allow the National Assembly for Wales to make provision in relation to electoral registration officers in Wales in relation to their non-reserved functions without the consent of a UK minister.

Article 3 of the Order provides for certain functions in relation to electoral registration officers in Wales to be treated as transferred to the Welsh Ministers under article 45 of the Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644) (“the 2018 Order”). The functions to be treated as transferred are those which would have been transferred by article 45 of the 2018 Order if the amendments made by article 2 of this Order had been in force at the time the 2018 Order came into force.

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

EXPLANATORY MEMORANDUM
THE GOVERNMENT OF WALES ACT 2006 (AMENDMENT) ORDER 2019
2019 No. [XXXX]

Introduction

This explanatory memorandum has been prepared by the Welsh Government. It should be read in conjunction with the explanatory memorandum prepared by the Office of the Secretary of State for Wales.

Summary of this Order

The Order will add to the exemptions at paragraphs 9(6) and 10(2) of Schedule 7B of the Government of Wales Act 2006 (GOWA) “electoral registration officers (within the meaning given in section 8 of the Representation of the People Act 1983.” It also provides for how these amendments affect the operation of article 45 of the Welsh Ministers (Transfer of Functions) Order 2018 (“the TFO”).

Legislative context

Paragraph 8 of Schedule 7B to GOWA provides that a provision in an Assembly Act cannot confer or impose any function on a reserved authority; cannot modify the constitution of a reserved authority; and cannot confer, impose, modify or remove functions specifically exercisable in relation to a reserved authority; without Minister of the Crown consent.

In addition, paragraph 10 provides that a provision of an Act of the Assembly cannot remove or modify any function of a public authority (other than a devolved Welsh authority), unless the appropriate Minister consents. It is considered that EROs appointed under section 8 of the Representation of the People Act 1983 are a reserved authority for the purposes of GOWA as they have functions relating to both devolved and non-devolved elections, and they are not included in paragraphs 9 or 10, which lists the reserved authorities to which specified consent requirements do not apply.

This means that whilst the Assembly now has competence to legislate in relation to Assembly elections and local government elections, it would not be able to legislate for certain changes to electoral registration processes in Wales for devolved elections where such changes relate to the functions of EROs, without Minister of the Crown consent.

In addition, the TFO transfers to the Welsh Ministers functions relating to electoral legislation. However, it does not do so by listing each function individually. Instead, it does so by reference to devolved competence.

Paragraph 12 of Schedule 7B provides that in any enactment, a reference to the legislative competence of the Assembly does not include provision that could be made in an Act of the Assembly only with the consent of a Minister of the Crown.

The combined effect of Schedule 7B and the way in which the TFO transfers functions relating to electoral legislation means that key electoral functions relating to EROs were not transferred and cannot be exercised by Welsh Ministers.

The Office of the Secretary of State for Wales has therefore agreed to produce an Order under s.109 of GOWA. The Order will add to the exemptions at paragraphs 9(6) and 10(2) of Schedule 7B “electoral registration officers (within the meaning given in section 8 of the Representation of the People Act 1983)”.

Policy context

The main purpose of the amendment to Schedule 7B is to enable the Assembly to legislate for changes to electoral registration processes in Wales for devolved elections, without the need for consent. In addition, the Welsh Government is currently engaged in a simultaneous and very complex programme of canvass reform along with the UK and Scottish Governments, but under the current arrangements Welsh Ministers are only able to make a fraction of the provisions required to amend the canvass process and bring it up-to-date in time for the 2020 canvass. The remaining provisions would need to be made as part of the UK legislative proposals which would see the necessary statutory changes sitting within two separate SIs.

Consultation

There has been no consultation on this Order, but the Welsh Government and the Office of the Secretary of State for Wales have worked together to develop it.

Financial Implications

There are no financial implications associated with this Order.

Jeremy Miles AM

Counsel General and Brexit Minister

EXPLANATORY MEMORANDUM TO
THE GOVERNMENT OF WALES ACT 2006 (AMENDMENT) ORDER 2019
2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Wales and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This Order amends Schedule 7B to the Government of Wales Act 2006 (GoWA) so as to disapply the restrictions contained in paragraphs 8 and 10 of that Schedule in relation to Electoral Registration Officers (EROs). The Order also provides for how these amendments affect the operation of article 45 (transfer of functions in relation to electoral legislation) of the Welsh Ministers (Transfer of Functions) Order 2018 (“the 2018 Order”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England and Wales only.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is UK wide.
- 4.2 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 Secretary of State for Wales, Alun Cairns MP has made the following statement regarding Human Rights:

“In my view the provisions of the Government of Wales Act 2006 (Amendment) Order 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Paragraph 8(1)(a) to (c) of Schedule 7B to GoWA places restrictions on the ability of the National Assembly for Wales (“the Assembly”) to confer or impose functions on a reserved authority; modify the constitution of a reserved authority; or confer, impose, modify or remove functions that are exercisable in relation to a reserved authority, without the consent of the appropriate UK Government Minister. Paragraph 10(1) of that Schedule places a similar restriction on the ability of the Assembly to remove or modify the functions of a reserved authority.
- 6.2 Paragraph 8(3) of Schedule 7B provides that a reserved authority means a Minister of the Crown or government department or any other public authority apart from a devolved Welsh authority. Section 157A of GoWA defines a devolved Welsh authority as a public authority whose functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters.
- 6.3 EROs are appointed under section 8 of the Representation of the People Act 1983 and exercise functions in relation to all UK polls. These include local government and Assembly elections in Wales (which are devolved matters in Wales) and UK Parliament, European, and Police and Crime Commissioner elections (which are reserved). Given this mix of devolved and reserved functions EROs do not meet the criteria of a devolved Welsh authority and are a reserved authority. Assembly legislation that seeks to amend the functions of EROs would therefore engage the restrictions at paragraphs 8 and/or 10 of Schedule 7B of GoWA and would require the consent of a Minister of the Crown.
- 6.4 Paragraph 9 of Schedule 7B to GoWA includes a number of carve outs to the consent requirements in paragraph 8 in respect of specified reserved authorities that similarly exercise a mix of devolved and reserved functions in relation to Wales. Paragraph 9(6) sets out a list of reserved authorities that are excepted from the consent requirements in paragraph 8(1). Paragraph 10(2) provides an equivalent list of bodies that are excepted from the consent requirements at paragraph 10(1) of Schedule 7B. This Order adds EROs to these lists of excepted bodies so that the Assembly can modify their functions within devolved competence without needing the consent of a UK Government Minister.
- 6.5 Separately, article 45 of the Welsh Ministers (Transfer of Functions) Order 2018 (“the 2018 Order”) transfers existing Ministerial functions under certain pieces of electoral legislation to the Welsh Ministers. The functions that are transferred are those that are within “devolved competence” as defined by article 45 of that Order (that is, within the legislative competence of the Assembly). Paragraph 12 of Schedule 7B to GoWA, however, provides that in any enactment not contained within GoWA a reference to “the legislative competence of the Assembly” does not include a provision that, were it to be made in an Assembly Act, would require the consent of a Minister of the Crown. The current consent requirements in paragraphs 8 and 10 of Schedule 7B to GoWA referred to above mean that Ministerial functions relating to EROs are outside the scope of “devolved competence” (within the meaning of article 45 of the 2018 Order, read with paragraph 12 of Schedule 7B to GoWA). Accordingly, those Ministerial functions relating to EROs did not transfer to the Welsh Ministers under the terms of the 2018 Order.

7. Policy background

What is being done and why?

- 7.1 The UK Government, Welsh Government and Scottish Government have committed to putting in place GB wide canvass reforms next year which require modifications to ERO's functions.
- 7.2 This Order does two things. It adds EROs to the lists of reserved authorities in Schedule 7B to GoWA which are excepted from the consent requirements in paragraphs 8 and 10 of that Schedule. This will allow the Assembly to make provision regarding EROs without the consent of a UK Government Minister (in line with other reserved authorities that have a mix of devolved and reserved functions).
- 7.3 The Order also clarifies the interaction between the effect of the amendments to paragraphs 9 and 10 of Schedule 7B to GoWA and the operation of article 45 of the 2018 Order. It provides for article 45 of the 2018 Order to have effect from the date of this Order as if the amendments made by this Order had been in force at the time the 2018 Order came into force. This means that the effect of the amendments made by this Order on the consent requirements in paragraphs 8 and 10 of Schedule 7B to GoWA will alter the scope of "devolved competence" under article 45 of the 2018 Order to include Ministerial functions in relation to EROs, so that those Ministerial functions are treated as transferring to the Welsh Ministers under article 45 of the 2018 Order, but only with effect from the date that this Order comes into force.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 This Order amends Schedule 7B to GoWA; consolidation is therefore unnecessary.

10. Consultation outcome

- 10.1 No formal consultation has been undertaken on this Order. We have engaged closely with the Welsh Government in its preparation. In line with the requirements in section 109 of GoWA this Order must also be approved by a resolution of the National Assembly for Wales.

11. Guidance

- 11.1 No formal guidance has been, or will be, issued in relation to this Order.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 There will be no monitoring of the effect of this Order.

15. Contact

- 15.1 David Harries at the Office of the Secretary of State for Wales Telephone: 07840 009179 or email: David.Harries@ukgovwales.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Geth Williams, Deputy Director for Constitution and Corporate Services, at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Foster MP, Parliamentary Under Secretary of State for Wales at the Office of the Secretary of State for Wales can confirm that this Explanatory Memorandum meets the required standard.

Agenda Item 3

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

Document is Restricted

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

Document is Restricted

Agenda Item 4

PNEGs with Clear Reports

16 September 2019

Pn(5)31 – The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Proposed

These Regulations are being made using powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018, with the exception of regulation 10 which is made under section 78(1) of the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017.

The purpose of these Regulations is to make minor technical corrections to the drafting of various Welsh EU Exit SIs and to enable the statute book to function properly after exit day. In some instances, the amendments made to Welsh EU Exit SIs are to correct technical points reported on previously by the CLA Committee.

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

Parent Act: European Union (Withdrawal) Act 2018 and the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017

Sift Requirements Satisfied: Yes



Agenda Item 5.1

pN(5)30 – The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations

Background and Purpose

Part 2 of these Regulations is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 ('the 1972 Act') to implement EU law. Regulation 2 amends the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 ('the Marketing Regulations') to enable the Welsh Ministers to continue to authorise the marketing of fruit plant and propagating material from countries outside the European Union in certain circumstances. Commission Implementing Decision (EU) 2019/120 extended the existing authority to 31 December 2022.

Part 3 of these Regulations is made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 and comes into force immediately before exit day. Regulation 3 amends the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 to ensure that the amendment made by regulation 2 continues to operate effectively after the withdrawal of the United Kingdom from the European Union.

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

Committee Recommendation as to Appropriate Procedure

We have considered the criteria set out in Standing Order 21.3C. We recommend that the appropriate procedure for these Regulations is the affirmative resolution procedure.

As is noted above, the Commission Decision extended the authority to authorise to 31 December 2022. The present Regulations remove the current time limit (31 December 2018) in regulation 5(4) of the Marketing Regulations rather than replacing it with the new date. It does not, therefore, appropriately implement EU law.

That date may not be relevant if Wales is no longer part of the European Union by then. If so, regulation 3 (which comes into force immediately before exit) could have made an appropriate change. As the purpose of section 2(2) of the 1972 Act, which is relied upon for regulation 2, is to implement EU law, that should be done in a manner that is correct on the date the implementing legislation is made.

Government Response

If the Welsh Government does not agree with the Committee's recommendation as to the appropriate procedure for these Regulations, the Welsh Government must explain why it disagrees with the Committee's recommendation in accordance with Standing Order 27.9B.

Legal Advisers

Constitutional and Legislative Affairs Committee
July 2019



2019 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

SEEDS, WALES

**The Seeds (Amendment etc.)
(Wales) (EU Exit) Regulations
2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of these Regulations is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. Regulation 2 amends the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 to enable the Welsh Ministers to authorise the marketing of fruit plant and propagating material from countries outside the European Union in certain circumstances.

Part 3 of these Regulations is made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018. Regulation 3 amends the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 to ensure that the amendment made by regulation 2 continues to operate effectively after the withdrawal of the United Kingdom from the European Union.

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

2019 No. (W.)

**EXITING THE EUROPEAN
UNION, WALES**

SEEDS, WALES

**The Seeds (Amendment etc.)
(Wales) (EU Exit) Regulations
2019**

Sift requirements satisfied ***

Made ***

Laid before the National Assembly for Wales

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

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

- (a) in relation to Part 1, the powers mentioned in paragraphs (b) and (c);
- (b) in relation to Part 2, section 2(2) of the European Communities Act 1972⁽¹⁾;
- (c) in relation to Part 3, paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018⁽²⁾.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy⁽³⁾.

-
- (1) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7). It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) from exit day (see the definition of “exit day” in section 20 of that Act).
- (2) 2018 c. 16.
- (3) S.I. 2010/2690.

The requirements of paragraph 4 of Schedule 2 (relating to consultation with the Secretary of State) and paragraph 4(2) of Schedule 7 (relating to the appropriate Assembly procedure for these Regulations) to the European Union (Withdrawal) Act 2018 have been satisfied.

PART 1

Introduction

Title, commencement and application

1.—(1) The title of these Regulations is the Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019.

(2) They come into force as follows—

- (a) as regards this Part and Part 2, 21 days after the day on which these Regulations are laid;
- (b) as regards Part 3, immediately before exit day.

(3) These Regulations apply in relation to Wales.

PART 2

Marketing of seeds and plant propagating material: amendment of domestic legislation

The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017

2. In the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017⁽¹⁾, in regulation 5, for paragraphs (3) and (4) substitute—

“ (3) The Welsh Ministers may authorise the marketing of plant material from any country outside the European Union if satisfied that the plant material has been produced under conditions equivalent to the requirements in these Regulations for plant material.”

(1) S.I. 2017/691 (W. 163), to which there are amendments not relevant to these Regulations.

PART 3

Marketing of seeds and plant propagating material: amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

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

3.—(1) The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019⁽¹⁾ are amended as follows.

(2) In regulation 5(4), for the words before the inserted text substitute—

“In regulation 5—

- (a) in paragraph (3), for “European Union” substitute “United Kingdom”;
- (b) at the end insert—”.

Name

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

Date

(1) S.I. 2019/368 (W. 90).

Explanatory Memorandum to The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Department for Energy, Planning and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Seeds (Amendment etc.) (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

16 July 2019

PART 1

1. Description

These Regulations make related amendments to the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 and The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019. These Regulations transpose EU legislation and correct operability issues that would arise after Exit.

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

- 2.1 Part 2 of these Regulations is made in exercise of powers conferred by section 2(2) of the European Communities Act 1972 while Part 3 of these Regulations is made in exercise of powers in paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”). Part 3 of these Regulations comes into force immediately before “exit day”, which is defined as 31 October 2019 at 11.00 pm.

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

3. Legislative background

- 3.1 Part 2 of these Regulations is made in exercise of powers conferred by section 2(2) of the European Communities Act 1972. Part 3 of these Regulations is made in exercise of powers conferred by paragraph 1(1) of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively due to the withdrawal of the United Kingdom from the European Union.
- 3.2 In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the relevant statements set out in Part 2 of the Annex to this Explanatory Memorandum.
- 3.3 This instrument makes amendments which are legally necessary to achieve its objectives. It does not represent any changes of policy and it will not produce any impact on businesses or the public.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 These Regulations amends two pieces of domestic legislation:

- The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017; and
- The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019.

4.2 Council Directive 2008/90/EC (“the Fruit Directive”) prescribes marketing standards for fruit plant propagating material to ensure minimum quality standards and traceability. It allows each Member State to authorise in respect of its territory the marketing of planting material produced in countries outside the European Union which the Member State considers to have equivalent production standards. The Directive is transposed by the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017.

Why is it being changed?

4.23 The Fruit Directive allows a Member State, during a specified period, to authorise in respect of their territory the marketing of fruit plant material produced in countries outside the European Union which that Member State considers to have equivalent production standards. The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 transposed this provision which was time limited. That limit has been extended by Commission Decision (EU) 2019/120. These Regulations provide for the new EU timeframe relating to the Fruit Directive and makes exit deficiency amendments with regards to references to the European Union.

What will it now do?

4.24 These Regulations will enable the Welsh Ministers to authorise the marketing, in Wales, of fruit plant and propagating material from any country outside of the EU if satisfied the plant material has been produced under conditions equivalent to those required in domestic legislation. The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 are amended to ensure that the amendment made by regulation 2 of these Regulations continues to operate effectively after the withdrawal of the United Kingdom from the European Union.

5. Consultation

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

6. Guidance

- 6.1** There is no associated guidance in respect of this Statutory Instrument.

7. Regulatory Impact Assessment (RIA)

- 7.1** The impact on business, charities or voluntary bodies is minimal.

8. Monitoring & review

- 8.1** As this instrument is made under the Withdrawal Act, no extra review arrangement is required.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

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

Statement	Where the requirement sits	To whom it applies	What it requires
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
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	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.

		committed to make the same statement when exercising powers in Schedule 2	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 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. 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	A statement to explain why it is appropriate to create such a sub-delegated power.

		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. 1. Sifting 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 Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”. This is the case because the changes being made are technical in nature and make no substantive changes to how the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 and The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 operate.

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 Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate”. This is the case because all the changes being made under the 2018 Act powers are solely in order to address deficiencies arising from EU exit.”

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 instrument, and I have concluded they are a reasonable course of action”. This is because the provisions made under the 2018 Act powers ensure that protections provided by the statutory instrument being amended continue to be operable after the UK leaves the European Union.”

4. Equalities

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

“The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 do 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, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

Little or no impact on equalities is expected.

5. Explanations

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

6. Criminal offences

Not applicable / required.

7. Legislative sub-delegation

Not applicable / required.

8. Urgency

Not applicable / required.

Statutory Instruments with Clear Reports

16 September 2019

SL(5)432 – Code of Practice for the Welfare of Cats

Procedure: Negative

A person who is responsible for an animal has a duty under the Animal Welfare Act 2006 (“the 2006 Act”) to take reasonable steps to ensure its welfare needs are met. The existing Code of Practice was issued in 2008, under the 2006 Act. An update is required to reflect the most recent science, legislation and standards in animal welfare in order to avoid animals being put at risk of harm.

The guidance in this Code explains what needs to be done by those responsible for a cat and covers the need for a suitable environment; a suitable diet; normal behaviour patterns; housing needs (particularly in relation to other animals) and health and welfare needs. The guidance contains signposts to further information and recommends veterinary surgeons as a primary source of advice on the animal’s health and welfare.

The Code should be used by those responsible for a cat. If proceedings are brought under the 2006 Act for a welfare offence the court may take into account the extent to which someone has complied with the guidance in the Code in deciding whether an offence has been committed.

The current maximum sentence for certain animal welfare offences under the 2006 Act is 51 weeks imprisonment and/or a fine. The Animal Welfare (Sentencing) Bill is currently awaiting committee stage in the House of Commons, if passed it will allow these offences to be tried either way and will increase the maximum penalty to a fine and/or 12 months imprisonment if tried summarily, and a fine and/or 5 years imprisonment if tried on indictment. The wording in the Code will be updated to reflect any changes.



Procedure: Negative

The Code of Practice is issued under section 14 of the 2006 Act, which allows the National Assembly for Wales to publish practical guidance in respect of any provision under the Act. The power to publish guidance was transferred from the Assembly to Welsh Ministers by paragraph 30 of Schedule 11 of the 2006 Act. Section 16 requires that a draft of the Code is published, consulted on, and any consultation responses are considered. These steps have been taken.

There is a transitional provision in paragraph 34 of Schedule 11 of the 2006 Act that states where there is a corresponding function exercisable by a Minister of the Crown, the relevant Parliamentary procedure applies to any function conferred on Welsh Ministers. The Minister of the Crown must use the negative procedure, set out by section 15 of the 2006 Act, and so the Code is being laid using the negative resolution procedure; the Assembly may resolve that the Code be annulled not later than 40 days after it is laid.

Parent Act: Animal Welfare Act 2006

Date Made:

Date Laid: 12 July 2019

Coming into force date:



Statutory Instruments with Clear Reports

16 September 2019

SL(5)436 – The Renting Homes (Fees etc.) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019

Procedure: Negative

The Renting Homes (Fees etc) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019 (“Regulations”) deal with the application of the Renting Homes (Fees etc.) (Wales) Act 2019 (“the 2019 Act”) to assured shorthold tenancies.

The Act prohibits a landlord, letting agent or any other person from requiring a prohibited payment to the landlord, letting agent or any other person:

- a) in consideration of the grant, renewal, or continuance of a standard occupation contract; or
- b) pursuant to a term of a standard occupation contract which purports to require the payment to be made.

The Regulations apply Parts 1 to 5 and 7 of the 2019 Act (which set out an overview of the 2019 Act and go on to deal with the prohibition of certain payments; treatment of holding deposits; enforcement; recovery of prohibited payments and ancillary provisions) to assured shorthold tenancies under the Housing Act 1988 (“the 1988 Act”). The Regulations also restrict landlords of a dwelling under a standard occupation contract from giving notice under section 21(1)(b) or (4)(a) of the 1988 Act (“a section 21 notice”) in relation to a dwelling where the landlord has required a prohibited payment which has been paid but not repaid. The Regulations similarly prevent a section 21 notice from being given where a holding deposit has not been repaid in relation to a standard occupation contract and such



failure to repay breaches the provisions of the 2019 Act.

Assured shorthold tenancies under the 1988 Act will be converted into occupation contracts by the Renting Homes (Wales) Act 2016 (“2016 Act”). However, the 2019 Act is to come into force on 1 September 2019, prior to the relevant provisions of the 2016 Act coming into force, therefore these transitional Regulations are required to ensure that the 2019 Act applies to assured shorthold tenancies when it comes into force.

Parent Act: Renting Homes (Fees etc.) (Wales) Act 2019

Date Made: 18 July 2019

Date Laid: 22 July 2019

Coming into force date: 01 September 2019



SL(5)434 – Education (School Day and School Year) (Wales) (Amendment) Regulations 2019

Background and Purpose

The Education (School Day and School Year) (Wales) (Amendment) Regulations 2019 ("these Regulations") are made in exercise of the powers conferred by sections 551 and 569(4) and (5) of the Education Act 1996.

These Regulations make amendments to the Education (School Day and School Year) (Wales) Regulations 2003 ("the 2003 Regulations") to provide for up to two sessions in the third term of each of the 2019—2020, 2020—2021 and 2021—2022 school years to count as sessions on which the school met if they were devoted to the provision of training, or preparation and planning, in relation to prospective changes to the curriculum for Wales. These proposed changes arise from the Independent Review of Curriculum and Assessment Arrangements in Wales and the subsequent report "Successful Futures" (September 2015). These Regulations also omit redundant provisions in the 2003 Regulations.

Procedure

Negative.

Technical Scrutiny

One technical 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(2) of these Regulations refers to definitions in regulation 2 of the 2003 Regulations, and omits the definitions of "foundation stage" and "key stage". However, neither of these definitions are included in regulation 2 of the 2003 Regulations. Both do, however, appear in regulation 3 of the 2003 Regulations.

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

Government Response

The reporting point is noted and accepted. The Government will look to correct this point by way of correction slip.

Legal Advisers

Constitutional and Legislative Affairs Committee

August 2019



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

2019 No. 1131 (W. 196)

EDUCATION, WALES

**The Education (School Day and
School Year) (Wales) (Amendment)
Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Education (School Day and School Year) (Wales) Regulations 2003 (“the 2003 Regulations”) apply to schools maintained by local authorities and to special schools whether or not so maintained. They make provision, among other things, for a school day which is ordinarily to be divided into two sessions with a break in the middle, and for schools (other than nursery schools) to meet for at least 380 sessions during any school year.

These Regulations amend the 2003 Regulations to provide for up to two sessions in the third term of each of the 2019—2020, 2020—2021 and 2021—2022 school years to count as sessions on which the school met if they were devoted to the provision of training, or preparation and planning, in relation to prospective changes to the curriculum for Wales. These proposed changes arise from the Independent Review of Curriculum and Assessment Arrangements in Wales and the subsequent report “Successful Futures” (September 2015). They also amend regulations 3 and 4 of the 2003 Regulations by omitting redundant provisions.

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 Pupil Wellbeing Branch, the Support for Learners Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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

2019 No. 1131 (W. 196)

EDUCATION, WALES

**The Education (School Day and
School Year) (Wales) (Amendment)
Regulations 2019**

Made 16 July 2019

*Laid before the National Assembly for
Wales* 17 July 2019

Coming into force 1 September 2019

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 551 and 569(4) and (5) of the Education Act 1996⁽¹⁾, and now vested in them⁽²⁾, make the following Regulations:

Title and commencement

1. The title of these Regulations is the Education (School Day and School Year) (Wales) (Amendment) Regulations 2019 and they come into force on 1 September 2019.

Amendment of Regulations

2.—(1) The Education (School Day and School Year) (Wales) Regulations 2003⁽³⁾ are amended as follows.

(2) In regulation 2, omit the definitions of “foundation stage” and “key stage”.

-
- (1) 1996 c.56. Section 551(1A) was inserted by paragraph 39 of Schedule 7 to the Education Act 1997 (c. 44), and section 551(2) was amended by paragraph 166 of Schedule 30 and Schedule 31 to the School Standards and Framework Act 1998 (c. 31). For the meaning of “regulations” and “prescribed” see section 579(1).
- (2) The functions of the Secretary of State were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) and then to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).
- (3) S.I. 2003/3231 (W.311), as amended by S.I. 2006/1262 (W.119), S.I. 2008/1739 (W.171), S.I. 2011/149 (W.33) and S.I. 2012/248 (W.41).

(3) In regulation 4, omit paragraph (7).

(4) For regulation 5, substitute—

“**5.**—(1) This paragraph applies to any school session falling within the school years 2019—2020, 2020—2021 and 2021—2022 which is devoted (wholly or mainly) to the—

(a) provision of training (including training attended by both teaching and non-teaching staff and training conducted jointly with other schools), or

(b) preparation and planning for teachers in maintained schools,

in relation to the curriculum to be taught at the school as a result of the prospective changes to the curriculum for Wales.

(2) Paragraph (1) is to have effect in relation to no more than two school sessions in the third term of each school year.

(3) Where paragraph (1) applies, that session is to be regarded for the purposes of regulation 4 as a session on which the school has met.”.

Kirsty Williams

Minister for Education, one of the Welsh Ministers

16 July 2019

Explanatory Memorandum to the Education (School Day and School Year) (Wales) (Amendment) Regulations 2019

This Explanatory Memorandum has been prepared by the Education and Public 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 Education (School Day and School Year) (Wales) (Amendment) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Minister for Education
17 July 2019

PART 1

1. Description

These Regulations allow maintained schools to use one day (two school sessions) in each of the school years 2019/2020, 2020/2021 and 2021/2022 as an INSET day specifically aimed at preparing teaching professionals for the curriculum to be taught at the school as a result of the prospective changes to the curriculum for Wales..

The regulations also specify that the additional Professional Learning INSET days must take place annually, during the third term (i.e. summer term) in each of the school years 2019/2020, 2020/2021 and 2021/2022 .

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

None

3. Legislative background

The Education (School Day and School Year) (Wales) (Amendment) Regulations 2019 amend the Education (School Day and School Year) (Wales) Regulations 2003¹ ("the 2003 Regulations") which set out the minimum number of school sessions which must be held in each school year in maintained schools in Wales.

The Education (School Day and School Year) (Wales) (Amendment) Regulations 2019 will be made under sections 551 and 569(4) and (5) of the Education Act 1996. Those sections were transferred by the National Assembly for Wales (Transfer of Functions) Order 1999 and are now vested in the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

These Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

The 2003 Regulations set out the minimum number of half-day sessions for which maintained schools must meet within a school year. The minimum number is 380 sessions (190 days). As well as these 190 days, teachers work an additional 5 days when pupils do not attend school (usually referred to as INSET days). These existing 5 INSET days are part of teachers' pay and conditions and are included within the Working Time section of the statutory School Teachers' Pay and Conditions Document (STPCD) and are generally used for teacher training.

As outlined in Education in Wales: Our National Mission², the Welsh Government is working to develop transformational curriculum and assessment arrangements

¹ S.I. 2003/3231 (W. 311)

² <https://gov.wales/our-national-mission-0>

in Wales to enable young people to have higher standards of literacy and numeracy, become more digitally and bilingually competent, and evolve to enterprising, creative and critical thinkers. The new arrangements have equity and excellence at their core and help to develop confident, capable and caring citizens.

Welsh Government wants to specifically support teaching professionals to prepare for the proposed changes to the curriculum for Wales which arise from the Independent Review of Curriculum and Assessment Arrangements in Wales³. This also reflects a recommendation from the CYPE Committee report on Professional Learning, December 2017, “that the workforce be prepared for the forthcoming changes to the curriculum”. In addition, this has been an issue raised by the teaching unions, and leaders and practitioners across the system throughout the reform journey thus far.

A focus on Professional Learning will be critical to ensure readiness and engagement of all practitioners with the new curriculum. The National Approach to Professional Learning (NAPL) and the associated £24million investment is intended to create time within schools for professionals to develop and up-skill themselves and to work collaboratively within and across schools. The NAPL is a key driver of the objectives within Education in Wales - Our National Mission. Welsh Government is committed to developing a national approach to career-long Professional Learning which is embedded in evidence-based research and effective collaboration.

However, even with the introduction of the NAPL and the provision of this additional funding, there is a need to reinforce a system-wide universal engagement with preparation and awareness of the implications of the new curriculum. Welsh Government therefore intends to give practitioners this extra time in the form of Professional Learning INSET days.

To increase the number of INSET days these regulations amend the 2003 Regulations. This change would allow maintained schools to use one day (i.e. two school sessions) in each of the school years 2019/2020, 2020/2021 and 2021/2022 for the purpose of INSET, specifically aimed at preparing teaching professionals for the curriculum to be taught at the school as a result of the prospective changes to the curriculum for Wales. This would mean that schools would hold six INSET days per year, with the school being closed to pupils on the additional INSET day.

Alongside this, the legislation will also set out that the INSET day will take place during the summer term annually for three years. Holding the INSET days at a similar time, albeit with a degree of flexibility, will help create a national conversation and ensure all teachers are receiving the same messages, and none are left behind.

These Regulations also remove redundant provisions from the 2003 Regulations.

5. Consultation

An eight week public consultation on the policy approach took place between 5 March and 1 May 2019 and 899 responses were received. The consultation was drawn to the attention of a wide audience of key stakeholders including Headteachers, schools, Regional Consortia, Teacher Unions, Local Authorities, and Estyn. The consultation was also publicised on social media.

A summary of consultation responses document has been published on the Welsh Government website and is available here: <https://gov.wales/additional-national-professional-learning-inset-days-2019-2022>

The responses analysis shows a clear agreement, from over 90% of respondents, with our proposal to increase the number of INSET days for professional learning to support the introduction of the new curriculum. The additional INSET day is seen as necessary by practitioners and middle tier organisations because the proposed changes to the curriculum for Wales represents a complex and large-scale reform, and capacity building is needed for practitioners to be able to deliver the curriculum.

We also consulted on the proposal that the additional INSET time should take the form of national days, taking place on a specific date, and also whether mandatory content should be provided by the Welsh Government. As a result of responses we have amended the policy to state that the INSET days should take place in a particular term, the summer term, rather than a single day, reflecting practical feedback and also that a bank of digital, bilingual resources will be available, rather than mandatory training content being required.

Further information on the consultation is set out within the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

In order to achieve the policy objective of supporting practitioners to prepare for the new curriculum by giving them additional time, the following options were identified:

1. Business as usual – this would see INSET days remaining at five and practitioners continuing to prepare during currently available time
2. Taking a legislative approach by creating one additional INSET day per year for three years, to be taken from the 190 days allocated to pupils, for the purpose of professional learning to support the new curriculum

3. Taking a legislative approach by creating one or more additional National Professional learning INSET days per years, to take place on a set date and for more than three years.

As explained above, provision for the existing 5 inset days are part of teachers' pay and conditions and are included within the Working Time section of the statutory School Teachers' Pay and Conditions Document (STPCD). This requires full time teachers to be employed for 195 days per year - of which no more than 190 must be days teaching pupils. The other 5 have traditionally been inset days. Teachers are also required to work "such reasonable additional hours as may be necessary to enable the effective discharge of the teacher's professional duties", though these hours are determined by the teacher themselves.

Powers over the STPCD have recently been devolved and a new annual process has been established to consider both teachers' pay and conditions moving forward. This is currently underway with the first STPCD to be designated by Welsh Ministers due to come into force from 1 September 2019. This focusses on pay rather than conditions, such as INSET and so was not considered to be a vehicle to create additional INSET time. In addition these changes are specifically related to achieving our policy objectives of preparing for the new curriculum. They reflect a separate and specific policy response to the need to prepare, rather than consideration of wider terms and conditions. We also want to maintain clarity around this change and any other changes brought in under the auspices of the Independent Welsh Pay Review Body (IWPRB)

7. Costs and benefits

Option 1 – Business as usual - this would see INSET days remaining at five and practitioners continuing to prepare during currently available time

Costs

This is the baseline option and as such there are no additional financial costs associated with this option. Schools will remain open to pupils, and practitioners will need to identify alternative methods of working together as a whole school and collaboratively with partners.

However this option carries a high degree of risk, and opportunity cost, as if the additional time, which practitioners and Headteachers have been vocal that they need, is not given then we risk schools being unprepared for the implementation of the new curriculum from 2022. This would impact upon both the delivery of the new curriculum and consequently on the outcomes for children and young people who will not benefit fully from the new curriculum.

Benefits

The benefits of this approach would be that there would be no additional cost to parents as schools would retain their current five INSET days and that children

and young people would not lose a day's teaching. However, these benefits are very short term, and we believe the increase in the risk to the roll out of the curriculum offsets these benefits.

Option 2 - Taking a legislative approach by creating one additional INSET days per year for three years, to be taken from the 190 days of school time allocated to pupils

Costs

This option would not create additional costs for the education system in terms of school costs, teacher and teaching assistants pay, as it would take place on a day when schools would have been open to pupils.

We believe the main impact will be upon children and families, particularly those on lower incomes. Our decision to limit the additional INSET days to one is partly as a result of conducting the equality impact assessment, as in this way we can mitigate some of the impact. The impact on children as a group will be short term as there will be a collective missed day of school for children and young people, however in the long term this will enable the successful delivery of new curriculum, improving the standard and breadth of education they receive.

There will be a cost, although difficult to quantify, both in terms of time and money for working families, where either childcare or annual leave is used to cover the time for an additional INSET day. While some may be able to draw upon family member support for childcare we know that other parents will need to pay for this additional childcare. This will be for one additional day for three years, until 2022.

We are unable to estimate the cost of an additional INSET day to parents who need to use childcare for the day that the schools are closed. This is because we do not have reliable evidence on the number of parents who would seek paid for childcare in this instance, nor how much this is likely to cost.

Data on the cost of both registered and unregistered childcare, during both term time and holiday periods, is limited. The Welsh Government Review of the Childcare Sector in Wales (2018) gives a description of some of these limitations with different data sources (<https://gov.wales/sites/default/files/statistics-and-research/2018-12/180110-review-childcare-sector-en.pdf>). Furthermore, the information we do have on costs shows vast variation.

Section 11 of the Childcare Act 2006 places a duty on local authorities to undertake a Childcare Sufficiency Assessment (CSA). Providers are not obliged to share their rates with local authorities, but the CSAs show significant variation in costs between those that have done so. An assessment of local authority responses on costs of holiday provision shows that childcare prices in Wales vary from 65% to 139% of the national average (P.21 https://www.familyandchildcaretrust.org/sites/default/files/Holiday%20Childcare%20Survey%202018_Family%20and%20Childcare%20Trust.pdf).

This picture is further complicated given that evidence shows demand for paid for childcare varies significantly geographically, by child age, and parent employment status (see for instance, Welsh Government National Survey data which evidences variations). Furthermore, ad hoc formal childcare can be difficult to find and access. Inset days, by definition, are in term time and while they might precede or follow school holidays it is likely holiday clubs may not be open. As well as using holiday clubs, parents may also use activity clubs as de facto childcare, which further distorts data on formal childcare demand.

The impact on lower income families with both parents/carers working is harder to mitigate, but there are some actions which we can take to try to reduce the impact. Schools will be advised to consider carefully the timing of the day to minimise disruption to parents, for example adding on to a half term so annual leave can be usefully used.

In terms of the impact upon children, the proposal is intended to affect the lives of children positively; ensuring their teachers and those leading their schools are ready and confident to deliver the new curriculum. By providing dedicated INSET time which teachers and schools can use to prepare, children should have a better experience when the new curriculum comes on board in 2022. The future use and approach to INSET will also be considered during the evaluation of the policy, and so children in the long term should benefit from their teachers access to well planned and tailored professional learning.

In the short term if the proposal goes ahead children will miss three days schooling over three years. This may have a small negative impact on some children as they are missing out on a day of teaching, however as it will be a collective missed day there will not be the usual element of 'catching up' which follows an absence. It might appear that this would affect all children the same on the surface, as all will be unable to attend school for those sessions. However, children who are living in poverty or who are experiencing adverse childhood experiences at home may feel a bigger impact, for example missing out on the structure of the school day or on free school meals.

The drive to improve attendance over the past few years means that the impact on children of missing a days schooling at the general population level will not be as severe as it would have been had attendance levels been lower. Going above one day per year might mean this mitigation in terms of learning time does not hold. Statistics show the percentage of half day sessions missed were 6.7% and 9.0% for Primary and secondary in 2006/7, and that these had improved to 5.5% and 6.2% by 2017/18 (Available here – <https://statswales.gov.wales/v/F6w4>)

There will also be an administrative cost, to be borne by the Welsh Government, relating to the development of the bank of digital, bilingual resources. Any costs associated with developing specific materials for the INSET days would therefore be met from within the existing Welsh Government budgets.

As highlighted by the consultation responses there is a broad continuum of needs in schools, from those at the start of exploring curriculum reform to those schools

involved in the curriculum design process. The INSET resources we will develop need to accommodate this diversity and we therefore envisage a range of resources being developed. They are likely to be a combination of online tools, Interactive online content, and slide packs or short videos developed in conjunction with Regional Consortia and schools

There may be a level of savings to be made for the education system as support staff are not required (or usually paid) to attend INSET sessions in the same way as teachers. If schools do not extend these extra INSET days to Support Staff it effectively allows LAs to reduce the number of days their support staff are employed for, and thereby their costs. However we would, in line with the principles of the NAPL being for all staff in schools, encourage the inclusion of support staff in these additional INSET days. There may also be reductions in home to school travel costs, but only if the INSET day is known about and planned for by LAs.

The Minister will also be recommending to schools that 1 out of the 5 INSET days already allocated to schools under the school teacher statutory pay and conditions document also be used to prepare for the new curriculum, to be taken at a time to suit the school.

As set out in section 4, this would be in addition to the additional Professional Learning day provided for by the regulations. This approach reflects the feedback in the responses, that 78% of respondents felt that one additional day would not be sufficient. Welsh Government agree that more time will be needed but that this could come out of one of the pre-existing INSET days, reflecting the fact that those who felt that their schools used the INSET days wisely are already using them to work on their implementation of the new curriculum, and to minimise the cost on families and missed school days of pupils.

Benefits

Welsh Government wants to specifically support teaching professionals to prepare for the delivery of the new curriculum. Welsh Government believes a focus on Professional Learning will be critical to ensure readiness and engagement of all practitioners with the new curriculum. The National Approach to Professional Learning (NAPL) and the associated £24million investment is intended to create time within schools for professionals to develop and up-skill themselves and to work collaboratively within and across schools.

The NAPL is a key driver of the objectives within Education in Wales - Our National Mission. Welsh Government is committed to developing a national approach to career-long Professional Learning which is embedded in evidence-based research and effective collaboration.

The Welsh Government believes that in conjunction with the NAPL, one extra day per year, for the above three years, to specifically focus on professional learning to support the introduction of the new curriculum will provide the balance of extra support and time, with the amount of time pupils have in school. However, even with the introduction of the NAPL and the provision of this

additional funding, there is a need to reinforce a system-wide universal engagement with preparation and awareness of the implications of the new curriculum.

These three years represent the key period for engagement and preparation prior to delivery of the new curriculum being realised in schools with the publication of the draft curriculum in 2019, the final curriculum in 2020 with roll out statutory from 2022.

Option 3 - Taking a legislative approach by creating one or more additional National Professional learning INSET days per years, to take place on a set date and for more than three years.

Costs

Similarly to option 2, this option would not create additional costs for the education system in terms of school costs, teacher and teaching assistants pay, as it would take place on a day when schools would have been open to pupils.

Many of the same considerations as those set out above apply to this option, but to a greater extent. For example, while it would give practitioners more time, and was therefore seen as beneficial within the consultation, the cost to parents would multiply should more than one day be made available. This was shown within the impact assessments and in the light of this, and also the potential impact of a greater level of collective missed schooling, it was felt that this option could not be justified.

However, as set out above, the Minister will be suggesting to schools that they use, as a minimum, one of their existing five days for the purpose of preparing for the new curriculum, if they are not already.

Benefits

Similarly to above, this would support teaching professionals to prepare for the delivery of the new curriculum. This focus on Professional Learning will be critical to ensure readiness and engagement of all practitioners with the new curriculum.

Outcome

Having weighed the costs and benefits, and considered carefully the responses to the consultation, the option chosen was option 2; to use subordinate legislation to provide one additional INSET day per year for three years.

8. Consultation

We consulted from 5 March – 1 May on proposals for an additional National Professional Learning INSET day. We received 899 responses, these included responses from organisations in the middle tier such as the regional consortia,

Local Authorities, Estyn, EWC and the NAEL, as well as from Unions, teachers and parents.

The consultation proposed an additional INSET day for the next three academic years (2019/20, 2020/21 and 2021/22) as schools engage with the new curriculum prior to its formal roll out in schools (academic year 2022/23). The consultation asked seven policy questions (and two mandatory questions regarding the Welsh language) and included a space for further comments.

The consultation posed questions around the optimum number of additional INSET days, how long they should be available for, whether content should be provided and whether we should set a specific day on which the Inset should be held.

The consultation responses document contains a detailed analysis of the responses received and can be found on the Welsh Government website <https://gov.wales/additional-national-professional-learning-inset-days-2019-2022>

Summary of key themes

The general trend amongst responses was agreement that an additional INSET day is necessary, and preferably more than one in many cases. Alongside this, a variety of alternative delivery models were suggested including more than one additional INSET day each year, offering these days for at least three years (if not more to allow for implementation and evaluation), and various options in terms of suitable timing for the additional INSET days.

There was a tendency for respondents to emphasise that additional INSET days should be considered as part of a wider Professional Learning journey. Responding to new curriculum and assessment arrangements – as well as wider education reforms – was clearly identified as a task beyond the scope of one additional INSET day. Practitioners will need a comprehensive programme of Professional Learning and planning opportunities, which will necessitate changes to existing INSET days, PPA time, cluster working and regional support.

Respondents often expressed awareness of the scale of work required to adapt to a complex new curriculum and the capacity of practitioners to undertake such work. Respondents emphasised that practitioners' workloads are already heavy and curriculum reform (and other education reforms) represented an added burden. As such, respondents emphasised this fact should be at the forefront of decisions relating to Professional Learning.

Since the new curriculum places an emphasis on collaboration, respondents had a tendency to comment that additional INSET days will be necessary to allow practitioners to come together to co-design curriculum elements and share good practice. Cross-subject and cross-key stage working is recognised as a core principle behind the new curriculum. While some Professional Learning and planning can be undertaken during PPA periods or similar, practitioners will need

dedicated time together to develop their vision and curriculum, ensuring a cohesive approach to pedagogy and curriculum content across the school. Similarly, schools require dedicated days to work in collaboration and share good practice with other schools in their clusters.

Respondents noted the importance of taking into consideration the scope of education reform as a whole when making decisions relating to Professional Learning opportunities. Respondents expressed awareness that additional INSET days should be considered within the context of a range of educational reforms occurring over the next few years. Key changes to consider include changes to Professional Learning structures, teacher pay and conditions, self-evaluation approaches, new approaches to assessment and inspection and ALN reforms.

Respondents tended to emphasise that considered, consistent and effective implementation of the new curriculum will require dedicated time such as INSET days. Schools are starting their curriculum reform journeys from very different circumstances and sufficient Professional Learning time, planning time and support or guidance from middle tier organisations and unions is vital to do justice to the vision for education in Wales.

However, there is some awareness amongst respondents that a balance must be achieved between providing additional INSET days and avoiding a negative impact on working parents and/or learner outcomes. Respondents tended to comment that the impact of additional INSET days on parents must be mitigated and the number of days for which learners are out of the classroom should be limited.

Outcome of the consultation

Following analysis of the consultation, and the completion of an Integrated Impact Assessment, the Minister for Education approved the following:

1. Amend the Education (School Day and School Year) (Wales) Regulations 2003 to provide one additional INSET day per year for 3 years, until 2022, to focus specifically on Professional Learning to support the new curriculum.

The responses analysis shows a clear agreement, from over 90% of respondents, with our proposal to increase the number of INSET days for Professional Learning to support the introduction of the new curriculum.

The additional INSET day is seen as necessary by practitioners, Unions and middle tier organisations such as Local Authorities, Regional Consortia, Estyn, Education Workforce Council and the National Academy for Educational Leadership. This reflects complex and large-scale reform, and capacity building which is needed for practitioners to be able to deliver the curriculum.

Many respondents called for more than one additional INSET, and for a longer period than the three years proposed. We are not proposing to amend the

regulations to longer than three years because in that time the wider context of the NAPL will be developing, we will be continuing to gather evidence and undertake research into the use of INSET and to monitor changes within the wider system that may have an impact on our approach. All of the factors have the potential to lead to further developments or changes in the future.

2. Amend the regulations to specify that the additional Professional Learning INSET days should take place annually, during the summer term

The consultation responses showed that two thirds of respondents agreed that having either a specified date or period would be beneficial, but many responses emphasised that there were practical issues with having a specified date. These included the challenge of accessing the experiences of colleagues from pioneer schools and others within their clusters. One third of respondents felt that when the INSET took place should be for the school to decide to allow for pre-planned training and school autonomy.

We are therefore proposing that the INSET day will take place within a specified period rather than being held on a specific day. Holding the INSET days at a similar time, albeit with a degree of flexibility, will help create a national conversation and ensure all teachers are receiving the same messages, and none are left behind

We are proposing that the summer term would be an appropriate time to hold the INSET days. For the first year, the summer term would allow us time to secure resources, and in the second year this will allow us time to evaluate the impact, making any changes necessary. We will recommend that to reduce the impact on families that generally schools should consider carefully the timing of the day and that all INSET days should be publicised well in advance.

3. A recommendation to schools that out of the original five INSET days already allocated to schools, a minimum of a further one day should also be used to prepare for the new curriculum, this to be taken at a time to suit the school.

This approach reflects the feedback in the responses, where 78% of respondents felt that one additional day would not be sufficient. Welsh Government agree that more time will be needed but that this could come out of one of the pre-existing INSET days, reflecting the fact that those who felt that their schools used the INSET days well are already using them to work on their implementation of the new curriculum.

We cannot fully justify more than one additional INSET day per year given the additional financial burden this would place on some parents, often those who can afford it least. There is also the tension between our approach to prioritising children's attendance and providing less available school days overall.

Instead, we recommend to all schools that they use another of their pre-existing INSET days as an approach to support their readiness for the new curriculum.

To support this, a bank of resources would be available for schools to use to support them on these days (see below).

4. The development of a bank of resources which can be used to guide INSET sessions.

The consultation asked for thoughts on whether WG should mandate the content of the material for the INSET days. The responses to this question were divided with 37% feeling that we should not, and 38% that we should, with the rest undecided.

Many felt that the choice should be made by schools, and that our approach to these additional INSET days should reflect the ethos of the new curriculum by providing practitioners with greater agency. We agree that flexibility will be essential, but that clearly there are some schools for whom a steer would be useful.

The use of the word 'mandatory' in the text of the consultation may have implied we planned to be very prescriptive in regard to the content to be offered to schools. What we propose however is, that a bank, or framework, of resources should be created which schools will be able to choose from, depending where they are on their own individual curriculum journey. A bank of online, bilingual resources should enable enough differentiation for schools and enable them to pick and choose the specifics in regard to the new curriculum that they need to cover on the INSET days.

We propose to secure these resources over the next nine months so that they are ready for schools to use them by Summer 2020.

The use of INSET, and their effectiveness, will be the subject of a piece of research work to be undertaken by University of South Wales. This learning will feed into the resources to be developed as well as wider thinking on the use and purpose of INSET.

9. Competition Assessment

Not applicable

10. Post implementation review

This is a short term legislative change, for 2019-2022 and so a review will take place at the end of the three years. However the effectiveness of the INSET day themselves will be evaluated following the first year, to ensure it is adding value.

Agenda Item 7.2

SI(5)435 – The Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019

Background and Purpose

This Order amends the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) to introduce emergency measures to prevent—

- (a) the introduction of *Thaumetopoea processionea* L. (the Oak Processionary Moth (“OPM”)) into Wales which is recognised as a protected zone for this harmful plant pest (“the protected area”); and
- (b) the spread of this harmful plant pest within the protected area.

The Order amends the technical requirements that must be satisfied when bringing in certain plants of *Quercus* L., intended for planting, into the protected area or when moving those plants within the protected area.

Procedure

Negative.

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(ii) in respect of this instrument.

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

1. The 21 day rule under the Statutory Instruments Act provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can occur if legislation is annulled after it has been implemented. However, in this case, the Welsh Government considers that the circumstances justify a breach of that rule.

The Explanatory Memorandum (EM) explains the reason for the breach of the 21 day rule at page 2:

“...To ensure continued enforceability with the rest of the UK it has become necessary to breach the 21 day rule. Scotland laid their equivalent Statutory Instrument on the 15th July and it came into force on the 16th of July. England laid their Statutory Instrument on the 15th July which came into force on the same day.

Currently imports of oak trees from regions where this pest is present are allowed under certain surveillance and regulations, however, findings in the wider environment in England and Wales have proved that these regulations are not sufficient and as a result a number of OPM findings have been reported outside of London across England and Wales. It is therefore necessary to immediately stop all potentially infested imports of Oak trees as soon as possible to reduce the potential spread of OPM throughout the UK...”



The EM further states at page 3 that:

*"...The Order implements measures which strengthen import and movement requirements for oak trees, to minimise the risk of further incursions of *Thaumetopoea processionea* (oak processionary moth (OPM)).*

It is necessary for the Minister to breach the 21 day laying rule due to the urgency needed to bring Welsh Government legislation in line with the rest of Great Britain. If not Wales will be a loophole in Plant trade and could still allow the importation of potentially infested material.

The earliest the Moths have been recorded flying in the UK is from 24 July and we need the ability to restrict potential plant trade pathways to minimise the spread and impact of this pest in Wales..."

The Minister for Finance and Trefnydd has, as required by section 11A of the Statutory Instruments Act 1946, notified the Presiding Officer of the breach, by way of a letter dated 19 July 2019.

2. The letter notifying the Presiding Officer of the breach of the 21 day rule on the one hand, and the Explanatory Notes and Explanatory Memorandum accompanying the Regulations on the other, provide different reasoning as to why a Regulatory Impact Assessment (RIA) has not been undertaken. The letter states as follows:

"...No Regulatory Impact Assessment or Consultation has been undertaken due to the urgency of implementing the Statutory Instrument. However, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations in Table Office..."

However, the Explanatory Notes to the Regulations state that *"an impact assessment has not been produced for the instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen"*. Likewise, the Explanatory Memorandum states at page 4 that *"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"*.

As such, it is unclear exactly why an RIA was not undertaken on this occasion, as the reasoning provided is contradictory.

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 in respect of the second reporting point regarding the reasoning for not undertaking an RIA.

Legal Advisers

Constitutional and Legislative Affairs Committee

11 September 2019



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

2019 No. 1153 (W. 202)

PLANT HEALTH, WALES

**The Plant Health (Forestry)
(Amendment No. 2) (Wales) Order
2019**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) to introduce emergency measures to prevent—

- (a) the introduction of *Thaumetopoea processionea* L. (the Oak Processionary Moth) into Wales which is recognised as a protected zone for this harmful plant pest (“the protected area”); and
- (b) the spread of this harmful plant pest within the protected area.

It amends the technical requirements that must be satisfied when bringing in certain plants of *Quercus* L., intended for planting, into the protected area or when moving those plants within the protected area.

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

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

2019 No. 1153 (W. 202)

PLANT HEALTH, WALES

**The Plant Health (Forestry)
(Amendment No. 2) (Wales) Order
2019**

Made 18 July 2019

Laid before the National Assembly for Wales
19 July 2019

Coming into force 19 July 2019

The Welsh Ministers, in exercise of the powers conferred by sections 2(1) and 3(1) of the Plant Health Act 1967⁽¹⁾ make the following Order.

Title, commencement and application

1.—(1) This title of this Order is the Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019 and it comes into force on 19 July 2019.

(2) This order applies in relation to Wales.

Amendment of the Plant Health (Forestry) Order 2005

2. In the table in Part C of Schedule 4 to the Plant Health (Forestry) Order 2005⁽²⁾, in item 7E, in the entry in the third column;

-
- (1) 1967 c.8. The powers conferred by sections 2(1) and 3(1) are conferred on a "competent authority" which is defined in section 1(2) for Wales, as the Welsh Ministers. Section 1(2) was amended by paragraph 43 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)). Section 2 was amended by paragraph 8(2)(a) of Schedule 4 to the European Communities Act 1972 (c. 68), Part 1 of the table in paragraph 12 of Schedule 4 to the Customs and Excise Management Act 1979 (c. 2) and S.I. 1990/2371 and 2011/1043. Sections 2(1) and 3(1) were amended by paragraph 8 of Schedule 4 to the European Communities Act 1972 (c. 68). Section 3(1) was also amended by S.I. 2011/1043, article 6.
- (2) S.I. 2005/2517

(1) at the end of paragraph (a) after the semi colon insert “or”;

(2) at the end of paragraph (b) after the semi colon insert “or”;

(3) omit paragraph (c).

Lesley Griffiths

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

18 July 2019

Explanatory Memorandum for subordinate legislation

Explanatory Memorandum to the Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government 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 Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

19 July 2019

PART 1

1. Description

This instrument amends the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) ('the principal Order') which contains measures to prevent the introduction and spread of harmful tree pests and diseases.

It implements EU plant health legislation including Commission Decision 2002/757/EC, Commission Implementing Decisions 2014/690/EU, 2015/789/EU, 2015/893/EU, 2012/535/EU and 2015/2416/EU.

It implements Commission Implementing Directive 2017/1279, Commission Implementing Decision (EU) 2017/204, and Decision No 1/2015 of the Joint Committee on Agriculture relating to the agreement between the European Community and the Swiss Confederation on trade in agricultural products (2017/169/EU).

Furthermore, it implements the specific control measures to minimise the risk of further incursions of *Thaumetopoea processionea* (oak processionary moth (OPM)).

This Order is necessary to ensure consistent plant health requirements within Great Britain and to maintain consistent biosecurity measures and additionally to ensure that European measures are implemented in order to update the lists of tree pests and infected material and to permit Welsh Ministers to apply the associated restrictions/prohibitions/ treatments.

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

To ensure continued enforceability with the rest of the UK it has become necessary to breach the 21 day rule. Scotland laid their equivalent Statutory Instrument on the 15th July and it came into force on the 16th of July. England laid their Statutory Instrument on the 15th July which came into force on the same day.

Currently imports of oak trees from regions where this pest is present are allowed under certain surveillance and regulations, however, findings in the wider environment in England and Wales have proved that these regulations are not sufficient and as a result a number of OPM findings have been reported outside of London across England and Wales. It is therefore necessary to immediately stop all potentially infested imports of Oak trees as soon as possible to reduce the potential spread of OPM throughout the UK.

3. Legislative background

The Plant Health (Forestry) (Amendment) (Wales) Order 2019 is being made pursuant to the powers in the Plant Health Act 1967. Section 1 of the Plant Health Act 1967 provides that the Act has effect for the control of pests and diseases injurious to agricultural or horticultural crops and trees or bushes.

Section 2(1) of the 1967 Act provides that a competent authority may from time to time make such orders as it thinks expedient or called for by an EU obligation for preventing the introduction of pests into Great Britain. Section 3(1) provides a corresponding power in relation to the control of the spread of pests in Great Britain. The competent authority as regards the protection of forest trees and timber and for all other plants and plant material is, in relation to Wales, the Welsh Ministers.

Section 6 of the Plant Health Act 1967 provides that this instrument is subject to the negative procedure.

Equivalent legislative amendments have already been made in relation to England and Scotland.

4. Purpose and intended effect of the legislation

The purpose of the Plant Health (Forestry) Order 2005 (“the 2005 Order”) is to prevent the introduction and spread of harmful plant pests and diseases. The 2005 Order has previously been amended on numerous occasions in order to implement EU law in this area, most recently in Wales by the Plant Health (Forestry) (Amendment) (Wales) Order 2019. The 2005 Order now requires a further amendment in Wales reduce the risk of importing Oak trees infested with OPM.

This instrument aligns the law relating to plant health forestry in Wales with provisions in relation to England and Scotland.

The Order implements measures which strengthen import and movement requirements for oak trees, to minimise the risk of further incursions of *Thaumetopoea processionea* (oak processionary moth (OPM)).

It is necessary for the Minister to breach the 21 day laying rule due to the urgency needed to bring Welsh Government legislation in line with the rest of Great Britain. If not Wales will be a loophole in Plant trade and could still allow the importation of potentially infested material.

The earliest the Moths have been recorded flying in the UK is from 24 July and we need the ability to restrict potential plant trade pathways to minimise the spread and impact of this pest in Wales.

5. Consultation

No consultation was required. The changes implement EU legislation the detail of which had already been subject to negotiations with the Commission and other Member States.

6. Regulatory Impact Assessment (RIA)

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.

With regard to the Government of Wales Act 2006 this legislation has no impact on the statutory duties (sections 77-79) or statutory partners (sections 72-75).



Elin Jones AM
Llywydd
National Assembly for Wales

19 July 2019

Dear Elin,

PLANT HEALTH (FORESTRY) (AMENDMENT NO. 2) (WALES) ORDER 2019

In accordance with guidance I am notifying you that section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, which affords the rule that statutory instruments come into force at least 21 days from the date of laying, will be breached for the introduction of the above amending The Plant Health (Forestry) Order 2005. The Explanatory Memorandum is attached for your information.

The Statutory Instrument will allow greater control over the import of potentially high risk oak trees from countries where Oak Processionary Moth (OPM) is widespread. To ensure continued enforceability with the rest of the UK it has become necessary to breach the 21 day rule. Currently imports of oak trees from regions where this pest is present are allowed under certain surveillance and regulations, however, findings in the wider environment in England and Wales have proved that these regulations are not sufficient and as a result a number of OPM findings have been reported outside of London across England and Wales.

Scotland laid their equivalent Statutory Instrument on the 15th July and it came into force on the 16th of July. England laid their Statutory Instrument on the 15th July which came into force on the same day.

No Regulatory Impact Assessment or Consultation has been undertaken due to the urgency of implementing the Statutory Instrument. However, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations in Table Office.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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

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

A copy of this letter goes to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,

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

Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)437 – The Hazardous Waste (Wales) (Amendment) Regulations 2019

Procedure

These Regulations amend the Hazardous Waste (Wales) Regulations 2005 ("the 2005 Regulations") in order to supplement Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants.

Regulation (EU) 2019/1021 replaces and repeals Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants.

Regulation 2 substitutes a new Schedule 8 to the 2005 Regulations in order to update references to Regulation (EU) 2019/1021.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

The Explanatory Memorandum to these Regulations states:

"The Hazardous Waste (Wales) (Amendment) Regulations 2019 are made under the European Communities Act 1972 (ECA) section 2(2) enabling power. Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. As these amendments are technical in nature and involve updating references to EU legislation and the discretion of the Welsh Ministers is limited over the content of the SI, the instrument is suitable for negative procedure."

Implications arising from exiting the European Union

Persistent Organic Pollutants (POPs) are substances identified as being toxic, persistent, bio-accumulative and long ranging. The EU Regulation implements the Stockholm Convention on POPs, which aim to eliminate or restrict the production and use of these substances. The UK will remain a party to this international Convention following EU exit.

Government Response

A government response is not required.



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

2019 No. 1165 (W. 203)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Hazardous Waste (Wales)
(Amendment) Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W. 138)) (“the 2005 Regulations”) in order to supplement Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) (OJ No. L 169, 25.6.2019, p. 45).

Regulation (EU) 2019/1021 replaces and repeals Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants (OJ No. L 158, 30.4.2004, p. 7).

Regulation 2 substitutes a new Schedule 8 to the 2005 Regulations in order to update references to Regulation (EU) 2019/1021.

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. 1165 (W. 203)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Hazardous Waste (Wales)
(Amendment) Regulations 2019**

Made 19 July 2019

*Laid before the National Assembly for
Wales* 24 July 2019

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

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽¹⁾ (“the ECA 1972”).

The Welsh Ministers are designated⁽²⁾ for the purposes of section 2(2) of the ECA 1972 in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste⁽³⁾ and the prevention, reduction and management of waste⁽⁴⁾.

(1) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7); paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 and by S.I. 2007/1388.

(2) By virtue of section 59(2) of the Government of Wales Act 2006 (c. 32) (“GOWA 2006”) the Welsh Ministers may exercise the power conferred by section 2(2) of the European Communities Act 1972 (“the ECA 1972”) in relation to any matter, or for any purpose, if they have been designated in relation to that matter or for that purpose. Paragraph 28(1) of Schedule 11 to GOWA 2006 provides that designations made under section 2(2) of the ECA 1972 by virtue of section 29(1) of the Government of Wales Act 1998 (c. 38) which are in force immediately before the commencement of the repeal of that subsection by GOWA 2006 continue to have effect after the commencement of that repeal as if made by virtue of section 59(1) of GOWA 2006.

(3) S.I. 2005/850.

(4) S.I. 2010/1552.

These Regulations make provision for a purpose mentioned in section 2(2) of the ECA 1972, and it appears to the Welsh Ministers that it is expedient for references to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast)⁽¹⁾ to be construed as references to that Regulation as amended from time to time.

Title and commencement

1.—(1) The title of these Regulations is the Hazardous Waste (Wales) (Amendment) Regulations 2019.

(2) These Regulations come into force 21 days after the day on which they are laid.

Amendment to the Hazardous Waste (Wales) Regulations 2005

2. For Schedule 8 (form of consignee's return to producer or holder/ffurf ateb y traddodai i'r cynhyrchydd neu'r deiliad) to the Hazardous Waste (Wales) Regulations 2005⁽²⁾, substitute the new Schedule 8 set out in the Schedule to these Regulations.

Hannah Blythyn

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

19 July 2019

⁽¹⁾ OJ No. L 169, 25.6.2019, p. 45.

⁽²⁾ S.I. 2005/1806 (W. 138), amended by S.I. 2015/1417 (W. 141).
There are other amending instruments but none is relevant.

SCHEDULE/ATODLEN Regulation/Rheoliad 2

“SCHEDULE 8/ATODLEN 8

Regulation/Rheoliad 54

Form of consignee’s return to producer or holder/Ffurf ateb y traddodai i’r cynhyrchydd neu’r deiliad

Hazardous waste producer returns form

Ffurflen atebion cynhyrchydd gwastraff peryglus

1. Consignee details/Manylion y traddodai

Name of consignee/ Enw’r traddodai	Postcode/ Cod Post	Consignee hazardous waste i.d. code Cod adnabod gwastraff peryglus y traddodai	Date/Dyddiad ⁽¹⁾

2. Waste return/ Atebion ynglŷn â gwastraff

Consignment note number Rhif nodyn traddodi	Date received Dyddiad dod i law	Mode of transport Cyfrwng cludo	Frequency of collection Amllder casglu(2)	Six digit code(s)) Cod(a u) chwe digid(3)	Hazard code(s) Cod(au) perygl(4)	Physical form Ffurf ffisegol(5)	Quantity (kg) Maint (kg)	Mode of disposal/ recovery Dull gwaredu/adfer(6)

⁽¹⁾Date of submission of the return by the consignee/ Dyddiad cyflwyno’r ateb gan y traddodai.

⁽²⁾Where relevant/ Pan fo’n berthnasol.

⁽³⁾The six digit code(s) must correspond to the relevant code in the list of wastes. There may be more than one waste stream for each consignment note. All relevant six digit codes must be recorded/ Rhaid i’r cod(au) chwe digid gyfateb i’r cod perthnasol yn y rhestr o wastraffoedd. Gall fod mwy nag un ffrwd wastraff ar gyfer pob nodyn traddodi. Rhaid cofnodi pob cod chwe digid perthnasol.

⁽⁴⁾Hazard code: the hazard code must correspond to the list below. Each individual six digit code may have more than one hazard code. Each appropriate hazard code for a particular six digit code must be entered. Choose all of the appropriate hazard codes for the particular waste. If a waste contains a substance listed in Annex IV to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast), and the concentration limit in that Annex is exceeded, the code “POP” must be recorded/ Cod perygl: rhaid i’r cod perygl gyfateb i’r rhestr isod. Gall pob cod chwe digid unigol gwmpasu mwy nag un cod perygl. Rhaid cofnodi pob cod perygl priodol ar gyfer unrhyw god chwe digid. Dewiswch bob un o’r codau perygl priodol ar gyfer gwastraff penodol. Os yw gwastraff yn cynnwys sylwedd a restrir yn Atodiad IV i Reoliad (EU) 2019/1021 Senedd Ewrop a’r Cyngor ar lygryddion organig parhaus (ail-lunio), a’r crynodiad yn uwch na’r terfyn uchaf yn yr Atodiad hwnnw, rhaid cofnodi’r cod “POP”.

Hazard code/ Cod perygl	Description/ Disgrifiad
HP 1	Explosive/ Ffrwydrol
HP 2	Oxidising/ Ocsideiddiol
HP 3	Flammable/ Fflamadwy
HP 4	Irritant – skin irritation and eye damage/ Llidiog – yn achosi lliid ar y croen a niwedd i’r llygad
HP 5	Specific Target Organ Toxicity (STOT)/ Aspiration Toxicity/ Gwenwyndra sy’n Targed Organ Benodol (STOT)/ Gwenwyndra Anadlol
HP 6	Acute Toxicity/ Gwenwyndra Aciwt
HP 7	Carcinogenic/ Carsinogenig
HP 8	Corrosive/ Cyrydol
HP 9	Infectious/ Heintus
HP 10	Toxic for reproduction/ Gwenwynig ar gyfer atgennedlu

HP 11	Mutagenic/ Mwtagenig
HP 12	Release of an acute toxic gas/ Rhyddhau nwy gwenwynig aciwt
HP 13	Sensitising/ Sensiteiddiol
HP 14	Ecotoxic/ Ecowenwynig
HP 15	Waste capable of exhibiting a hazardous property listed above not directly displayed by the original waste/ Gwastraff a allai amlygu priodwedd beryglus a restrir uchod, nas amlygwyd yn uniongyrchol gan y gwastraff gwreiddiol
POP	Persistent Organic Pollutant/ Llygrydd Organig Parhaus

⁽⁵⁾Physical form: Choose one option from the following list as appropriate.

Ffur ffisegol: Dewiswch un opsiwn fel y bo'n briodol o'r rhestr ganlynol.

Gas/ Nwy
Liquid/ Hylif
Mixed/ Cymysgedd
Powder/ Powdr
Sludge/ Slwtsh
Solid/ Solid

⁽⁶⁾ Mode of disposal/recovery or rejected: use the appropriate Dxx/Rxx code for the operation performed on the waste or insert REJ if the waste has been rejected.

Dull gwaredu/ adfer, neu gwrthodwyd: defnyddier y cod Dxx/Rxx priodol ar gyfer y gweithrediad a gyflawnwyd ar y gwastraff, neu mewnosoder REJ os gwrthodwyd y gwastraff.

Code/ Cod	Disposal operation/ Gweithrediad gwaredu
D01	Deposit into or onto land/ Dyddodi yn y tir neu arno
D02	Land treatment/ Trin tir
D03	Deep injection/Chwistrellu'n ddwfn
D04	Surface impoundment/ Cronni ar yr wyneb
D05	Specially engineered landfill/ Tirlenwi a beiriannwyd yn benodol
D06	Release into a water body except seas/oceans/ Rhyddhau mewn corff dŵr ac eithrio moroedd/cefnforoedd
D07	Release into seas/oceans including seabed insertion/ Rhyddhau mewn moroedd/cefnforoedd gan gynnwys mewnosod yng ngwely'r môr
D08	Biological treatment not specified elsewhere which results in final compounds or mixtures which are disposed of by any of the operations numbered D01 to D12 Triniaeth fiolegol, nas pennir yn unman arall, sy'n creu cyfansoddion neu gymysgeddau terfynol a waredir drwy ddefnyddio unrhyw rai o'r gweithrediadau a rifwyd D01 i D12
D09	Physic-chemical treatment not specified elsewhere which results in final compounds or mixtures which are disposed of by any of the operations numbers D01 to D12 Triniaeth ffisegol-gemegol, nas pennir yn unman arall, sy'n creu cyfansoddion neu gymysgeddau terfynol a waredir gan ddefnyddio unrhyw rai o'r gweithrediadau a rifwyd D01 i D12
D10	Incineration on land/ Hyllogi ar y tir
D11	Incineration at sea/ Hyllogi ar y môr
D12	Permanent storage/ Storio'n barhaol
D13	Blending or mixing prior to submission to any of the operations numbered D01 to D12 Blendio neu gymysgu cyn cyflawni unrhyw rai o'r gweithrediadau a rifwyd D01 i D12
D14	Repackaging prior to submission to any of the operations numbered D01 to D12/ Ailbecynnu cyn cyflawni unrhyw rai o'r gweithrediadau a rifwyd D01 i D12
D15	Storage pending any of the operations numbered D01 to D14 (excluding temporary storage, pending collection, on the site where it is produced) Storio tra'n aros i gyflawni unrhyw rai o'r gweithrediadau a rifwyd D01 i D14 (ac eithrio storio dros dro, tra'n aros am ei gasglu o'r safle lle'i cynhyrchir)
	Recovery operation/ Gweithrediad adfer
R01	Use principally as a fuel or other means to generate energy/ Defnyddio'n bennaf fel tanwydd neu ar gyfer dull arall o gynhyrchu ynni
R02	Solvent reclamation/regeneration/ Adennill/atgynhyrchu toddyddion
R03	Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes)/ Ailgylchu/adennill sylweddau anorganig nas defnyddir fel toddyddion (gan gynnwys compostio a phrosesau trawsnewid biolegol eraill)
R04	Recycling/reclamation of metals and metal compounds/ Ailgylchu/adennill metelau a chyfansoddion metelau
R05	Recycling/reclamation of other inorganic materials/ Ailgylchu/adennill deunyddiau anorganig eraill
R06	Regeneration of acids or bases/ Atgynhyrchu asidau neu fasau
R07	Recovery of components used for pollution abatement/ Adfer cydrannau a ddefnyddir ar gyfer atal llygredd
R08	Recovery of components from catalysts/ Adfer cydrannau o gatalyddion
R09	Oil refining or other re-uses of oil/ Puro olew, neu ddulliau eraill o aildefnyddio olew
R10	Land treatment resulting in benefit to agriculture or ecological treatment/ Trin tir mewn ffordd sy'n llesol i amaethyddiaeth, neu driniaeth ecolegol
R11	Use of wastes obtained from any of the operations numbered R01 to R10/ Defnyddio gwastraffoedd a geir o unrhyw rai o'r gweithrediadau a rifwyd R01 i R10
R12	Exchange of wastes for submission to any of the operations numbered R01 to R11/ Cyfnewid gwastraffoedd er mwyn cyflawni arnynt unrhyw rai o'r gweithrediadau a rifwyd R01 i R11
R13	Storage of wastes pending any of the operations numbered R01 to R12 (excluding temporary storage, pending collection, on the site where it is produced)/ Storio gwastraffoedd tra'n aros i gyflawni unrhyw rai o'r gweithrediadau a rifwyd R01 i R12 (ac eithrio storio dros dro, tra'n aros am eu casglu o'r safle lle'u cynhyrchir)

Explanatory Memorandum to The Hazardous Waste (Wales) (Amendment) Regulations 2019

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

Deputy Minister's Declaration

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

HANNAH BLYTHYN AM

DEPUTY MINISTER FOR HOUSING AND LOCAL GOVERNMENT

24 JULY 2019

PART 1

1. Description

The EU Regulation on Persistent Organic Pollutants (POPs) (recast) (Regulation EU 2019/1021 of the European Parliament and of the Council) was published in the Official Journal of the European Union on 25 June 2019 and will come into force on 15 July 2019. Regulation 2019/1021 repeals and replaces Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (Regulation 850/2004). This instrument amends Wales-only legislation that includes references to Regulation 850/2004, by substituting a reference to Regulation 2019/1021.

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

The Hazardous Waste (Wales) (Amendment) Regulations 2019 are made under the European Communities Act 1972 (ECA) section 2(2) enabling power. Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. As these amendments are technical in nature and involve updating references to EU legislation and the discretion of the Welsh Ministers is limited over the content of the SI, the instrument is suitable for negative procedure.

3. Legislative background

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 ("the ECA 1972"). The Welsh Ministers are designated for the purposes of section 2(2) of the ECA 1972 in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste and the prevention, reduction and management of waste.

These Regulations make provision for a purpose mentioned in section 2(2) of the ECA 1972, and it appears to the Welsh Ministers that it is expedient for references to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) to be construed as references to that Regulation as amended from time to time.

4. Purpose and intended effect of the legislation

Persistent Organic Pollutants (POPs) are substances identified as being toxic, persistent, bio-accumulative and long ranging. The EU Regulation implements the Stockholm Convention on POPs, which aim to eliminate or restrict the

production and use of these substances. The UK will remain a party to this international Convention following EU exit.

EU Regulation 850/2004 on Persistent Organic Pollutants entered into force on 20 May 2004 and implemented the provisions of the Stockholm Convention in the EU.

The revised EU regulation 2019/1021 was published in the Official Journal of the European Union on 25 June, and will come into force on 15 July 2019. The main changes to the EU Regulation are procedural and technical changes to further reduce production and use of POPs. In addition, they increase the role for the European Chemicals Agency, particularly in relation to providing advice and support to the Commission when considering proposals for listing a substance as a POP.

This instrument amends the hazardous waste producer returns form set out in The Hazardous Waste (Wales) Regulations 2005. The form in Wales is bilingual and contained in Schedule 8 of those Regulations. All references to EU regulation 850/2004 in The Hazardous Waste (Wales) Regulations 2005 are amended by substituting EU Regulation 2019/1021.

5. Consultation

A consultation was not conducted as this instrument is only required to correct references to EU regulations within Welsh legislation, and does not constitute a policy change.

6. Regulatory Impact Assessment (RIA)

This instrument is required to amend Wales-only legislation that includes references to Regulation 850/2004, by substituting a reference to Regulation 2019/1021; as such this instrument doesn't confer any new burdens on businesses, charities or voluntary bodies. Furthermore, there is no significant impact on the public sector.

An Impact Assessment has not been prepared for this instrument because this instrument relates to the maintenance of existing regulatory standards.

The legislation has no impact on the statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 72-75 GOWA 06).

SL(5)438 – The Plant Health (Wales) (Amendment) (No. 2) Order 2019

Background and Purpose

This Order amends the Plant Health (Wales) Order 2018 (S.I. 2018/1064) (W. 223) to introduce emergency measures to prevent the introduction into and spread of *Thaumetopoea processionea* L. (the Oak Processionary Moth ("OPM")) within Wales.

This Order is necessary to ensure consistent plant health requirements within Great Britain, to maintain consistent biosecurity measures and ensure that the Welsh Ministers are able to apply the required prohibitions.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

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

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 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented. However, in this case, the Welsh Government consider that the circumstances justify a breach of that rule. The Minister for Finance and Trefnydd, as required under section 11A of the Statutory Instruments Act 1946, has notified the Presiding Officer of the breach so that the matter can be brought to the attention of Members.

The Explanatory Memorandum ("the EM") sets out the reasons for the breach of the 21 day rule:

"To ensure controls that are aligned with the rest of Great Britain it has become necessary to breach the 21 day rule. Scotland laid an equivalent statutory instrument on the 12th July and it came into force on the 16th of July. England laid an equivalent statutory instrument on the 15th July and it came into force on the same day.

*Currently imports of certain plants of *Quercus* L., from regions where this pest is present are allowed in accordance with certain controls. However, findings in the wider environment in England and Wales have proved that these controls are not sufficient.*

OPM causes heavy defoliation leading to weakening of oak trees. Apart from the intrinsic damage (loss of growth and reduction in timber values) it is also regarded as an important contributor to long term decline of oak trees in several countries. Contact with the hairs of the caterpillars can also cause extreme irritation



for both humans and animals. The wider human health impacts of OPM can lead to school closures and closures of public places for recreation.

It is therefore necessary to introduce strengthened controls to reduce the risk of OPM being introduced and spread in Wales from imported oak plants."

Implications arising from exiting the European Union

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

Government Response

A government response is not required.

The relevant Welsh Minister has written to the Llywydd to give notification of the 21 day rule breach and detailed reasons for the breach are given in the EM.

Legal Advisers

Constitutional and Legislative Affairs Committee

July 2019



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

2019 No. 1167 (W. 204)

PLANT HEALTH, WALES

**The Plant Health (Wales)
(Amendment) (No. 2) Order 2019**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (Wales) Order 2018 to introduce emergency measures to prevent the introduction into and spread of *Thaumetopoea processionea* L. (the Oak Processionary Moth) within Wales.

It amends the technical requirements that must be satisfied when bringing certain plants of *Quercus* L., into or when moving those plants within Wales.

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

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

2019 No. 1167 (W. 204)

PLANT HEALTH, WALES

**The Plant Health (Wales)
(Amendment) (No. 2) Order 2019**

Made 24 July 2019

*Laid before the National Assembly for
Wales* 25 July 2019

Coming into force in accordance with article 1

The Welsh Ministers make this Order in exercise of the powers conferred on them by sections 2 and 3(1) of the Plant Health Act 1967⁽¹⁾.

Title and commencement

1. The title of this Order is the Plant Health (Wales) (Amendment) (No. 2) Order 2019 and it comes into force on the day after the day on which it is laid.

Amendment of the Plant Health (Wales) Order 2018

2.—(1) The Plant Health (Wales) Order 2018⁽²⁾ is amended as follows.

(2) In article 21, omit paragraph (7).

(3) In the table in Part C of Schedule 4, after item 10 insert—

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- (1) 1967 c. 8; section 2 was amended by paragraph 8(2)(a) of Schedule 4 to the European Communities Act 1972 (c. 68), Part 1 of the table in paragraph 12 of Schedule 4 to the Customs and Excise Management Act 1979 (c. 2), S.I. 1990/2371 and S.I. 2011/1043. Section 3(1) was amended by paragraph 8(2)(a) and (b) of Schedule 4 to the European Communities Act 1972 and S.I. 2011/1043. The powers conferred by sections 2 and 3(1) are conferred on a “competent authority”, which is defined in section 1(2). Section 1(2) was amended by paragraph 43 of Schedule 2 to S.I. 2013/755 (W. 90). Section 1(2), as amended, provides that the competent authority for Wales is the Welsh Ministers.
- (2) S.I. 2018/1064 (W. 223), to which there are amendments not relevant to this instrument.

“11.	Plants, other than fruit or seeds, of <i>Quercus</i> L., other than <i>Quercus suber</i> , intended for planting, whose girth at 1.2 m above the root collar is 8 cm or more.	<p>The plants must be accompanied by an official statement that they have been grown throughout their life:</p> <ul style="list-style-type: none"> (a) in places of production in countries in which <i>Thaumetopoea processionea</i> L. is not known to occur; (b) in a protected zone which is recognised as a protected zone for <i>Thaumetopoea processionea</i> L. or in an area free from <i>Thaumetopoea processionea</i> L., established by the national plant protection organisation in accordance with IPSM No. 4; or (c) in a site with complete physical protection against the introduction of <i>Thaumetopoea processionea</i> L. and have been inspected at appropriate times and found to be free from <i>Thaumetopoea processionea</i> L.”
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Mark Drakeford

First Minister of Wales, one of the Welsh Ministers

24 July 2019

Explanatory Memorandum for subordinate legislation

Explanatory Memorandum to the Plant Health (Wales) (Amendment) (No. 2) Order 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government 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 Plant Health (Wales) (Amendment) (No. 2) Order 2019.

Rt Hon Mark Drakeford AM
First Minister of Wales
25 July 2019

PART 1

1. Description

This instrument amends the Plant Health (Wales) Order 2018 (S.I. 2018/1064) (W. 223) which contains measures to prevent the introduction and spread of harmful plant pests and diseases.

It implements control measures to minimise the risk of the introduction into and spread of *Thaumetopoea processionea* (Oak Processionary Moth (OPM)) in Wales.

This instrument is necessary to ensure consistent plant health requirements within Great Britain, to maintain consistent biosecurity measures and ensure that the Welsh Ministers are able to apply the required prohibitions.

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

To ensure controls that are aligned with the rest of Great Britain it has become necessary to breach the 21 day rule. Scotland laid an equivalent statutory instrument on the 12th July and it came into force on the 16th of July. England laid an equivalent statutory instrument on the 15th July and it came into force on the same day.

Currently imports of certain plants of *Quercus* L., from regions where this pest is present are allowed in accordance with certain controls. However, findings in the wider environment in England and Wales have proved that these controls are not sufficient. It is therefore necessary to introduce strengthened controls to reduce the risk of OPM being introduced and spread in Wales from imported oak plants.

3. Legislative background

The Plant Health (Wales) (Amendment) (No. 2) Order 2019 is being made pursuant to the powers in the Plant Health Act 1967. Section 1 of the Plant Health Act 1967 provides that the Act has effect for the control of pests and diseases injurious to agricultural or horticultural crops and trees or bushes.

Section 2(1) of the 1967 Act provides that a competent authority may from time to time make such orders as it thinks expedient or called for by an EU obligation for preventing the introduction of pests into Great Britain. Section 3(1) provides a corresponding power in relation to the control of the spread of pests in Great Britain. The Welsh Ministers are the competent authority for Wales.

Section 6 of the Plant Health Act 1967 provides that this instrument is subject to the negative procedure.

4. Purpose and intended effect of the legislation

This instrument amends the Plant Health (Wales) Order 2018. A purpose of that Order is to prevent the introduction and spread of harmful plant pests and diseases. That Order 2018 is amended to take account of new and revised risk assessments, pest interceptions, changes in the distribution of pests and other developments.

OPM causes heavy defoliation leading to weakening of oak trees. Apart from the intrinsic damage (loss of growth and reduction in timber values) it is also regarded as an important contributor to long term decline of oak trees in several countries. Contact with the hairs of the caterpillars can also cause extreme irritation for both humans and animals. The wider human health impacts of OPM can lead to school closures and closures of public places for recreation.

Recent interceptions of OPM on planted oak trees imported from the Netherlands have highlighted that current controls are not preventing the arrival of infested trees into the UK. As the pest is highly mobile, any undetected incursions carry a significant risk of spread and establishment if not caught early.

This instrument implements stricter technical requirements that must be satisfied when bringing certain plants of *Quercus* L., into or moving within Wales. These measures will strengthen the import and movement requirements for oak plants, to minimise the risk of further introduction or spread of OPM.

This instrument aligns the law relating to plant health in Wales with plant health in England and Scotland.

It is necessary for the Minister to breach the 21 day laying rule due to the urgency and necessity of aligning legislation in Wales with the rest of Great Britain.

5. Consultation

No consultation was required. We have engaged with the UK and Scottish Governments to ensure that the changes proposed are coordinated across Great Britain. UK stakeholder groups are supportive of action to prevent introductions of OPM.

6. Regulatory Impact Assessment (RIA)

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.

With regard to the Government of Wales Act 2006 this legislation has no impact on the statutory duties (sections 77-79) or statutory partners (sections 72-75).



Elin Jones AM
Presiding Officer
National Assembly for Wales

25 July 2019

Dear Llywydd,

The Plant Health (Wales) (Amendment) (No. 2) Order 2019

In accordance with guidance I am notifying you that section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006, which provides the rule that statutory instruments come into force at least 21 days from the date of laying, will be breached for the introduction of the Plant Health (Wales) (Amendment) (No. 2) Order 2019. The Explanatory Memorandum is attached for your information.

Following the recent Oak Processionary Moth (OPM) outbreaks in Wales the Order will provide greater control over the import of potentially high risk oak plants from countries where the OPM is widespread. To ensure we can take immediate action to control the risk of further imports and to align our controls with the rest of Great Britain it has become necessary to breach the 21 day rule. The current controls for the pest must be strengthened following a number of recent OPM findings in England and Wales.

Scotland laid their equivalent Statutory Instrument on the 12th July and it came into force on the 16th of July. England laid their equivalent Statutory Instrument on the 15th July and it came into force on the same day. A similar statutory instrument, amending the Plant Health (Forestry) Order 2005 as it applies to Wales, came into force on 19 July 2019.

Breaching the 21 day rule will allow the Order to come into force quickly to increase biosecurity and align the legislation in Wales with the rest of Great Britain. A breach of the 21 day rule is therefore thought necessary and justifiable in this case.

An Explanatory Memorandum has been prepared and this has been laid, together with the Order in Table Office.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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

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

A copy of this letter goes to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid.

Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)439 – Education (Student Finance) (Amendments to Student Eligibility) (Wales) Regulations 2019

Background and Purpose

The Education (Student Finance) (Amendments to Student Eligibility) (Wales) Regulations 2019 amend the following:

- the Education (Fees and Awards) (Wales) Regulations 2007;
- the Education (European University Institute) (Wales) Regulations 2014;
- the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015;
- the Education (Student Support) (Wales) Regulations 2017;
- the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017;
- the Education (Student Support) (Wales) Regulations 2018;
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

These Regulations provide for a person with leave to enter or remain to be one of the categories of eligible persons and is one of the criteria that a person must meet if they are to be eligible for the relevant student support.

The amendments insert into the definition of "leave to enter or remain", in each of the Regulations above, persons granted leave to remain on the grounds of family life. They already make provision for a person granted leave to enter or remain on the grounds of private life.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

Two points have been identified for reporting under Standing Order 21.3(ii) in respect of this instrument.

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.

1. Section 22 of the Teaching and Higher Education Act 1998 is cited as one of the enabling powers for making these Regulations. Section 22 contains a wide range of powers and it would assist the reader if the Regulations were more specific in stating which power is being used. In this case, the power is contained in section 22(2)(a).



2. The Regulatory Impact Assessment states the following, in relation to the costs and benefits of making the Regulations:

"The changes outlined relating to persons with leave to remain on the grounds of family life are expected to have no or negligible financial implications for the Welsh Government. It is not possible to determine how many such persons may take up support for study, but the number will be very small."

These Regulations extend the potential number of students that may qualify for student support, yet the RIA states that there will be no or negligible financial implications for Welsh Government. This appears to be contradictory, as it also states that it is not possible to determine how many such persons may take up the support.

Implications arising from exiting the European Union

No implications 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

11 September 2019



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

2019 No. 1192 (W. 209)

EDUCATION, WALES

**The Education (Student Finance)
(Amendments to Student
Eligibility) (Wales) Regulations
2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend—

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

The amendments insert into the definition of “leave to enter or remain”, in each of the Regulations referred to, persons granted leave to remain on the grounds of family life.

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 Higher

Education Division, Welsh Government, Cathays Park,
Cardiff CF10 3NQ.

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

2019 No. 1192 (W. 209)

EDUCATION, WALES

**The Education (Student Finance)
(Amendments to Student
Eligibility) (Wales) Regulations
2019**

Made 15 August 2019

Laid before the National Assembly for Wales
16 August 2019

Coming into force 9 September 2019

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State under sections 1 and 2 of the Education (Fees and Awards) Act 1983⁽¹⁾ and sections 22 and 42(6) of the Teaching and Higher Education Act 1998⁽²⁾ and now exercisable by

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- (1) 1983 c. 40; section 1 was amended by the Education Reform Act 1988 (c. 40), Schedule 12, paragraph 91; the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 19; the Education Act 1994 (c. 30), Schedule 2, paragraph 7; the Education Act 1996 (c. 56), Schedule 37, paragraph 57; the Learning and Skills Act 2000 (c. 21), Schedule 9, paragraphs 1 and 11; the Education Act 2002 (c. 32), Schedule 21, paragraph 5 and Schedule 22; the Education Act 2005 (c. 18), Schedule 14, paragraph 9; S.I. 2005/3238, Schedule 1, paragraph 9; S.I. 2010/1158, Schedule 2, paragraph 1; the Education Act 2011 (c. 21), Schedule 5, paragraph 5 and Schedule 16, paragraph 5; and the Deregulation Act 2015 (c. 20), Schedule 14, paragraph 33. Section 2 was amended by the Teaching and Higher Education Act 1998 (c. 30) (“the 1998 Act”), section 44 and Schedule 4.
- (2) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000, section 146 and Schedule 11; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6; the Finance Act 2003 (c. 14), section 147; the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7; the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257; the Education Act 2011 (c. 21), section 76; S.I. 2013/1181 and the Higher Education and Research Act 2017 (c. 29), section 88. *See* section 43(1) of the 1998 Act for the definition of “prescribed” and “regulations”.

them(1) and powers conferred on them under section 5(5)(b) of the Higher Education (Wales) Act 2015(2) make the following Regulations:

Title and commencement

1.—(1) The title of these Regulations is the Education (Student Finance) (Amendments to Student Eligibility) (Wales) Regulations 2019.

(2) These Regulations come into force on 9 September 2019.

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

2.—(1) The Education (Fees and Awards) (Wales) Regulations 2007(3) are amended in accordance with this regulation.

(2) In the Schedule, in paragraph 1, in the definition of “person with leave to enter or remain”—

(a) after paragraph (a)(ii) insert—

“(ia) been granted leave to remain on the grounds of family life under the immigration rules;”;

(b) in paragraph (a)(iv), after “private” insert “or family”.

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- (1) The functions of the Secretary of State in section 1 of the Education (Fees and Awards) Act 1983 (“the 1983 Act”) were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 2006/1458 with effect from 8 June 2006. The functions of the Secretary of State in section 2 of the 1983 Act were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 1999/672. The Secretary of State’s functions in section 22(2)(a) to (i) and (k) of the 1998 Act were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004, with subsections (a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State’s function in section 42 of the 1998 Act was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. All the above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) 2015 anaw 1.
- (3) S.I. 2007/2310 (W. 181), amended by S.I. 2010/1142 (W. 101), S.I. 2011/1978 (W. 218), S.I. 2018/814 (W. 165) and S.I. 2019/424 (W. 98) (as from exit day, as defined by the European Union (Withdrawal) Act 2018 (c. 16), section 20(1) to (5)); there are other amending instruments but none is relevant.

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

3.—(1) The Education (European University Institute) (Wales) Regulations 2014(1) are amended in accordance with this regulation.

(2) In regulation 3, in the definition of “person with leave to enter or remain”—

(a) after paragraph (a)(ii) insert—

“(ia) been granted leave to remain on the grounds of family life under the immigration rules;”;

(b) in paragraph (a)(iv), after “private” insert “or family”.

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

4.—(1) The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015(2) are amended in accordance with this regulation.

(2) In the Schedule, in paragraph 1(1), in the definition of “person with leave to enter or remain”—

(a) after paragraph (a)(ii) insert—

“(ia) been granted leave to remain on the grounds of family life under the immigration rules;”;

(b) in paragraph (a)(iv), after “private” insert “or family”.

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

5.—(1) The Education (Student Support) (Wales) Regulations 2017(3) are amended in accordance with this regulation.

(2) In regulation 2 (interpretation), in paragraph (1), in the definition of “person with leave to enter or remain”—

(a) after paragraph (a)(ii) insert—

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| (1) | S.I. 2014/3037 (W. 303), amended by S.I. 2016/211 (W. 84), S.I. 2018/814 (W. 165) and S.I. 2019/424 (W.98) (as from exit day, as defined by the European Union (Withdrawal) Act 2018, section 20(1) to (5)). |
| (2) | S.I. 2015/1484 (W. 163), amended by S.I. 2016/276 (W. 100), S.I. 2018/814 (W. 165) and S.I. 2019/424 (W. 98) (as from exit day, as defined by the European Union (Withdrawal) Act 2018, section 20(1) to (5)). |
| (3) | S.I. 2017/47 (W. 21), amended by S.I. 2018/191 (W. 42), S.I. 2018/814 (W. 165) and S.I. 2019/424 (W. 98) (as from exit day, as defined by the European Union (Withdrawal) Act 2018, section 20(1) to (5)). |

“(ia) been granted leave to remain on the grounds of family life under the immigration rules;”;

(b) in paragraph (a)(iv), after “private” insert “or family”.

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

6.—(1) The Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017(1) are amended in accordance with this regulation.

(2) In regulation 2 (interpretation), in paragraph (1), in the definition of “person with leave to enter or remain”—

(a) after paragraph (a)(ii) insert—

“(ia) been granted leave to remain on the grounds of family life under the immigration rules;”;

(b) in paragraph (a)(iv), after “private” insert “or family”.

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

7.—(1) The Education (Student Support) (Wales) Regulations 2018(2) are amended in accordance with this regulation.

(2) In Schedule 2, in paragraph 3(4)—

(a) after paragraph (a)(ii) insert—

“(ia) been granted leave to remain on the grounds of family life under the immigration rules;”;

(b) in paragraph (a)(iv), after “private” insert “or family”.

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

8.—(1) The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018(3) are amended in accordance with this regulation.

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| (1) | S.I. 2017/523 (W. 109), amended by S.I. 2017/712 (W. 169), S.I. 2018/277 (W. 53), S.I. 2018/814 (W. 165), S.I. 2019/424 (W. 98) (as from exit day, as defined by the European Union (Withdrawal) Act 2018, section 20(1) to (5)) and S.I. 2019/895 (W. 161). |
| (2) | S.I. 2018/191 (W. 42), amended by S.I. 2018/813 (W. 164), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54) and S.I. 2019/424 (W. 98) (as from exit day, as defined by the European Union (Withdrawal) Act 2018, section 20(1) to (5)). |
| (3) | S.I. 2018/656 (W. 124), amended by S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54) and S.I. 2019/424 (W. 98) (as from exit day, as defined by the European Union (Withdrawal) Act 2018, section 20(1) to (5)). |

(2) In regulation 2 (interpretation), in paragraph (1), in the definition of “person with leave to enter or remain”—

(a) after paragraph (a)(ii) insert—

“(iia) been granted leave to remain on the grounds of family life under the immigration rules;”;

(b) in paragraph (a)(iv), after “private” insert “or family”.

Amendments to the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019

9.—(1) The Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019(1) are amended in accordance with this regulation.

(2) In Schedule 2, in paragraph 4(4)—

(a) after paragraph (a)(ii) insert—

“(iia) been granted leave to remain on the grounds of family life under the immigration rules;”;

(b) in paragraph (a)(iv), after “private” insert “or family”.

Kirsty Williams

Minister for Education, one of the Welsh Ministers

15 August 2019

(1) S.I. 2019/895 (W. 161), amended by S.I. 2019/1039 (W. 182) (as from exit day, as defined by the European Union (Withdrawal) Act 2018, section 20(1) to (5)).

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

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

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

Kirsty Williams AM
Minister for Education
16 August 2019

1. Description

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

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

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

None.

3. Legislative background

The Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983 (in relation to the amendments made to the 2007 Regulations); Section 5(5)(b) of the Higher Education (Wales) Act 2015 (in relation to the amendments made to the 2015 Regulations) and sections 22 and 42(6) of the Teaching and Higher Education Act 1998 (in relation to the amendments to the 2014 Regulations, the 2017 Regulations, the 2018 Regulations, the Doctoral Regulations and the 2017 Master's Regulations and the 2019 Master's Regulations).

Sections 1 and 2 of the 1983 Act provide the Welsh Ministers with powers to make regulations requiring or authorising the charging of higher fees to certain students and to prescribe the persons who may be eligible for certain awards in connection with education, training or research. Section 22 of the 1998 Act

provides the Welsh Ministers with the power to make regulations authorising or requiring the payment of financial support to students studying courses of higher or further education designated by or under those regulations. In particular, this power enables the Welsh Ministers to prescribe the amount of financial support (grant or loan) and who is eligible to receive such support.

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

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

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

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

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

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

This instrument will follow the Negative Resolution procedure.

4. Purpose and intended effect of the legislation

The Welsh Ministers make regulations to provide the basis for the system of financial support for eligible students taking designated courses of higher education who are eligible students undertaking designated courses.

The amendments will amend the definition of “person with leave to enter or remain” in each of the Regulations being amended by adding a “person granted leave to remain on the grounds of family life”. The Regulations provide for a person with leave to enter or remain to be one of the categories of eligible persons and is one of the criteria that a person must meet if they are to be eligible for the relevant student support.

The Regulations being amended already make provision for a person granted leave to enter or remain on the grounds of private life. The amendment will place persons with leave to remain on the grounds of family life in the same position.

Additionally in order to be eligible for the relevant student support, all other residency criteria in the Regulations must be met. The student must be:

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

5. Regulatory Impact Assessment

Options

Option 1: Business as usual

In the event of the Regulations not being made the principal implication is that students who would meet the criteria would not be eligible for student support.

Option 2: Make the Regulations

Making the Regulations ensures that persons with leave to enter or remain in the UK on the grounds of family life would not be denied student support (as long as all other criteria are met). This reflects the Welsh Ministers’ policy for

student support, and ensures that relevant students are able to apply for appropriate support.

Costs and benefits

Option 1: Business as usual

Leaving the previous regulations in place would mean no additional costs are incurred via the student support system. Students with leave to remain on the grounds of family life who are ordinarily resident in Wales and meet the other eligibility criteria would not be eligible for support.

Option 2: Make the Regulations

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

The changes outlined relating to persons with leave to remain on the grounds of family life are expected to have no or negligible financial implications for the Welsh Government. It is not possible to determine how many such persons may take up support for study, but the number will be very small.

CONSULTATION

There is no statutory requirement to consult on the Regulations and no consultation has been carried out on this occasion.

COMPETITION ASSESSMENT

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

POST-IMPLEMENTATION ASSESSMENT

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

SUMMARY

The making of these Regulations is necessary to establish the basis for, and update aspects of, the higher education student support system.

Agenda Item 8.1

SL(5)433 – The Cardiff and Valleys Railways (Transfer) Order 2019

Background and Purpose

This Order provides for Transport for Wales and Network Rail Infrastructure Limited to enter into schemes for the transfer from Network Rail Infrastructure Limited to Transport for Wales of certain statutory provisions and other rights and liabilities relating to the existing core Valleys railways described in Schedule 1 to the Cardiff and Valleys Railways (Transfer) Order 2019 ("the Order").

Procedure

No procedure.

Scrutiny under Standing Order 21.7

Three points are identified for reporting under Standing Order 21.7 in respect of this Order.

1. Standing Order 21.7(v) – A responsible Committee may consider and report on any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers.

This Order is not subject to any Assembly procedure. It deals with significant issues and demonstrates how a no procedure instrument can do significant things like provide for schemes transferring property, rights and liabilities from one company to another.

2. Standing Order 21.7(v) – A responsible Committee may consider and report on any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers.

Schedule 1 to the Order makes reference to various enactments which are not easily available online. We have struggled to locate these using both publicly available resources, and resources which require subscription (LexisNexis and Westlaw). It appears that some of the enactments may be stored in the National Archives, Kew however it is difficult to confirm this as the stored documents are described in general terms. There is a concern as regards accessibility of the law, which has limited our ability to fully scrutinise the Order.

3. Standing Order 21.7(v) – A responsible Committee may consider and report on any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers.

There is inconsistency between the English and Welsh texts of Schedule 1, which lists the enactments for the railways to which the Order relates. The Cardiff Railway Act 1897 is missing in the English text. We have been unable to locate the Cardiff Railway Act 1897 and so are not clear whether the English or Welsh text is correct.

Implications arising from exiting the European Union

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



Government Response

Point two: The government notes the issue of accessibility. However, the Order was drafted this way due to the nature of the authorisation of the relevant railways, and the need to refer to the individual Acts to permit the transfer of the railways authorised by such Acts. This ensures all elements of the railways in question are captured.

As you have stated, the legislation is held in the National Archives, which would be available on request for a fee. The legislation is also available in full on the JustisOne database, which is a subscription service. We understand from recent correspondence that the Assembly has access to this database.

Point three: The reporting point is noted and accepted. The government is already aware of this typographical error and is in contact with the SI registrar to correct this by way of correction slip.

Legal Advisers

Constitutional and Legislative Affairs Committee

6 August 2018



WELSH STATUTORY
INSTRUMENTS

2019 No. 1132 (W. 197)

**TRANSPORT AND WORKS,
WALES**

**The Cardiff and Valleys Railways
(Transfer) Order 2019**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for Transport for Wales and Network Rail Infrastructure Limited to enter into schemes for the transfer from Network Rail Infrastructure Limited to Transport for Wales of certain statutory provisions and other rights and liabilities relating to the existing railways described in Schedule 1.

The Applicant is Keolis Amey Wales Cymru Limited.

The Order does not authorise the construction of works.

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

2019 No. 1132 (W. 197)

**TRANSPORT AND WORKS,
WALES**

**The Cardiff and Valleys Railways
(Transfer) Order 2019**

Made 15 July 2019

Coming into force 2 August 2019

CONTENTS

1. Title and commencement
2. Interpretation
3. Agreements with Network Rail for transfer schemes
4. Further transfer of railways by undertaker
5. Power to operate and use railway

SCHEDULES

SCHEDULE 1 — The railway enactments for the core Valley lines

SCHEDULE 2 — Provisions relating to transfer schemes

An application has been made to the Welsh Ministers in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006⁽¹⁾ for an Order under sections 1 and 5 of the Transport and Works Act 1992⁽²⁾ (“the Act”).

(1) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.

(2) 1992 c. 42.

The Welsh Ministers have determined to make an Order giving effect to the proposals comprised in the application with modifications which in their opinion do not make any substantial change in the proposals.

Notice of the Welsh Ministers' determination was published in the London Gazette on 11 July 2019.

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 1 and 5 of, and paragraphs 1, 5, 6, 7, 8, 11, 15, 16 and 17 of Schedule 1 to, the Act, now exercisable by them⁽¹⁾ make the following Order:

Title and commencement

1. The title of this Order is the Cardiff and Valleys Railways (Transfer) Order 2019 and it comes into force on 2 August 2019.

Interpretation

2. In this Order—

“the companies” (“*y cwmnïau*”) means—

- (a) Keolis Amey Wales Cymru Limited (Company registration number 11391059) whose registered office is at Amey Rail Maindee Depot, Off Caerleon Road, Newport NP19 9DZ, and
- (b) Amey Keolis Infrastructure/Seilwaith Amey Keolis Limited (Company registration number 11389544) whose registered address is The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ;

“the core Valley lines” (“*llinellau craidd y Cymoedd*”) means the railways authorised by the enactments listed in Schedule 1 (the railway enactments for the core Valley lines) together with all lands and works relating to those railways;

“the core Valley lines undertaking” (“*ymgymeriad llinellau craidd y Cymoedd*”) means the part of Network Rail's undertaking which comprises the core Valley lines, and any land, works, other property, rights, liabilities or obligations, statutory or otherwise, relating to the core Valley lines;

(1) Powers under sections 1 and 5 of, and paragraphs 1, 5, 6, 7, 8, 11, 15, 16 and 17 of Schedule 1 to, the Act are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by virtue of article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to the Welsh Ministers.

“Network Rail” (“*Network Rail*”) means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purposes of this definition “associated company” (“*cwmni cysylltiedig*”) means any company which is (within the meaning of section 1159 of the Companies Act 2006⁽¹⁾) the holding company of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“the relevant date” (“*y dyddiad perthnasol*”) means the date on which this Order comes into force;

“statutory provision” (“*darpariaeth statudol*”) means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature;

“transfer scheme” (“*cynllun trosglwyddo*”) means a scheme made under article 3(1) (agreements with Network Rail for transfer schemes);

“the transferred railways” (“*y rheilffyrdd a drosglwyddir*”) means so much of the core Valley lines as may be transferred to the undertaker by means of a transfer scheme;

“the undertaker” (“*yr ymgymwrwr*”) means Transport for Wales (Company No. 09476013) incorporated under the Companies Act 2006, a company limited by guarantee and having its registered office at QED Centre, Main Avenue, Treforest Industrial Estate, Pontypridd, Rhondda Cynon Taff CF37 5YR.

Agreements with Network Rail for transfer schemes

3.—(1) The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, agree, enter into, and carry into effect a scheme or schemes for the transfer to the undertaker of the whole or any part of—

- (a) the core Valley lines, and
- (b) the core Valley lines undertakings.

(2) A transfer scheme under paragraph (1) may be made pursuant to an agreement made before the coming into force of this Order which, had it been made on or after that date, could have been made under paragraph (1).

(1) 2006 c. 46.

(3) Where a transfer scheme is made under paragraph (1) the undertaker is, to the extent set out in the transfer scheme—

- (a) entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the core Valley lines or any part of them referred to in the transfer scheme,
- (b) subject to all obligations, statutory or otherwise, relating to the core Valley lines or any part of them (in so far as those provisions continue in force and are capable of taking effect), with Network Rail released from all such obligations in the terms provided for in the transfer scheme, and
- (c) able to adapt for use, maintain, use and operate any railway on in over or under that land, works and property.

(4) Nothing in paragraph (3) prejudices any express statutory provision for—

- (a) the protection of the owner, lessee or occupier of any property specifically identified by the provision, or
- (b) the protection or benefit of any public trustees or commissioners, corporation or other person, specifically named in the provision.

(5) Schedule 2 makes further provision about transfer schemes.

Further transfer of railways by undertaker

4.—(1) In this article—

“lease” (*“prydles”*) includes an underlease and “lease” (*“prydlesu”*) where used as a verb is to be construed accordingly;

“the transferee” (*“y trosglwyddai”*) means any person to whom the railways, or any part of them, are leased or sold under the powers conferred by this article;

“the transferred undertaking” (*“yr ymgymeriad a drosglwyddir”*) means so much of the railways as is leased or sold under the powers conferred by this article.

(2) Subject to paragraph (3), any time after the relevant date the undertaker may, with the consent of the Welsh Ministers, sell or lease the transferred railways or any part of them to any person on such terms and conditions as may be agreed between the undertaker and that person.

(3) The Welsh Ministers’ consent is not required under paragraph (2) if it is proposed to lease the transferred railways or any part of them to one or both of the companies.

(4) Except as may be otherwise provided in this Order—

- (a) the transferred undertaking continues to be subject to all statutory and other provisions applicable to it at the date of the lease or sale (in so far as those provisions continue in force and are capable of taking effect),
- (b) the transferee is, to the exclusion of the undertaker, entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the transferred undertaking, and
- (c) the exercise by the transferee of the powers of any enactment is subject to the same obligations, statutory or otherwise, as would apply if those powers were exercised by the undertaker.

(5) Paragraph (4) has effect during the term of any lease granted, and from the operative date of any sale, under the powers conferred by this article.

Power to operate and use railway

5.—(1) The undertaker and any transferee under article 4 may operate and use the transferred railways as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993(1).

Julie James

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

15 July 2019

(1) 1993 c. 43.

SCHEDULES

SCHEDULE 1 Article 2

The railway enactments for the core Valley lines

Taff Vale Railway Act 1836 (1836 c. lxxxii.)

Aberdare Railway Act 1845 (1845 c. clix.)

South Wales Railway Act 1845 (1845 c. cxc.)

Vale of Neath Railway Act 1846 (1846 c. cccxli.)

Taff Vale Railway Act 1846 (1846 c. cccxciii.)

Vale of Neath Amendment Act 1847 (1847 c. lxxiv.)

South Wales Railway Amendment Act 1847 (1847
c. cix.)

Newport, Abergavenny and Hereford Railway
(Extension to Taff Vale Railway) Act 1847 (1847
c. clxxvii.)

South Wales Railway New Works Act 1851 (1851
c. lii.)

Vale of Neath Railway Act 1852 (1852 c. xvi.)

Rhymney Railway Act 1854 (1854 c. cxciii.)

Rhymney Railway Amendment Act 1855 (1855 c. cx.)

Aberdare Valley Railway Act 1855 (1855 c. cxx.)

Ely Tidal Harbour and Railway Act 1856 (1856
c. cxxii.)

Newport, Abergavenny and Hereford Railway Act
1857 (1857 c. cxix.)

Rhymney Railway Act 1857 (1857 c. cxl.)

Taff Vale Railway Act 1857 (1857 c. cliii.)

Rhymney Railway (Cardiff and Caerphilly) Act 1864
(1864 c. cclxiv.)

Rhymney Railway (Northern Lines) Act 1864 (1864
c. cclxxv.)

Great Western Railway (Further Powers) Act 1866
(1866 c. cccvii.)

Great Western Railway (Various Powers) Act 1867
(1867 c. cl.)

Rhymney Railway Act 1867 (1867 c. clxxi.)

Brecon and Merthyr Railway (Arrangement) Act 1868
(1868 c. cxlii.)

Great Western Railway Act 1872 (1872 c. cxxix.)

Taff Vale Railway Act 1873 (1873 c. clviii.)

Great Western Railway Act 1880 (1880 c. cxli.)

Taff Vale Railway Act 1884 (1884 c. ccii.)

Great Western Railway Act 1890 (1890 c. clix.)

SCHEDULE 2 Article 3

Provisions relating to transfer schemes

General provisions about transfer schemes

1.—(1) A transfer scheme may—

- (a) define the property, rights and liabilities to be transferred to the undertaker (subject to any exception, reservation or other terms that may be specified in the transfer scheme)—
 - (i) by specifying or describing the property, rights and liabilities in question,
 - (ii) by referring to all (or all but so much as may be excepted or reserved) of the property, rights and liabilities comprised in a specified part of the core Valley lines undertaking, or
 - (iii) partly in the one way and partly in the other;
- (b) provide that any rights or liabilities specified or described in the scheme is to be enforceable either by or against the undertaker or Network Rail (or both of them);
- (c) without affecting paragraph 6, impose on the undertaker or Network Rail an obligation to enter into such written agreements with, or execute such other instruments in favour of, Network Rail or the undertaker or such other person as may be specified in the scheme;
- (d) make such supplemental, incidental, consequential or transitional provision as the undertaker and Network Rail consider appropriate.

(2) An obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c) may be enforced by the undertaker or Network Rail or other person mentioned in that sub-paragraph—

- (a) in civil proceedings for an injunction,
- (b) in civil proceedings for any other appropriate relief or remedy, or

- (c) in any other way authorised by the transfer scheme.

(3) A transaction of any description which is effected pursuant to an obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c)—

- (a) has effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register, but
- (b) subject to that, is binding on all other persons, notwithstanding that it would, apart from this paragraph, have required the consent or concurrence of any other person.

(4) No right of reverter, right of pre-emption, right of forfeiture, right of re-entry, option or similar right affecting land operates or becomes exercisable as a result of any transfer of land—

- (a) by virtue of a transfer scheme;
- (b) pursuant to an obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c);

and, any such right or option accordingly has effect in the case of any such transfer as if the undertaker in relation to that transfer were the same person in law as Network Rail and as if no transfer of the land had taken place.

(5) Sub-paragraph (4) has effect in relation to—

- (a) the grant or creation of an estate or interest in, or right over, land, or
- (b) the doing of any other thing in relation to land,

as it has effect in relation to a transfer of land; and any reference in that sub-paragraph or in the following provisions of this Schedule to Network Rail or the undertaker is to be construed accordingly.

(6) In any case where—

- (a) any such right or option as is mentioned in sub-paragraph (4) would, apart from that sub-paragraph, have operated in favour of, or become exercisable by, a person, but
- (b) the circumstances are such that, in consequence of the operation of that sub-paragraph, the right or option cannot subsequently operate in favour of that person or, as the case may be, become exercisable by that person,

such compensation as may be just must be paid to that person by the undertaker in respect of the extinguishment of the right or option.

(7) Any dispute as to whether any, and (if so) how much, compensation is payable under sub-paragraph

(6), or as to the person to whom it is to be paid, is to be referred to and determined by an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors.

(8) If it appears to the undertaker that a person (A) is or may be entitled to compensation under sub-paragraph (6), the undertaker must—

- (a) notify A that A is or may be so entitled, and
- (b) invite A to make such representations as A wishes to the undertaker not later than 14 days after the date of issue of the document containing the notification required by sub-paragraph (8)(a),

or, if the undertaker is not aware of the name and address of the person concerned, must publish, in such manner as the undertaker considers appropriate, a notice containing information about the interest affected and inviting any person who thinks that they are or may be entitled to compensation to make such representations to the undertaker within such period (being not less than 28 days from the date of publication of the notice) as may be specified in the notice.

Property, rights and liabilities that may be transferred

2. The property, rights and liabilities for whose transfer a transfer scheme may provide include (in particular)—

- (a) rights and liabilities relating to contracts of employment;
- (b) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by Network Rail;
- (c) property acquired after the making of the scheme and rights and liabilities arising after the making of the scheme;
- (d) without affecting paragraph 3, rights and liabilities under a statutory provision.

Functions under local or private legislation

3.—(1) A transfer scheme may provide that any functions of Network Rail under a statutory provision—

- (a) are to be transferred to the undertaker, or
- (b) are to be concurrently exercisable by Network Rail and the undertaker.

(2) Sub-paragraph (1) applies in relation to any function under a statutory provision if and to the extent that the statutory provision—

- (a) relates to any part of the core Valley lines undertaking, or to any property, which is to be transferred by the scheme, or

- (b) authorises the carrying out of works designed to be used in connection with any such part of the core Valley lines undertaking or the acquisition of land for the purpose of carrying out any such works.

(3) A transfer scheme may define any functions of Network Rail to be transferred or made concurrently exercisable by the scheme in accordance with sub-paragraph (1)—

- (a) by specifying the statutory provisions in question,
- (b) by referring to all the statutory provisions which—
 - (i) relate to any part of the core Valley lines undertaking, or to any property, which is to be transferred by the scheme, or
 - (ii) authorise the carrying out of works designed to be used in connection with any such part of the core Valley lines undertaking or the acquisition of land for the purpose of carrying out any such works, or
- (c) by referring to all the statutory provisions within sub-paragraph (3)(b), but specifying certain excepted provisions.

Proof of title by certificate

4.—(1) In the case of any transfer to which this Schedule applies, a joint certificate by or on behalf of Network Rail and the undertaker that—

- (a) any property specified in the certificate, or
- (b) any such interest in or right over any such property as may be so specified, or
- (c) any right or liability so specified,

is property, or (as the case may be) an interest, right or liability which was intended to be, and was vested by virtue of the transfer scheme in such one of them as may be so specified (and, if it is the undertaker who is so specified, that the property, interest, right or liability has not been transferred back to Network Rail by virtue of an agreement under paragraph 9) is conclusive evidence for all purposes of that fact.

(2) If on the expiration of one month after a request from either Network Rail or the undertaker for the preparation of such a joint certificate as respects any property, interest, right or liability they have failed to agree on the terms of the certificate, they must refer the matter to the Welsh Ministers and issue the certificate in such terms as the Welsh Ministers may direct.

*Transfer scheme may provide for contraventions etc.
to be treated as not occurring*

5.—(1) A transfer scheme may contain provision for a transfer to take effect as if there were no contravention or liability, or interference with any interest or right, that there would otherwise be under a provision falling within sub-paragraph (2).

(2) A provision falls within this sub-paragraph if it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which Network Rail is entitled to the property or right, or subject to the liability, for whose transfer the transfer scheme provides.

(3) A transfer scheme may contain provision for—

- (a) the creation of an interest in property (including a lease),
- (b) the transfer of shares in a subsidiary of Network Rail, or
- (c) the creation of a right in relation to property,

to take effect as if there were no contravention or liability, or interference with any interest or right, that there would otherwise be under a provision falling within sub-paragraph (4) or (5).

(4) A provision falls within this sub-paragraph if it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which Network Rail is entitled to the property.

(5) A provision falls within this sub-paragraph if it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which a subsidiary of Network Rail is entitled or subject to anything immediately before the creation of the interest or right takes effect.

Transfer scheme may impose obligations to enter into agreements or execute instruments

6.—(1) A transfer scheme may contain provision for imposing, on Network Rail or the undertaker, obligations—

- (a) to enter into agreements with persons specified in the scheme,
- (b) to execute instruments in favour of persons specified in the scheme, or
- (c) to execute such other instruments as are necessary or expedient to identify or define the property, rights and liabilities transferred to the undertaker or retained by Network Rail.

(2) The persons who may be so specified are—

- (a) the undertaker;
- (b) Network Rail;
- (c) any other person.

(3) The transfer scheme must specify or describe the agreement or instrument to which the obligation relates.

(4) Any such agreement may provide so far as it is expedient—

- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not,
- (b) for the granting of indemnities in connection with the severance of leases and other matters, and
- (c) for responsibility for registration of any matter in any statutory register.

Supplementary provisions of transfer schemes

7.—(1) A transfer scheme may make such incidental, supplementary, consequential and transitional provision as Network Rail and the undertaker consider appropriate.

(2) The provision under sub-paragraph (1) that may be made by a transfer scheme includes (in particular) provision—

- (a) saving the effect of things done by or in relation to Network Rail,
- (b) for the undertaker to be treated as the same person in law as Network Rail,
- (c) for things done by or in relation to Network Rail to be treated as done by or in relation to the undertaker,
- (d) for things (including legal proceedings) being done by or in relation to Network Rail to be continued by or in relation to the undertaker, and
- (e) for references in a document to Network Rail, or to an employee or office-holder of Network Rail, to have effect with modifications specified in the transfer scheme.

(3) The provision that may be made under sub-paragraph (2)(e) includes provision for references to Network Rail in any statutory provision, or any provision of an agreement to which Network Rail is not a party, to be treated as references to the undertaker, if and so far as the provision relates to the core Valley lines undertaking.

(4) The references in this paragraph to agreements to which Network Rail is a party and to statutory provisions include, in particular, references to

agreements to which Network Rail became a party by virtue of the Transport Act 1962⁽¹⁾ and the Railways Act 1993⁽²⁾ and statutory provisions which apply to Network Rail by virtue of those Acts.

Effect of transfer scheme

8.—(1) At the time appointed for the purpose by a transfer scheme—

- (a) property, rights and liabilities for whose transfer the scheme provides, and
- (b) interests, rights and liabilities for whose creation the scheme provides,

are, by virtue of this sub-paragraph, transferred or (as the case may be) created in accordance with the scheme.

(2) A scheme may appoint different times for the transfer or creation of different things.

Variation of transfer schemes

9.—(1) At any time before the end of the period of twelve months beginning with the date on which a transfer scheme comes into effect, the undertaker and Network Rail may, with the approval of the Welsh Ministers, agree in writing that—

- (a) as from such date as may be specified in or determined under the agreement, and
- (b) in such circumstances (if any) as may be so specified,

there is to be transferred from the undertaker to, and vested in, Network Rail any property, rights and liabilities specified in the agreement; but no such agreement is to have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.

(2) Subject to sub-paragraphs (3) and (4), in the case of an agreement under sub-paragraph (1), the property, rights and liabilities in question are to be transferred and vest in accordance with the agreement.

(3) Any transfer effected in pursuance of an agreement under sub-paragraph (1) is to have effect subject to the provisions of any enactment which provides for such transactions to be registered in any statutory register.

(4) The provisions of this Schedule have effect in relation to a transfer effected in pursuance of an agreement under sub-paragraph (1) as if—

- (a) any reference to a transfer to which this Schedule applies included a reference to a

(1) 1962 c. 46.
(2) 1993 c. 43.

transfer effected in pursuance of such an agreement,

- (b) any reference to a transaction effected in pursuance of a transfer scheme included a reference to such an agreement,
- (c) any reference to a vesting by virtue of a transfer scheme included a reference to a vesting by virtue of such an agreement, and
- (d) except in the case of paragraph 1(6) to (8), any reference to Network Rail was a reference to the undertaker, and vice-versa.

Transfer of employees and continuity of employment

10.—(1) Where, by virtue of a transfer scheme, a person employed by Network Rail becomes an employee of the undertaker—

- (a) the person is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996⁽¹⁾ as having been dismissed by virtue of the transfer,
- (b) the person's period of employment with Network Rail counts, for the purposes of that Act, as a period of employment with the undertaker, and
- (c) the change of employment does not break the continuity of the period of employment for the purposes of that Act.

(2) This sub-paragraph applies where—

- (a) a transfer scheme provides for the transfer of rights, powers, duties and liabilities relating to a person's contract of employment, but
- (b) before the transfer takes effect, the person informs Network Rail or the undertaker that the person objects to the transfer.

(3) Where sub-paragraph (2) applies—

- (a) those rights, powers, duties and liabilities are not transferred to the undertaker;
- (b) the person's contract of employment is terminated immediately before the day on which the transfer would have occurred;
- (c) the person is not, for any purpose, to be regarded as having been dismissed.

(4) Nothing in sub-paragraph (2) or (3) affects the person's right to terminate the contract of employment if, apart from the change of employer, a substantial change is made to the person's detriment in his or her working conditions.

(5) If a transfer scheme provides for the transfer of rights, powers, duties and liabilities relating to a

(1) 1996 c. 18.

person's contract of employment, it may include provision with respect to the person's eligibility to become a member of a pension scheme by virtue of employment with the undertaker.

(6) The transfer scheme may include provision with respect to rights of, or rights or liabilities in respect of, the person under—

- (a) a pension scheme of which the person may become a member by virtue of employment with the undertaker, or
- (b) a pension scheme of which the person is a member by virtue of employment immediately before the transfer.

Agenda Item 9.1

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Plant Health (Amendment etc.) (EU Exit) Regulations 2019 (“the 2019 Regulations”).

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A provides that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“the Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Plant Health (Amendment etc.) (EU Exit) Regulations 2019 (“the 2019 Regulations”) were laid before the Houses of Parliament on 22 July 2019. The Regulations can be found at:

<https://beta.parliament.uk/work-packages/z5kBsny2>

Summary of the Statutory Instrument and its objective

3. The 2019 Regulations 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 include amendments to primary legislation relating to plant health to remove references to EU obligations.
4. Regulation 2 of the 2019 Regulations makes relevant provision. Regulation 2 removes references to EU obligations in sections 2(1) and 3(1) of the Plant Health Act 1967 and in doing so removes the power of competent authorities (the competent authority for Wales being the Welsh Ministers) to make orders in pursuance of EU obligations.

Relevant provision to be made by the SI

5. The amendments made to the 1967 Act by the 2019 Regulations, are as follows:

PART 1

Amendment of primary legislation relating to plant health

2. In sections 2(1) and 3(1) of the Plant Health Act 1967, omit “or called for by any EU obligation”.

6. The amendments set out in paragraph 6 relates to the subject matter of plant health which is within the legislative competence of the National Assembly for Wales, and which could be the subject of a National Assembly Bill.
7. Section 108A of the Government of Wales Act 2006 provides, among other things, that the Assembly can legislate in relation to matters except those specifically reserved in Schedule 7A to that Act.

Why it is appropriate for the SI to make this provision

8. There is no divergence between the Welsh Government, the Scottish Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales, Scotland and England to make the same correction would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single amendment across Great Britain, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

26 July 2019

DRAFT STATUTORY INSTRUMENTS

2019 No. 000

EXITING THE EUROPEAN UNION

PLANT HEALTH

The Plant Health (Amendment etc.) (EU Exit) Regulations 2019

Made - - - -

Coming into force in accordance with regulation 1(2) to (4)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament in accordance with paragraph 1(3) of Schedule 7 to that Act.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Plant Health (Amendment etc.) (EU Exit) Regulations 2019.

(2) This Part, regulation 4(6)(d)(ii), (e), (7)(c)(i) and (8)(b) and Part 4 come into force on the day after the day on which these Regulations are made.

(3) Part 2 comes into force on exit day.

(4) Part 3, other than regulation 4(6)(d)(ii), (e), (7)(c)(i) and (8)(b), comes into force immediately before exit day.

(a) 2018 c. 16.

PART 2

Amendment of primary legislation relating to plant health

The Plant Health Act 1967

2. In sections 2(1) and 3(1) of the Plant Health Act 1967^(a), omit “or called for by any EU obligation”.

The Plant Health Act (Northern Ireland) 1967

3. In sections 2(1) and 3(1) of the Plant Health Act (Northern Ireland) 1967^(b), omit “or called for by any Community obligation”.

PART 3

Amendment of the Plant Health (EU Exit) Regulations 2019

4.—(1) The Plant Health (EU Exit) Regulations 2019^(c) are amended as follows.

(2) In regulation 2(1), in the definition of “relevant material”, at the end insert “or any used machinery or vehicle which has been operated for agricultural or forestry purposes”.

(3) In Schedule 1—

(a) in the table in Part A—

(i) under the heading “Insects, mites and nematodes”—

(aa) after item 8 insert—

“8A. *Aromia bungii* (Faldermann)”;

(bb) after item 22 insert—

“22A. *Grapholita packardi* Zeller”;

(cc) after item 33 insert—

“33A. *Neoleucinodes elegantalis* (Guenée)

33B. *Oemona hirta* (Fabricius)

33C. *Pityophthorus juglandis* Blackman”;

(ii) under the heading “Fungi”—

(aa) after item 1 insert—

“1A. *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.”;

(bb) after item 3 insert—

“3A. *Elsinoë australis* Bitanc. & Jenk.

3B. *Elsinoë citricola* X.L. Fan, R.W. Barreto & Crous

3C. *Elsinoë fawcettii* Bitanc. & Jenk.”;

(cc) after item 4 insert—

(a) 1967 c. 8; section 2(1) was amended by paragraph 8(2)(a) of Schedule 4 to the European Communities Act 1972 (c. 68) and S.I. 2011/1043. Section 3(1) was amended by paragraph 8(2)(a) and (b) of Schedule 4 to the European Communities Act 1972 and S.I. 2011/1043.

(b) 1967 c. 28 (N.I.); sections 2(1) and 3(1) were amended by S.R. & O (N.I.) 1972 No. 351.

(c) S.I. 2019/787, amended by S.I. 2019/809.

- “4A. *Fusarium circinatum* Nirenberg & O’Donnell
 4B. *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat”;

(b) in Part D—

(i) after item 3 insert—

“3A. *Phyllocoptes fructiphilus* (Keifer 1940)”;

(ii) for items 4 and 5 substitute—

“4. *Phytophthora ramorum* Werres, De Cock & Man in’t Veld sp. nov

5. *Pomacea* (Perry)”;

(iii) after item 6 insert—

“7. Rose rosette virus”.

(4) In Schedule 2—

(a) in the table in Part A—

(i) under the heading “Insects, mites and nematodes”—

(aa) omit item 10;

(bb) in item 37, in column 2, after “seeds, of” insert “*Cedrus* Trew or”;

(ii) under the heading “Fungi”, omit item 10.

(5) In Schedule 3, in the table in Part A, for item 14 substitute—

<p>“14. Soil consisting in part of solid organic substances or other growing medium consisting in whole or in part of solid organic substances, other than any growing medium that is composed entirely of peat or fibre of <i>Cocos nucifera</i> L. and has not been previously used for growing plants or for any agricultural purposes</p>	<p>Any third country, other than the European Union or Switzerland”.</p>
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(6) In Schedule 4—

(a) in the definition of “associated controlled dunnage”, for “9 or 12 to 14” substitute “8A, 9, 11 or 12 to 14A”;

(b) in the table in Part A—

(i) in item 8, in the entry in column 3, in paragraph (a), at the beginning insert “except in the case of wood originating in Canada or the USA,”;

(ii) after item 8 insert—

<p>“8A. Wood of <i>Juglans</i> L. or <i>Pterocarya</i> Kunth, other than wood in the form of: —chips, particles, sawdust, shavings, wood waste or scrap, or —wood packaging material which is not associated controlled dunnage, but including wood which has not kept its natural round</p>	<p>The wood must be accompanied by:</p> <p>(a) an official statement that it originates in:</p> <p>(i) an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from <i>Geosmithia morbida</i> Kolarik, Freeland, Utley & Tisserat and its vector <i>Pityophthorus juglandis</i> Blackman, or</p>
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surface, originating in the USA or the European Union

(ii) in the case of wood originating in the European Union, an area known to be free from *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat and its vector *Pityophthorus juglandis* Blackman,

- (b) an official statement that it has undergone an appropriate heat treatment to achieve a minimum temperature of 56°C for a minimum duration of 40 continuous minutes throughout the entire profile of the wood, or
- (c) an official statement that it has been squared to entirely remove the natural rounded surface.

Where the phytosanitary certificate includes the official statement referred to in paragraph (b), there must also be evidence of that heat treatment by a mark “HT” put on the wood or on any wrapping in accordance with current usage and on the phytosanitary certificate.

*The name of the area(s) must be included in the phytosanitary certificate under the heading “Additional declaration”;

(iii) for item 11 substitute—

“11. Wood of *Platanus* L., other than wood packaging material that is not associated controlled dunnage, but including wood which has not kept its natural round surface and wood in the form of chips, particles, sawdust, shavings, wood waste or scrap, originating in Albania, Armenia, the European Union, Switzerland, Turkey or the USA

The wood must be accompanied by:

- (a) an official statement that it originates in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.,
- (b) in the case of wood originating in the European Union, an official statement that it originates in a part of the European Union which is recognised as an EU protected zone in relation to *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr., or
- (c) an official statement that it has undergone kiln-drying to below 20% moisture content, expressed as a percentage of dry matter, achieved through an appropriate time/temperature schedule.

Where the phytosanitary certificate includes the official statement referred to in paragraph

(c), there must also be evidence of that kiln-drying by a mark “kiln-dried” or “KD” or another internationally recognised mark put on the wood or on any wrapping in accordance with current usage.

*The name of the area(s) must be included in the phytosanitary certificate under the heading “Additional declaration””;

(iv) after item 14 insert—

“14A. Wood of *Prunus* L., other than in the form of:
—chips, particles, sawdust, shavings, wood waste or scrap, or
—wood packaging material which is not associated controlled dunnage,

but including wood which has not kept its natural round surface, originating in China, Democratic People’s Republic of Korea, Mongolia, Japan, Republic of Korea or Vietnam

The wood must be accompanied by:

- (a) an official statement that it originates in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Aromia bungii* (Faldermann),
- (b) an official statement that it has undergone an appropriate heat treatment to achieve a minimum temperature of 56°C for a minimum duration of 30 continuous minutes throughout the entire profile of the wood, or
- (c) an official statement that it has undergone appropriate ionising radiation to achieve a minimum absorbed dose of 1kGy throughout the wood.

Where the phytosanitary certificate includes the official statement referred to in paragraph (b), there must also be evidence of that heat treatment by a mark “HT” on the phytosanitary certificate.

*The name of the area(s) must be included in the phytosanitary certificate under the heading “Additional declaration””;

(v) omit item 18;

(vi) after item 22 insert—

“22A. Wood of *Prunus* L. in the form of chips, particles, sawdust, shavings, wood waste or scrap, originating in China, Democratic People’s Republic of Korea, Mongolia, Japan, Republic of Korea or Vietnam

The wood must be accompanied by:

- (a) an official statement that it originates in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Aromia bungii* (Faldermann),
- (b) an official statement that it has been processed into pieces of not more

than 2.5 cm thickness and width, or

- (c) an official statement that it has undergone an appropriate heat treatment to achieve a minimum temperature of 56°C for a minimum duration of 30 continuous minutes throughout the entire profile of the wood.

Where the phytosanitary certificate includes the official statement referred to in paragraph (c), there must also be evidence of that heat treatment by a mark “HT” on the phytosanitary certificate.

*The name of the area(s) must be included in the phytosanitary certificate under the heading “Additional declaration”;

(vii) after item 24 insert—

“24A. Isolated bark of *Juglans* L. or *Pterocarya Kunth* or wood of *Juglans* L. or *Pterocarya Kunth* in the form of chips, particles, sawdust, shavings, wood waste or scrap, originating in the USA or the European Union

The bark or wood must be accompanied by:

- (a) an official statement that it originates in an area* established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4 as an area that is free from *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat and its vector *Pityophthorus juglandis* Blackman, or
- (b) an official statement that it has undergone an appropriate heat treatment to achieve a minimum temperature of 56°C for a minimum duration of 40 continuous minutes throughout the entire profile of the bark or the wood.

Where the phytosanitary certificate includes the official statement referred to in paragraph (b), there must also be evidence of that heat treatment by a mark “HT” on the phytosanitary certificate.

*The name of the area(s) must be included in the phytosanitary certificate under the heading “Additional declaration”;

(viii) in item 35, in column 2, after “seeds, of” insert “*Cedrus Trew* or”;

(ix) after item 43 insert—

“43A. Plants, other than seeds, of *Juglans* L. or *Pterocarya Kunth*, intended for planting,

The plants must be accompanied by:

- (a) an official statement that they have been grown throughout their life in an

originating in the USA

area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat and its vector *Pityophthorus juglandis* Blackman,

- (b) an official statement that they:
 - (i) originate in a place of production where neither symptoms of *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat nor its vector *Pityophthorus juglandis* Blackman, or the presence of the vector, have been observed during official inspections of the place of production and its vicinity (which, as a minimum, must include the area lying within a radius of 5 km of the place of production) carried out in the period of two years prior to their export,
 - (ii) have been inspected immediately prior to export, and
 - (iii) have been handled and packaged in ways to prevent their infestation once they have left the place of production, or
- (c) an official statement that they:
 - (i) originate in a place of production with complete physical isolation,
 - (ii) have been inspected immediately prior to export, and
 - (iii) have been handled and packaged in ways to prevent their infestation once they have left the place of production.

*The name of the area(s) must be included in the phytosanitary certificate under the heading "Additional declaration"

43B. Plants, other than seeds, of *Juglans* L. or *Pterocarya* Kunth, intended for planting, originating in the European Union

The plants must be accompanied by:

- (a) an official statement that they have been grown throughout their life, or since their introduction into the European Union, in a place of production in an area* established in accordance with ISPM No. 4 as an area that is free from *Geosmithia morbida* Kolarik, Freeland, Utley &

Tisserat and its vector *Pityophthorus juglandis* Blackman,

- (b) an official statement that they:
 - (i) originate in a place of production where neither symptoms of *Geosmithia morbida* Kolarik, Freeland, Utley & Tisserat nor its vector *Pityophthorus juglandis* Blackman, or the presence of the vector, have been observed during official inspections of the place of production and its vicinity (which, as a minimum, must include the area lying within a radius of 5 km of the place of production) carried out in the period of two years prior to their movement,
 - (ii) have been visually inspected prior to their movement from the place of production, and
 - (iii) have been handled and packaged in ways to prevent their infestation once they have left the place of production, or
- (c) an official statement that they:
 - (i) originate in a place of production with complete physical isolation,
 - (ii) have been visually inspected prior to their movement from the place of production, and
 - (iii) have been handled and packaged in ways to prevent their infestation once they have left the place of production.

*The name of the area(s) must be included in the phytosanitary certificate under the heading “Additional declaration””;

- (x) in item 45, in column 2, for “Armenia, the European Union, Switzerland or the USA” substitute “Albania, Armenia, the European Union, Switzerland, Turkey or the USA”;

- (xi) after item 49 insert—

“49A. Plants, other than plants in tissue culture or seeds, of *Crataegus* L., *Cydonia* Mill., *Malus* Mill., *Prunus* L., *Pyrus* L. or *Vaccinium* L., intended for planting, originating in Canada, Mexico or the USA

The plants must be accompanied by:

- (a) an official statement that they have been grown throughout their life in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Grapholita*

packardi Zeller,

- (b) an official statement that they have been:
 - (i) grown throughout their life in a place of production established in accordance with ISPM No. 10 as a place of production that is free from *Grapholita packardi* Zeller, which is registered and supervised by the national plant protection organisation in the country of origin and has been subjected annually to inspections for any signs of *Grapholita packardi* Zeller carried out at appropriate times, and
 - (ii) grown in a site with the application of appropriate preventive treatments, where the absence of *Grapholita packardi* Zeller has been confirmed by official surveys carried out annually at appropriate times, and
 - (iii) subjected to a meticulous inspection for the presence of *Grapholita packardi* Zeller immediately prior to export, or
- (c) an official statement that they have been grown in a site with complete physical protection against the introduction of *Grapholita packardi* Zeller.

A phytosanitary certificate may not include the official statement referred to in paragraph (a) unless the national plant protection organisation of the country of origin has previously notified the national plant protection organisation of the United Kingdom with written details of the area or areas.

* The name of the area(s) must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”;

(xii) for items 55 and 56 substitute—

- “55. Fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., *Mangifera* L. or *Prunus* L., originating in any third country, other than the European Union
- The fruits must be accompanied by:
- (a) an official statement that they originate in a country which, in accordance with the measures specified in ISPM No. 4, is known to be free from *Tephritidae* (non-European),
 - (b) an official statement that they originate in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Tephritidae* (non-European),
 - (c) an official statement that no signs of *Tephritidae* (non-European) have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation, on official inspections carried out at least monthly during the three months prior to harvesting, and none of the fruits harvested at the place of production have shown, in appropriate official examinations, signs of *Tephritidae* (non-European), or
 - (d) an official statement that they have been subjected to an effective treatment† to ensure freedom from *Tephritidae* (non-European).

A phytosanitary certificate may not include:
 —the official statement referred to in paragraph (a) unless the national plant protection organisation of the country of origin has previously notified the national plant protection organisation of the United Kingdom of this information in writing,

—the official statement referred to in paragraph (b) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas,

—the official statement referred to in paragraph (d) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of treatment method.

Where the phytosanitary certificate includes the official statement referred to in paragraph (c), information on traceability must also be included in the phytosanitary certificate.

* The name of the area(s) must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

† Details of the treatment data must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

56. Fruits of *Capsicum* (L.), *Citrus* L., other than *Citrus limon* (L.) Osbeck. or *Citrus aurantiifolia* (Christm.) Swingle, *Prunus persica* (L.) Batsch or *Punica granatum* L., originating in any country of the African continent, Cape Verde, Saint Helena, Madagascar, La Reunion, Mauritius or Israel
- The fruits must be accompanied by:
- (a) an official statement that they originate in a country which, in accordance with the measures specified in ISPM No. 4, is known to be free from *Thaumatotibia leucotreta* (Meyrick),
 - (b) an official statement that they originate in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Thaumatotibia leucotreta* (Meyrick),
 - (c) an official statement that they:
 - (i) originate in a place of production established by the national plant production organisation in the country of origin in accordance with ISPM No. 10 as a place of production that is free from *Thaumatotibia leucotreta* (Meyrick), and
 - (ii) are free from *Thaumatotibia leucotreta* (Meyrick) as shown from official inspections carried out at the place of production at appropriate times during the growing season, which included at least one visual examination on representative samples of fruit, or
 - (d) an official statement that they have been subjected to an effective cold or other treatment† to ensure freedom from *Thaumatotibia leucotreta* (Meyrick).

A phytosanitary certificate may not include: —the official statement referred to in paragraph (a) unless the national plant

protection organisation of the country of origin has previously notified the national plant protection organisation of the United Kingdom of this information in writing,

—the official statement referred to in paragraph (b) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas,

—the official statement referred to in paragraph (d) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of treatment method and documentary evidence of its effectiveness.

Where the phytosanitary certificate includes the official statement referred to in paragraph (c), information on traceability must also be included in the phytosanitary certificate.

* The name of the area(s) must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

† Details of the treatment data must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”;

(xiii) after item 56 insert—

“56A. Fruits of *Malus* Mill.,
originating in any third country,
other than the European Union

The fruits must be accompanied by:

- (a) an official statement that they originate in a country which, in accordance with the measures specified in ISPM No. 4, is known to be free from *Enarmonia prunivora* Walsh, *Grapholita inopinata* Heinrich and *Rhagoletis pomonella* (Walsch),
- (b) an official statement that they originate in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Enarmonia prunivora* Walsh, *Grapholita inopinata* Heinrich and *Rhagoletis pomonella* (Walsch),
- (c) an official statement that they originate in a place of production

where official inspections and surveys for the presence of *Enarmonia prunivora* Walsh, *Grapholita inopinata* Heinrich and *Rhagoletis pomonella* (Walsch) are carried out at appropriate times during the growing season, including at least one visual examination on representative samples of fruits, and have shown the fruits to be free from those plant pests, or

- (d) an official statement that they have been subjected to an effective treatment† to ensure freedom from *Enarmonia prunivora* Walsh, *Grapholita inopinata* Heinrich and *Rhagoletis pomonella* (Walsch).

A phytosanitary certificate may not include:—the official statement referred to in paragraph (a) unless the national plant protection organisation of the country of origin has previously notified the national plant protection organisation of the United Kingdom of this information in writing,

—the official statement referred to in paragraph (b) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas,

—the official statement referred to in paragraph (d) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of treatment method.

Where the phytosanitary certificate includes the official statement referred to in paragraph (c), information on traceability must also be included in the phytosanitary certificate.

* The name of the area(s) must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

† Details of the treatment data must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

56B. Fruits of *Malus* Mill. or *Pyrus* L., originating in any third country, other than the European

The fruits must be accompanied by:

- (a) an official statement that they

Union

originate in a country which, in accordance with the measures specified in ISPM No. 4, is known to be free from *Guignardia piricola* (Nosa) Yamamoto,

- (b) an official statement that they originate in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Guignardia piricola* (Nosa) Yamamoto,
- (c) an official statement that they originate in a place of production where official inspections and surveys for the presence of *Guignardia piricola* (Nosa) Yamamoto are carried out at appropriate times during the growing season, including at least one visual examination on representative samples of fruits, and have shown the fruits to be free from that plant pest, or
- (d) an official statement that they have been subjected to an effective treatment† to ensure freedom from *Guignardia piricola* (Nosa) Yamamoto.

A phytosanitary certificate may not include:
—the official statement referred to in paragraph (a) unless the national plant protection organisation of the country of origin has previously notified the national plant protection organisation of the United Kingdom of this information in writing,

—the official statement referred to in paragraph (b) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas,

—the official statement referred to in paragraph (d) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of treatment method.

Where the phytosanitary certificate includes the official statement referred to in paragraph

(c), information on traceability must also be included in the phytosanitary certificate.

* The name of the area(s) must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

† Details of the treatment data must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

56C. Fruits of *Malus* Mill. or *Pyrus* L., originating in any third country, other than the European Union

The fruits must be accompanied by:

- (a) an official statement that they originate in a country which, in accordance with the measures specified in ISPM No. 4, is known to be free from *Tachypterellus quadrigibbus* Say,
- (b) an official statement that they originate in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Tachypterellus quadrigibbus* Say,
- (c) an official statement that they originate in a place of production where official inspections and surveys for the presence of *Tachypterellus quadrigibbus* Say are carried out at appropriate times during the growing season, including at least one visual examination on representative samples of fruits, and have shown the fruits to be free from that plant pest, or
- (d) an official statement that they have been subjected to an effective treatment† to ensure freedom from *Tachypterellus quadrigibbus* Say.

A phytosanitary certificate may not include:
—the official statement referred to in paragraph (a) unless the national plant protection organisation of the country of origin has previously notified the national plant protection organisation of the United Kingdom of this information in writing,

—the official statement referred to in paragraph (b) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas,

—the official statement referred to in paragraph (d) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of treatment method.

Where the phytosanitary certificate includes the official statement referred to in paragraph (c), information on traceability must also be included in the phytosanitary certificate.

* The name of the area(s) must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

† The treatment data must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

56D. Fruits of *Malus* Mill., *Prunus* L., *Pyrus* L. or *Vaccinium* L., originating in Canada, Mexico or the USA

The fruits must be accompanied by:

- (a) an official statement that they originate in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Grapholita packardi* Zeller,
- (b) an official statement that they originate in a place of production where official inspections and surveys for the presence of *Grapholita packardi* Zeller are carried out at appropriate times during the growing season, including at least one visual examination on representative samples of fruits, and have shown the fruits to be free from that plant pest, or
- (c) an official statement that they have been subjected to an effective treatment† to ensure freedom from *Grapholita packardi* Zeller.

A phytosanitary certificate may not include:

—the official statement referred to in paragraph (a) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas,

—the official statement referred to in paragraph (c) unless the national plant

protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of treatment method.

Where the phytosanitary certificate includes the official statement referred to in paragraph (b), information on traceability must also be included in the phytosanitary certificate.

* The name of the area must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

† Details of the treatment data must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”;

(xiv) after item 89 insert—

“89A. Tubers of *Solanum tuberosum* originating in any third country, other than the European Union or Switzerland

The tubers must be accompanied by an official statement that the consignment or lot does not contain more than 1% by net weight of soil and growing medium”;

(xv) after item 97 insert—

“97A. Fruits of *Capsicum annuum* L., *Solanum aethiopicum* L., *Solanum lycopersicum* L. or *Solanum melongena* L., originating in any third country, other than the European Union

The fruits must be accompanied by:

- (a) an official statement that they originate in a country which, in accordance with the measures specified in ISPM No. 4, is known to be free from *Neoleucinodes elegantalis* (Guenée),
- (b) an official statement that they originate in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Neoleucinodes elegantalis* (Guenée),
- (c) an official statement that they:
 - (i) originate in a place of production established by the national plant production organisation in accordance with ISPM No. 10 as a place of production that is free from *Neoleucinodes elegantalis* (Guenée), and
 - (ii) are free from that plant pest as shown from official inspections carried out at the place of production at appropriate times during the growing season,

which included at least one visual examination on representative samples of fruit, or

- (d) an official statement that they originate in an insect-proof site of production, established by the national plant production organisation in the country of origin as a site of production that is free from *Neoleucinodes elegantalis* (Guenée) on the basis of official inspections and surveys carried out during the three months prior to export.

A phytosanitary certificate may not include:
—the official statement referred to in paragraph (a) unless the national plant protection organisation of the country of origin has previously notified the national plant protection organisation of the United Kingdom of this information in writing,

—the official statement referred to in paragraph (b) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas.

Where the phytosanitary certificate includes the official statement referred to in paragraph (c) or (d), information on traceability must also be included in the phytosanitary certificate.

* The name of the area(s) must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

97B. Fruits of *Solanaceae* originating in Australia, the Americas or New Zealand

The fruits must be accompanied by:

- (a) an official statement that they originate in a country which, in accordance with the measures specified in ISPM No. 4, is known to be free from *Bactericera cockerelli* (Sulc.),
- (b) an official statement that they originate in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from *Bactericera cockerelli* (Sulc.),
- (c) an official statement that:
 - (i) they originate in a place of

production where official inspections and surveys for the presence of *Bactericera cockerelli* (Sulc.) were carried out at the place of production and in its immediate vicinity during the three months prior to export,

(ii) they have been subjected to effective treatments to ensure freedom from the plant pest, and

(iii) representative samples of the fruit have been inspected prior to export, or

(d) an official statement that that they originate in an insect-proof site of production, established by the national plant production organisation in the country of origin as a site of production that is free from *Bactericera cockerelli* (Sulc.) on the basis of official inspections and surveys carried out during the three months prior to export.

A phytosanitary certificate may not include:
—the official statement referred to in paragraph (a) unless the national plant protection organisation of the country of origin has previously notified the national plant protection organisation of the United Kingdom of this information in writing,

—the official statement referred to in paragraph (b) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas.

Where the phytosanitary certificate includes the official statement referred to in paragraph (c) or (d), information on traceability must also be included in the phytosanitary certificate.

* The name of the area(s) must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”;

(xvi) for item 114 substitute—

“114.	Growing medium, attached to or associated with plants,	The associated plants must be accompanied by an official statement that:
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intended to sustain the vitality of the plants, other than any sterile medium of *in-vitro* plants, originating in any third country, other than the European Union or Switzerland

- (a) at the time of planting, the growing medium:
 - (i) was free from soil and organic matter and had not been previously used for growing plants or for any agricultural purposes,
 - (ii) was composed entirely of peat or fibre of *Cocos nucifera* L. and had not been previously used for growing plants or for any agricultural purposes, or
 - (iii) was subjected to an effective treatment† to ensure freedom from harmful plant pests,
- (b) the growing medium was stored and maintained under appropriate conditions to keep it free from harmful plant pests, and
- (c) either:
 - (i) appropriate measures have been taken since planting to ensure that the growing medium has been kept free from harmful plant pests, including at least the physical isolation of the growing medium from soil and other possible sources of contamination, the use of water that is free from harmful plant pests and hygiene measures, or
 - (ii) in the period of two weeks prior to export:
 - (aa) the growing medium (including, where appropriate, any soil) has been completely removed by washing with water that is free from harmful plant pests, and
 - (bb) where the associated plants have been replanted, the growing medium met the requirements specified in paragraph (a) at the time of replanting and appropriate measures since replanting have been taken to ensure that the growing medium has been kept free from harmful plant pests in accordance

with sub-paragraph (i).

† Details of the treatment data must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”;

(xvii) after item 114 insert—

“114A.	Bulbs, corms, rhizomes or tubers, intended for planting, other than tubers of <i>Solanum tuberosum</i> , originating in any third country, other than the European Union or Switzerland	The bulbs, corms, rhizomes or tubers must be accompanied by an official statement that the consignment or lot does not contain more than 1% by net weight of soil and growing medium
114B.	Root or tubercle vegetables originating in any third country, other than the European Union or Switzerland	The vegetables must be accompanied by an official statement that the consignment or lot does not contain more than 1% by net weight of soil and growing medium
114C.	Used machinery or vehicles which have been operated for agricultural or forestry purposes, imported from any third country, other than the European Union or Switzerland	The machinery or vehicles must be accompanied by an official statement that they have been cleaned and are free from soil and plant debris
114D.	Used machinery or vehicles which have been operated for agricultural or forestry purposes, imported from the European Union or Switzerland	<p>The machinery or vehicles must be accompanied by an official statement that:</p> <ul style="list-style-type: none"> (a) they have been exported from: <ul style="list-style-type: none"> (i) an area established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from <i>Ceratocystis platani</i> (J.M. Walter) Engelbr. & T.C. Harr., or (ii) in the case of any machinery or vehicles exported from the European Union, any part of the European Union which is recognised as an EU protected zone in relation to <i>Ceratocystis platani</i> (J.M. Walter) Engelbr. & T.C. Harr.), or (b) in the case of any machinery or vehicles exported from an area infested with <i>Ceratocystis platani</i> (J.M. Walter) Engelbr. & T.C. Harr., they have been cleaned and are free from soil and plant debris prior to

being moved out of the area”;

(xviii) after item 124 insert—

- | | |
|--|---|
| “124A. Plants of <i>Euphorbia pulcherrima</i> Willd., intended for planting, other than seeds or uprooted cuttings, for which there is evidence from their packing or their flower development or from other means that they are intended for direct sale to final consumers not involved in professional plant production | The plants must be accompanied by an official statement that they have been officially inspected and found free from <i>Bemisia tabaci</i> Genn. (European populations) immediately prior to their movement”; |
|--|---|

(xix) in item 125, in the entry in column 2, after “seeds, of” insert “*Ajuga* L., *Crossandra* Salisb.”;

(c) in the table in Part C, after item 11 insert—

- | | | |
|---|---|--------------------------|
| “11A. Plants, other than fruit or seeds, of <i>Quercus</i> L., other than <i>Quercus suber</i> , intended for planting, that have a girth at 1.2 m above the root collar of 8 cm or more, other than any such plants:
—which originate in a third country, enter England via a point of entry in the OPM excluded zone and are not in the course of consignment to the OPM pest free area,
—which originate in, or have been introduced into, the OPM excluded zone and remain in that zone | The plants must be accompanied by: | The OPM pest free area”; |
| | (a) an official statement that they have been grown throughout their life in places of production in any country in which <i>Thaumetopoea processionea</i> L. is not known to occur, | |
| | (b) an official statement that they have been grown throughout their life in an area established by the national plant protection organisation in accordance with ISPM No. 4, or where the plants originate in the European Union, in any part of the European Union which is recognised as an EU protected zone in relation to <i>Thaumetopoea processionea</i> L., or | |
| | (c) an official statement that they have been grown throughout their life in a site with | |

complete physical
protection against the
introduction of
Thaumetopoea
processionea L. and
have been inspected
at appropriate times
and found to be free
from *Thaumetopoea*
processionea L.

(d) in the table in Part D—

(i) in item 30, in column 3—

(aa) omit paragraph (b);

(bb) in paragraph (c), omit “in the case of fruits originating in Argentina, South Africa or Uruguay,”;

(ii) omit item 32;

(iii) at the end insert—

<p>“38. Plants, other than seeds, of <i>Rosa</i> sp., originating in Canada, India, Mexico or the USA</p>	<p>The plants must be accompanied by an official statement that:</p>
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(a) they have been grown throughout their life in an area* established by the national plant protection organisation in accordance with ISPM No. 4 as an area that is free from Rose rosette virus and *Phyllocoptes fructiphilus* (Keifer 1940), and

(b) they have been packaged in a manner to prevent infestation by *Phyllocoptes fructiphilus* (Keifer 1940) during their transport.

* The name of the area(s) must also be mentioned on the phytosanitary certificate under the heading “Additional declaration”

<p>39. Plants in tissue culture of <i>Rosa</i> sp., originating in Canada, India, Mexico or the USA</p>	<p>The plants must be accompanied by an official statement that they have been produced from mother plants tested and found to be free from Rose rosette virus”;</p>
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(e) in the table in Part E, omit item 17.

(7) In Schedule 5—

(a) in Part A—

(i) in paragraph 3—

(aa) in sub-paragraph (i), for the words from “*Juglans ailantifolia* Carr.” to “*Pterocarya rhoifolia* Siebold & Zucc.” substitute “*Juglans* L., *Ulmus davidiana* Planch. or *Pterocarya* L.” and at the end omit “or”;

(bb) after sub-paragraph (i) insert—

- “(ia) *Convolvulus* L., *Ipomoea* L. (other than tubers), *Micromeria* Benth or *Solanaceae* originating in Australia, the Americas or New Zealand; or”;
 - (ii) in paragraph 5—
 - (aa) in sub-paragraph (a), for “, *Solanum lycopersicum* L. or *Solanum melongena* L.” substitute “or *Solanaceae*”;
 - (bb) for sub-paragraph (b) substitute—
 - “(b) *Actinidia* Lindl., *Annona* L., *Carica papaya* L., *Cydonia* Mill., *Diospyros* L., *Fragaria* L., *Malus* L., *Mangifera* L., *Passiflora* L., *Persea americana* Mill., *Prunus* L., *Psidium* L., *Pyrus* L., *Ribes* L., *Rubus* L., *Syzygium* Gaertn., *Vaccinium* L. or *Vitis* L.”;
 - (cc) omit sub-paragraph (c);
 - (iii) omit paragraph 7;
 - (iv) for paragraph 8 substitute—
 - “8. Growing medium, attached to or associated with plants, intended to sustain the vitality of the plants, originating in any third country, other than the European Union or Switzerland.”;
 - (v) after paragraph 8 insert—
 - “8A. Used machinery or any used vehicle, imported from any third country, which has been operated for agricultural or forestry purposes and meets one of the following descriptions—
- | <i>CN code</i> | <i>Description</i> |
|----------------|--|
| ex 8432 | Agricultural, horticultural or forestry machinery for soil preparation or cultivation, lawn or sports-ground rollers |
| ex 8433 53 | Root or tuber harvesting machines |
| ex 8436 80 10 | Forestry machinery |
| ex 8701 20 90 | Tractors (other than tractors of heading 8709): Road tractors for semi-trailers used |
| ex 8701 91 10 | Agricultural tractors and forestry tractors, wheeled, of an engine power not exceeding 18 kW.”; |
- (vi) in paragraph 12(c), for the words from “*Juglans ailantifolia* Carr.” to “*Pterocarya rhoifolia* Siebold & Zucc.” substitute “*Juglans* L., *Ulmus davidiana* Planch. or *Pterocarya* L.”;
 - (vii) in paragraph 13(a)—
 - (aa) in paragraph (ii) for “Armenia, Switzerland or the USA” substitute “Albania, Armenia, Switzerland, Turkey or the USA”;
 - (bb) in paragraph (vi), for the words from “*Juglans ailantifolia* Carr.” to “*Pterocarya rhoifolia* Siebold & Zucc.” substitute “*Juglans* L., *Ulmus davidiana* Planch. or *Pterocarya* L.”;
 - (cc) in paragraph (viii), omit “*Prunus* L.” and the “and” at the end;
 - (dd) after paragraph (viii) insert—
 - “(ix) *Prunus* L., including wood which has not kept its natural round surface, originating in Canada, China, Democratic People’s Republic of Korea, Mongolia, Japan, Republic of Korea, the USA or Vietnam; and”;
 - (b) in Part B—
 - (i) in paragraph 17, after “seeds, of” insert “*Cedrus* Trew.”;
 - (ii) in paragraph 27(a)—
 - (aa) after “*Impatiens* L.” insert “*Juglans* L.”;
 - (bb) after “*Pseudotsuga* Carr.” insert “*Pterocarya* L.”;

- (iii) in paragraph 28(a)(i), for “*Platanus* L.” substitute “*Juglans* L., *Platanus* L. or *Pterocarya* L.”;
- (c) in Part C—
 - (i) omit paragraph 49;
 - (ii) at the end insert—

“**52.** Plants, other than seeds, of *Rosa* sp., originating in Canada, India, Mexico or the USA.”.
- (8) In Schedule 6—
 - (a) in Part A—
 - (i) in paragraph 2, after “seeds, of” insert “*Cedrus* Trew.”;
 - (ii) in paragraph 12(a)—
 - (aa) after “*Impatiens* L.” insert “*Juglans* L.”;
 - (bb) after “*Pseudotsuga* Carr.” insert “*Pterocarya* L.”;
 - (iii) in paragraph 13(a)(i), for “*Platanus* L.” substitute “*Juglans* L., *Platanus* L. or *Pterocarya* L.”;
 - (b) in Part B, omit paragraph 29.
- (9) In Schedule 17—
 - (a) after paragraph 17 insert—

“**17A.** Commission Decision 2007/433/EC on provisional emergency measures to prevent the introduction into and the spread within the Community of *Gibberella circinata* Nirenberg & O’Donnell.”;
 - (b) after paragraph 18 insert—

“**18A.** Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster).

18B. Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).

18C. Commission Implementing Decision 2012/535/EU on emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode).

18D. Commission Implementing Decision 2012/697/EU as regards measures to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry).”;
 - (c) after paragraph 21 insert—

“**21A.** Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.).

21B. Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulksy).”;
 - (d) after paragraph 22 insert—

“**22A.** Commission Implementing Decision (EU) 2016/412 authorising Member States to provide for a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of ash wood originating or processed in Canada.

22B. Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa.”;

(e) after paragraph 24 insert—

“**25.** Commission Implementing Decision (EU) 2018/1203 authorising Member States to provide for a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of ash wood originating or processed in the United States of America and repealing Commission Implementing Decision (EU) 2017/204.

26. Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann).

27. Commission Implementing Decision (EU) 2018/1553 on conditions for the recognition of electronic phytosanitary certificates issued by the national plant protection organisations of third countries.

28. Commission Implementing Decision (EU) 2018/1959 derogating from Council Directive 2000/29/EC as regards measures to prevent the introduction into and the spread within the Union of the harmful organism *Agrilus planipennis* (Fairmaire) through wood originating in Canada and in the United States of America.

29. Commission Implementing Decision (EU) 2019/1449 amending Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa.”.

PART 4

Amendment of the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019

5. In regulation 5 of the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019(a)—

- (a) omit paragraph (5);
- (b) in paragraph (7)—
 - (i) in sub-paragraph (b)(xiii), for “after item 32” substitute “at the appropriate place (in numerical sequence)”;
 - (ii) in sub-paragraph (c)(xiv), for “after item 17” substitute “at the end”;
- (c) in paragraph (8), for “after paragraph 49” substitute “at the appropriate place (in numerical sequence)”;
- (d) in paragraph (9)—
 - (i) omit sub-paragraph (o);
 - (ii) in sub-paragraph (p), for “after paragraph 29” substitute “at the end”.

Date

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

(a) S.I. 2019/809.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) to (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

Part 2 makes amendments to the Plant Health Act 1967 (c. 8) and the Plant Health (Northern Ireland) Act 1967 (c. 28).

Part 3 amends the Plant Health (EU Exit) Regulations 2019 (S.I. 2019/787) and Part 4 amends the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/809).

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

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EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ('Defra') and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes technical changes to earlier EU Exit SIs to take account of various recent EU instruments relating to plant health. It will ensure that this recent EU legislation forms part of the retained EU law relating to plant health on exit day. It also amends primary legislation relating to plant health to remove references to EU obligations.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU¹ ("the Plant Health Directive") establishes the EU plant health regime. Whilst protecting against plant health risks, the Plant Health Directive also provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.
- 2.3 The Plant Health Directive is implemented in England by the Plant Health (England) Order 2015 (S.I. 2015/610) and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) which extends to Great Britain. The Orders set out obligations for the control and management of plant health risks from the import of plant material from third countries and the movement of such material within the EU single market, in order to protect biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in Scotland, Wales and Northern Ireland.

Why is it being changed?

- 2.4 The following EU instruments have been adopted recently which modify the annexes of the Plant Health Directive as a result of technical changes in the assessment of risks presented by particular pests and diseases and introduce new measures to address risks presented by other pests and diseases:
- **Commission Implementing Decision (EU) 2018/ 1959** which establishes measures to prevent the introduction into and spread within the EU of the harmful organism *Agrilus planipennis* (Fairmaire) through wood originating in Canada and the United States of America.

¹ This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

- Commission Implementing Decision (EU) 2019/449 which amends Commission Implementing Decision (EU) 2016/715 setting out measure in respect of certain fruits originating in third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa.
- Commission Implementing Directive (EU) 2019/523 which amends Annexes 1 to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community.
- These recent EU measures have been implemented in relation to England through two non-EU Exit SIs: the Plant Health (England) (Amendment) Order 2019 (S.I. 2019/1070); and the Plant Health (Forestry) (Amendment) (England) Order 2019 (S.I. 2019/1075). These Orders also introduce national provisions to protect against the introduction of the Rose rosette virus under provisions contained in the Plant Health Directive. Equivalent legislation to implement these EU measures is being brought forward in Wales and Northern Ireland.

- 2.5 National provisions to add strengthened protection against the introduction and spread of Oak Processionary Moth were implemented through the Plant Health (Amendment) (England) Order 2019 (S.I. 2019/1128), which came into force on 15 July 2019. This instrument amends the measures in the Plant Health (EU Exit) Regulations 2019 which apply to Oak Processionary Moth to reflect those changes, as well as the other changes required by the EU measures in Commission Implementing Directive (EU) 2019/523.

What will it now do?

- 2.6 This instrument amends the Plant Health (EU Exit) Regulations 2019 (S.I. 2019/787) and the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/809), which apply to England, Wales and Northern Ireland. It will ensure that Schedules 1 to 6 to the Plant Health (EU Exit) Regulations 2019 are updated to reflect recent EU and national legislation, relating to plant health so that EU-derived protective measures against the introduction and spread of organisms harmful to plants or plant products which are in place immediately before exit day continue to remain effective and operable following the UK's withdrawal from the EU.
- 2.7 In Part 2, this instrument also removes references to EU obligations from sections 2(1) and 3(1) of the Plant Health Act 1967 (which extends to Great Britain) and to Community obligations from sections 2(1) and 3(1) of the Plant Health Act (Northern Ireland) 1967 which will become redundant on exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument varies between provisions.
- 3.3 Regulation 2 applies to Great Britain, regulation 3 applies to Northern Ireland and regulations 4 and 5 apply to England, Wales and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of the provisions in this instrument is the same as the provisions they amend. This means that regulation 2 extends to Great Britain, regulation 3 extends to Northern Ireland and regulations 4 and 5 extend to England and Wales and Northern Ireland.
- 4.2 The territorial application of the provisions in this instrument is the same as the provisions they amend. This means that regulation 2 applies to Great Britain, regulation 3 applies to Northern Ireland and regulations 4 and 5 apply to England, Wales and Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding Human Rights:
“In my view the provisions of Plant Health (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The key legislative context for the instrument is set out at sections 2.2 to 2.7 above. The principal amendments made by this instrument are contained in Part 3 and Part 4 and amend the Plant Health (EU Exit) Regulations 2019 and the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 to update Schedules 1 to 6 to the Plant Health (EU Exit) Regulations 2019.

7. Policy background

What is being done and why?

- 7.1 This instrument will ensure that EU Exit SIs (referred to in section 6.1) are updated to reflect recent EU and national legislation relating to plant health. It ensures that the relevant EU-derived protective measures against the introduction and spread of organisms harmful to plants or plant products which are in place immediately before exit day continue to remain effective and operable following the UK’s withdrawal from the EU. These measures will be in place immediately before exit day.
- 7.2 All the amendments introduced by this instrument are technical operability amendments and do not introduce any policy changes.
- 7.3 We are also using this opportunity to remove references to EU obligations at sections 2(1) and 3(1) of the Plant Health Act 1967 (which extends to Great Britain) and to Community obligations from sections 2(1) and 3(1) of the Plant Health Act (Northern Ireland) 1967. These changes have no operational impact but simply remove redundant and inoperable references to EU obligations. The Devolved Administrations have provided their consent to make these changes for the whole of the UK.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018, in order to address failures of retained EU law to operate effectively or other deficiencies (within the meaning of that Act) arising from the withdrawal of the United Kingdom from the European Union. The instrument is also

made under paragraph 21 of Schedule 7 of the Withdrawal Act. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

10.1 The Scottish, Welsh and Northern Irish devolved administrations have been consulted about the proposed amendments and are content.

11. Guidance

11.1 The Animal and Plant Health Agency are the relevant delivery body and are developing an implementation plan and associated guidance for publication. A Technical Notice was published in September 2018, describing how imports and exports of plants and plant products to/from the EU will change in a 'no deal' EU Exit scenario.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An impact assessment has not been prepared for this instrument because the direct impacts on businesses and the public sector are expected to be below the *de minimus* threshold for requiring an impact assessment, as outlined in paragraphs 12.1 to 12.2 above.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Kate Somerwill-Owens at the Department for Environment, Food and Rural Affairs
Telephone: 02080 5654319 or email: kate.somerwill-owens@defra.gsi.gov.uk can be contacted with any queries regarding this instrument.

15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

- 15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub- delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under s. 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations Under s. 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view the Plant Health (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate”.
- 1.2 This is the case because the instruments correct technical deficiencies that will arise from withdrawal and ensures that the existing regimes for safeguarding UK biosecurity will continue to operate effectively once we leave the EU. This is in line with government policy.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 2.2 These are that there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement:
“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.



Ein cyf/Our ref MA - L/LG/0566/19

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

SeneddCLA@assembly.wales

29 July 2019

Dear Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum before the National Assembly for Wales in respect of the Plant Health (Amendment etc.) (EU Exit) Regulations 2019 as required by Standing Order 30A.

I am writing to inform you that I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis that our interest in this SI is restricted to simple amendments that address deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Regulation 2 of the 2019 Regulations makes relevant provision and removes references to EU obligations in sections 2(1) and 3(1) of the Plant Health Act 1967. There is no divergence in policy between the Welsh Government, Scottish Government and the UK Government in this case.

SO30A provides that any Member may table a motion for a debate on this SI. Given the volume of legislation that the Assembly is considering, I will not myself be seeking to initiate such a debate.

Yours Sincerely,

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Plant Health (Amendment etc.) (EU Exit) Regulations 2019**

DATE **26 July 2019**

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

The Plant Health (Amendment etc.) (EU Exit) Regulations 2019 (“the 2019 Regulations”).

The Law that is being amended

- The Plant Health Act 1967
- The Plant Health Act (Northern Ireland) 1967
- The Plant Health (EU Exit) Regulations 2019
- The Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019

The Law that is being revoked

- Commission Decision 2007/433/EC on provisional emergency measures to prevent the introduction into and the spread within the Community of *Gibberella circinata* Nirenberg & O'Donnell
- Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster)
- Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner)
- Commission Implementing Decision 2012/535/EU on emergency measures to prevent the spread with the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode)
- Commission Implementing Decision 2012/697/EU as regards measures to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry)
- Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.)
- Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky)

- Commission Implementing Decision (EU) 2016/412 authorising Member States to provide for a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of ash wood originating or processed in Canada
- Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa
- Commission Implementing Decision (EU) 2018/1203 authorising Member States to provide for a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of ash wood originating or processed in the United States of America and repealing Commission Implementing Decision (EU) 2017/204
- Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann)
- Commission Implementing Decision (EU) 2018/1553 on conditions for the recognition of electronic phytosanitary certificates issued by the national plant protection organisations of third countries
- Commission Implementing Decision (EU) 2018/1959 derogating from Council Directive 2000/29/EC as regards measures to prevent the introduction into and the spread within the Union of the harmful organism *Agrilus planipennis* (Fairmaire) through wood originating in Canada and in the United States of America
- Commission Implementing Decision (EU) 2019/1449 amending Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa

The purpose of the amendments

The purpose of the 2019 Regulations is to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. They also amend primary legislation relating to plant health to remove references to EU obligations.

A number of EU instruments have been adopted which modify the annexes of the Plant Health Directive (Council Directive 2000/29/EC) as a result of technical changes in the assessment of risks presented by particular pests and diseases and the introduction of new measures to address risks presented by other pests and diseases. The 2019 Regulations will ensure that plant health legislation which implements EU protective measures against the introduction and spread of organisms harmful to plants or plant products, remains effective after the UK leaves the EU in a 'no deal' scenario.

Part 2 of the 2019 Regulations makes amendments to the Plant Health Act 1967 and the Plant Health Act (Northern Ireland) 1967 removing references to EU obligations from sections 2(1) and 3(1) of the Plant Health Act 1967 and to Community obligations from sections 2(1) and 3(1) of the Plant Health Act (Northern Ireland) 1967.

Part 3 of the 2019 Regulations includes amendments to the Plant Health (EU Exit) Regulations 2019 that revoke further retained direct EU legislation introduced since these Regulations were laid.

Part 4 of the 2019 Regulations makes brief amendments, elements of which are of a stylistic nature, to the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/z5kBsny2>

Any impact the SI may have on the Welsh Ministers' executive competence

Save for the following, the 2019 Regulations do not impact on the Welsh Ministers' executive competence. Regulation 2 to the 2019 Regulations removes references to EU obligations in sections 2(1) and 3(1) of the Plant Health Act 1967 and in doing so removes the power of competent authorities (the competent authority for Wales being the Welsh Ministers) to make orders in pursuance of EU obligations.

Any impact the SI may have on the legislative competence of the National Assembly for Wales

The 2019 Regulations have no impact on the National Assembly for Wales' legislative competence.

Why consent was given

As set out above, the 2019 Regulations address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. They also amend primary legislation relating to plant health to remove references to EU obligations.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to Plant Health Act 1967

UK MINISTERS ACTING IN DEVOLVED AREAS

141 - The Plant Health (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 22 July 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	N/A
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 32
SICM under SO 30A (because amends primary legislation)	Paper 28

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft 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	10 September 2019

Commentary

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

These Regulations amend the Plant Health (EU Exit) Regulations 2019 and the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019. The amendments ensure that Schedules 1 to 6 to the Plant Health (EU Exit) Regulations 2019 are updated to reflect recent EU and national legislation so that EU-derived protective measures against the introduction and spread of organisms harmful to plants or plant products which are in place immediately before exit day continue to remain effective and operable following the UK's withdrawal from the EU.

These Regulations also remove references to EU obligations from sections 2(1) and 3(1) of the Plant Health Act 1967.

Legal Advisers agree with the statement laid by the Welsh Government dated 26 July 2019 regarding the effect of these Regulations. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The European Union (Withdrawal) Act and Common Frameworks**
DATE **17 July 2019**
BY **Jeremy Miles, AM, Counsel General and Brexit Minister**

The European Union (Withdrawal) Act requires the UK Government to report to Parliament periodically on matters relating to Common Frameworks and the use if any made by the UK Government of powers under section 12 of the Act (the so-called 'freezing powers') temporarily to maintain existing EU law limits on devolved competence.

I am notifying Members that the fourth such report was laid in Parliament on 17 July.

<https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks>



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 March 2019 to 25 June 2019



Cabinet Office

The European Union (Withdrawal) Act and Common Frameworks

26 March 2019 to 25 June 2019

Presented to Parliament pursuant to paragraph 4 of Schedule 3 to the European Union (Withdrawal) Act 2018

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The Rt Hon David Lidington CBE MP
Chancellor of the Duchy of
Lancaster and Minister for the
Cabinet Office



The Rt Hon Karen Bradley MP
Secretary of State for Northern Ireland



The Rt Hon David Mundell MP
Secretary of State for Scotland



The Rt Hon Alun Cairns MP
Secretary of State for Wales

Foreword

The UK Government remains committed to ensuring a smooth and orderly exit from the European Union. Officials from the UK, Scottish, and Welsh Governments and Northern Ireland Civil Service (NICS) have continued to work closely together to prepare the UK for EU Exit.

The UK Government recognises the importance of accountability and transparency in the development of common frameworks and has therefore committed in legislation to report to Parliament every three months and to share this report with the devolved administrations (DAs). This report includes the steps we are taking, in partnership with those administrations, to establish common frameworks and any use of the powers in section 12 of the European Union (Withdrawal) Act 2018 to temporarily freeze devolved competence. The last report was published on 16 May 2019 covering the reporting period 26 December 2018 to 25 March 2019.

This commitment to transparency is demonstrated by the fact that this report is the fourth publication on common frameworks this year (three statutory reports and the revised frameworks analysis) and that there have been two frameworks publications developed in this reporting period alone, detailing progress made. This commitment to transparency will continue and further updates will be published in the future. The increased level of interest and engagement from legislatures and stakeholders in this work is welcomed.

The revised frameworks analysis was published on 4 April 2019. This set out the progress made to develop common frameworks since the initial analysis was published in March 2018. The revised analysis demonstrates the progress that had been made by proceeding collaboratively and the commitment by the Scottish and Welsh Governments to cooperative working.

The UK Government, Welsh Government and Scottish Government, together with the Northern Ireland Civil Service, have jointly developed a plan of engagement to increase awareness of the Common Frameworks programme across the United Kingdom.

This report details the progress made in the fourth reporting period (26 March 2019 to 25 June 2019) as required under Schedule 3 to the European Union (Withdrawal) Act 2018. On the basis of the continuing joint progress and collaboration on common frameworks, the UK Government has not sought to bring forward any section 12 regulations to date. On the basis of this, the Scottish and Welsh Governments have committed to not create divergent policy in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussion continues.

Implementation of Future Common Frameworks

- 1.1 Part 2 of Schedule 3 to the European Union (Withdrawal) Act 2018 requires that a Minister of the Crown report to Parliament at three month intervals on various matters pertaining to common frameworks, and the use of the powers in section 12 of, and Schedule 3 to, the 2018 Act to temporarily maintain the existing EU law limits on devolved competence. Reports are shared with the devolved administrations to enable them to maintain a concurrent level of scrutiny. The last report was published on 16 May 2019 covering the reporting period 26 December to 25 March 2019.
- 1.2 The purpose of these reports is to ensure that the process of developing common frameworks, in collaboration with the devolved administrations, is transparent and subject to robust parliamentary scrutiny.

Principles for Common Frameworks

- 1.3 Under the current devolution settlements, the devolved legislatures and administrations cannot act incompatibly with EU law. The EU laws that are in place create common UK-wide approaches even where those policy areas otherwise fall within devolved competence. The Scottish and Welsh Governments agree that common approaches will continue to be required in some areas after the UK leaves the EU.
- 1.4 In October 2017, the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) agreed principles to guide the work to create common frameworks. These principles are set out below:

1. *Common frameworks will be established where they are necessary in order to:*
 - *enable the functioning of the UK internal market, while acknowledging policy divergence;*
 - *ensure compliance with international obligations;*
 - *ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;*
 - *enable the management of common resources;*
 - *administer and provide access to justice in cases with a cross-border element;*
 - *safeguard the security of the UK.*
2. *Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:*

- *be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;*
- *maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules;*
- *lead to a significant increase in decision-making powers for the devolved administrations.*

3. *Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.*

1.5 These principles continue to guide all discussions between the UK Government and the devolved administrations on common frameworks.

Progress Towards Establishing Future Frameworks

1.6 The following section sets out the steps taken by the UK Government, during the reporting period, toward implementing our long-term common frameworks, and explains how the frameworks principles have been taken into account.

1.7 Common frameworks continue to be developed through constructive discussions between the UK Government and the devolved administrations. This fact was recognised in the conclusion to the Scottish Parliament's Finance and Constitution Committee's report on common frameworks. In this report, the committee welcomed *'the progress being made with common frameworks on the basis of negotiation and agreement between Governments'*.¹ This has been continued during the latest reporting period (26 March 2019 to 25 June 2019) where detailed multilateral engagement has taken place at official level, including two joint UKG-DA Project Board meetings, with a rotating chair and location between London, Cardiff, Belfast and Edinburgh, and standalone sessions on:

- Implementation of EU Emissions Trading System (2 May 2019) - publication of joint consultation on the approach to UK carbon pricing following EU Exit
- Agricultural Support (29 May 2019) - discussion on Crisis Measures, Public Intervention and Private Storage Aid
- Fertiliser Regulations (4 June 2019) - meeting of the Fertiliser Regulatory Committee to continue to develop proposals for framework

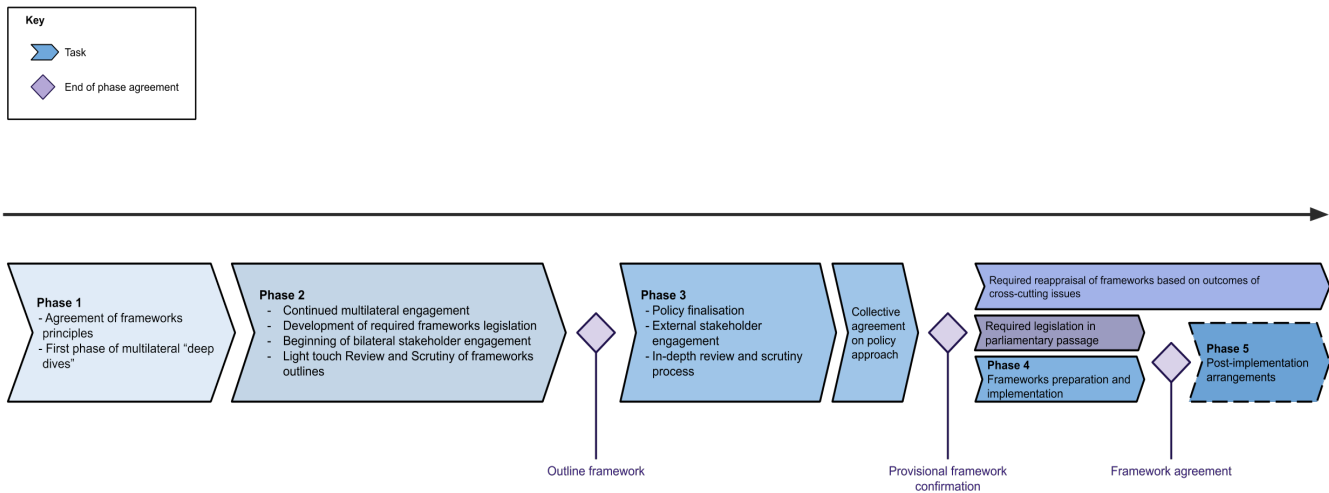
¹ <https://sp-bpr-en-prod-cdnep.azureedge.net/published/FCC/2019/3/25/Report-on-Common-Frameworks/FCC-S5-19-04.pdf>

- Animal Health and Welfare (17 June 2019) - deep dive on establishment of future UK Biosecurity Office to complement wider framework development
- Fisheries Management and Support (29 May 2019) - Science Working Group convened to develop content of non-legislative MoU

- 1.8 In the absence of Northern Ireland Executive Ministers, officials from the Northern Ireland Civil Service continue to participate in frameworks development on a factual and analytical basis.
- 1.9 In addition to this multilateral engagement the Chancellor of the Duchy of Lancaster has also appeared before the Public Administration and Constitutional Affairs Committee (PACAC)² to talk about common frameworks amongst other things; and before the House of Lords EU Select Committee³ to give evidence on how the UK Government has worked with the devolved administrations to develop common frameworks. This shows the UK Government's continued commitment over the reporting period to transparency and engagement with Parliament.
- 1.10 During the reporting period officials have revisited the planning assumptions for frameworks delivery in light of a more in depth understanding of related interdependencies. As a result, officials have amended the delivery pathway to reflect the process of agreement, and the impact of the key interdependencies. This new approach can be seen below:

² <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/news-parliament-2017/military-force-fourth-session-evidence-17-19/>

³ <https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/news-parliament-2017/david-lidington-evidence-session/>



- 1.11 UK Government officials in collaboration with devolved administration officials have revised the frameworks delivery programme. Frameworks will be implemented depending on the needs of the particular policy area and may require a combination of legislative and non-legislative measures. The delivery process accounts for frameworks to be implemented in different ways, with some activity undertaken concurrently, to ensure that all of the due process has been undertaken as the framework is put in place. As a result, frameworks will be implemented at different points in time, depending on the requirements of that framework.
- 1.12 During the reporting period officials have also developed three documents for publication. Firstly a progress update on common frameworks which will include a summary of technical stakeholder engagement, UK Government and DA cooperation, the interdependencies of the programme with cross cutting issues and the future work programme. Secondly, an illustration of the frameworks delivery process including a high level visual snapshot of implementation proposals, included above. Thirdly, a sample frameworks outline covering all the key elements of a framework.
- 1.13 The UK Government has begun to assess the potential interaction between common frameworks and the Future Partnership with the EU. This has included considering how framework areas might be affected by future negotiations with the EU.
- 1.14 The UK Government will work with the Scottish and Welsh Governments and the Northern Ireland Civil Service, to seek to develop a shared approach to the internal market, including exploring a range of evidence and ideas, and together will continue to support policy teams in considering how to manage internal market-related issues in individual framework areas.

- 1.15 As frameworks outlines are developed, work is ongoing to consider what level of consistency is desirable in the governance structures across all frameworks. Officials from the UK Government and the devolved administrations continue to work together to ensure that governance proposals for individual frameworks take account of the potential outputs of the Review of Intergovernmental Relations. Consideration is also being given to the effect that the outcomes of other cross-cutting issues, such as the Future Economic Partnership and Internal Market, may have on the governance of common frameworks.
- 1.16 As activity continues to move into the third phase, further planning has taken place to deliver on a programme of multilateral engagements with stakeholders. The UK, Scottish and Welsh Governments and Northern Ireland Civil Service have worked collaboratively to develop and agree a joint approach to stakeholder engagement, which plans to engage with Parliament, the devolved legislatures, business organisations and wider sector-specific stakeholders as work on common frameworks continues. They are:
- **High level programme engagement** focused on academics and umbrella organisations. The UK Government and the devolved administrations are working together on the best way of presenting the overarching principles and purpose of frameworks at key events across the UK;
 - **Parliamentary engagement** with UK Parliament and the devolved legislatures. We will be updating parliamentary committees at key moments in the process, and consulting them on the arrangements that will need to be put in place to enable the formal scrutiny of frameworks; and
 - **Technical engagement** by policy teams on specific frameworks. This work is engaging relevant sectors to test provisional conclusions, informing future policy development.

The UK Government and devolved administrations recognise the importance of, and are collectively committed to, bringing stakeholders and their expertise into the development process.

- 1.17 After testing the provisional policy conclusions with stakeholders, the UK Government and devolved administration's 'Hazardous Substances Planning' policy teams have published their draft outline framework in full. We envisage further policy-owning teams will test the detail of their outline framework to stakeholders within the next reporting period. The Northern Ireland Civil Service will continue to participate in this area of work.

Northern Ireland

- 1.18 Frameworks need to ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. As set out in the agreed principles frameworks will also adhere to the Belfast Agreement.
- 1.19 Due to the absence of a Northern Ireland Executive, there remain significant limits to the decision-making capacity of the Northern Ireland Civil Service. Guidance issued by the Secretary of State under the Northern Ireland (Executive Formation and Exercise of Functions) Act (EFEF) - legislation which enables senior officers of NI departments to continue to take a limited range of decisions, where they are satisfied that it is in the public interest to do so - provides departments with increased clarity and certainty about when they can make decisions in the absence of Ministers. The Secretary of State for Northern Ireland issued guidance under the Act on 5 November 2018. This guidance has, and will continue to inform our ongoing collective processes regarding changes to primary and secondary legislation, as well as non-legislative mechanisms. The Secretary of State extended the Act for a period of 5 further months on 21 March, and it will now expire towards the end of August.
- 1.20 Officials from the Northern Ireland Civil Service have engaged in the common frameworks process where the policy area intersects with the devolved competence of the Northern Ireland Assembly. However, in the absence of the Northern Ireland Executive, officials' input has been limited to analytical and factual responses only. Where framework arrangements have been developed, they are without prejudice to the views of future Northern Ireland Executive Ministers.

Common Frameworks Analysis

- 1.21 The revised Frameworks Analysis⁴ was published on 4 April 2019, setting out the progress that has been made to develop common frameworks in collaboration with the devolved administrations since the initial analysis was published in March 2018.
- 1.22 The revised analysis was published by the UK Government, although it was co-authored by officials in all administrations. It demonstrates the progress that has been made by proceeding collaboratively. It also highlights the

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792738/20190404-FrameworksAnalysis.pdf

commitment by the Scottish and Welsh Governments to ongoing cooperative working, including in policy areas where no formal common frameworks are required.

1.23 The analysis set out each of the 160 areas of EU law that intersect with devolved competence in one or more of the devolved administrations. As the devolution settlements are asymmetrical, a different range of powers is relevant to Scotland, Wales and Northern Ireland. The analysis set out the latest policy positions, including the reclassification of some policy areas and further detail on the shape that some of these frameworks might take. The changes in the analysis since the initial publication in March 2018 demonstrate the careful and considered joint work underway to establish common frameworks, which in some areas has led to reclassification.

1.24 The revised frameworks analysis outlined:

- There are 63 areas where no further action is required to make a framework and the UK Government and devolved administrations will continue to cooperate. This has increased from 49 in the initial analysis.
- There are 78 (reduced from 82) areas where we think that common rules or ways of working will be needed and we expect to implement this through a non-legislative common framework agreement (e.g. a concordat). In some of these areas, consistent fixes to retained EU law (made using secondary legislation) will create a unified body of UK law alongside the non-legislative framework agreement.
- There are now 21 (reduced from 24) policy areas where future legislation may be needed, in whole or in part, to implement the common rules and ways of working, alongside a non-legislative framework agreement and - potentially - a consistent approach to retained EU law.
- Finally, there are now only four areas where competence is disputed, and conversations between the UK Government and devolved administrations continue. This is reduced from twelve in the first publication, demonstrating the significant progress made in this area.

1.25 Updates on the progression of work in the policy areas set out in the frameworks analysis will continue to be provided in future publications of this report. This will enable us to show progress in these areas on a more regular basis.

Legislation Relating to Retained EU Law Restrictions

- 2.1 Section 12 of the EU (Withdrawal) Act removes the current requirements in each of the devolution statutes that the devolved legislatures can only legislate in ways that are compatible with EU law. The Act then replaces those requirements with powers for the UK Government to apply, by regulations, a temporary ‘freeze’ on devolved competence in specified areas, subject to the approval of the UK Parliament, via the draft affirmative scrutiny procedure.
- 2.2 The process for making, agreeing and revoking these regulations can be found in our first report: *The European Union (Withdrawal) Act and Common Frameworks* - 26 June 2018 to 25 September 2018⁵.

Regulations to ‘Freeze’ Devolved Competence

Retained EU law restrictions applied during reporting period

- 2.3 No regulations have been made to apply retained EU law restrictions under these powers during the reporting period.

Progress towards removal of retained EU law restrictions

- 2.4 No retained EU law restrictions made under the powers in sections 30A and 57(4) of the Scotland Act 1998, sections 80(8) and 109A of the Government of Wales Act 2006, or sections 6A and 24(3) of the Northern Ireland Act 1998 had effect at the end the reporting period.

Regulations to Repeal the ‘Freezing’ Powers

- 2.5 In addition to the ‘freezing’ powers inserted into the devolution statutes by the EU (Withdrawal) Act, section 12(9) confers a power on UK Ministers to repeal, by regulations, the new provisions containing those powers.

Powers to apply retained EU law restrictions repealed during reporting period

- 2.6 No regulations have been made under section 12(9) of the EU (Withdrawal) Act to repeal the powers to apply retained EU law restrictions during the reporting period.

⁵ <https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-report>

Progress required in order to repeal the powers to apply retained EU law restrictions

- 2.7 The UK Government has not sought to make use of the powers to apply retained EU law restrictions at this juncture. As outlined earlier in this report, significant progress is being made across policy areas to establish common frameworks in collaboration with the devolved administrations.
- 2.8 The 'freezing' powers provide a mechanism to give certainty across those areas where common rules do need to be maintained, by ensuring that there will not be substantive policy change in different parts of the UK until those future arrangements are in place. In order to remove those powers from the statute book, further progress towards the implementation of common frameworks would be needed. We will keep this position under review, in line with the statutory duty in section 12(10) of the EU (Withdrawal) Act.

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WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Freedom of Establishment and Free Movement of Services
(EU Exit) Regulations 2019**

DATE **15 July 2019**

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

The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019 under powers in the European Union (Withdrawal) Act 2018.

The retained EU law which is being disapplied

- Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018 and are derived (directly or indirectly) from –
 - Article 49 of the Treaty on the Functioning of the European Union;
 - Article 31 of the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993;
 - Article 4 of the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons signed at Luxembourg on 21st June 1999; and
 - Article 13 of the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12th September 1963 and Article 41 of the additional Protocol to that Agreement signed at Brussels on 23rd November 1970.
- Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018 and are derived (directly or indirectly) from –
 - Articles 56 and 57 of the Treaty on the Functioning of the European Union;
 - Articles 36 and 37 of the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993;
 - Article 5 of the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons signed at Luxembourg on 21st June 1999; and

- Article 14 of the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12th September 1963 and Article 41 of the additional Protocol to that Agreement signed at Brussels on 23rd November 1970
- Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018 and are derived (directly or indirectly) from –
 - Article 18 of the Treaty on the Functioning of the European Union;
 - Article 4 of the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993;
 - Article 2 of the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons signed at Brussels on 21st June 1999;
 - Article 9 of the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12th September 1963 and Article 41 of the additional Protocol to that Agreement signed at Brussels on 23rd November 1970,

so far as they relate to the cessation of rights etc. set out further above.

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

The proposed amendments will have no impact on the Assembly's legislative competence and/or the Welsh Ministers' executive competence.

The purpose of the amendments

The purpose of the amendments is to provide that directly effective rights relating to the freedom of establishment and the freedom to provide services which would continue to apply in domestic law by virtue of section 4(1) of the European Union (Withdrawal) Act 2018, are to cease. The SI also ensures that any directly effective rights relating to the prohibition of discrimination on the grounds of nationality are also to cease, insofar as they relate to those directly effective treaty rights relating to the freedom of establishment and the freedom to provide services.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/r01NiaNN>

Why consent was given

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

UK MINISTERS ACTING IN DEVOLVED AREAS

140 - The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019

Laid in the UK Parliament: 11 July 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 36
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	4 September 2019
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	23 July 2019

Commentary

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

The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019 ('this Instrument') disapplies provisions on freedom of establishment and the free movement of services which continue as directly effective rights in domestic law, by virtue of section 4 of the European Union (Withdrawal) Act 2018. 'Directly effective rights' is the term used to reference provisions of EU law which are sufficiently clear, precise and unconditional to confer rights directly on individuals, which can be relied on in national law without the need for implementing measures.

As a consequence of its membership of the EU, the UK is bound by EU bilateral and multilateral agreements, including: the Agreement on the

European Economic Area (the EEA Agreement); the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons (FMOPA); and the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara ('the Ankara Agreement') and subsequent Protocols. In 2009, the UK ratified the Treaty on the Functioning of the European Union (TFEU).

This Instrument concerns directly effective rights derived from Article 49 TFEU (freedom of establishment), Article 56 TFEU (free movement of services) and Article 57 TFEU (definition of 'services'). Collectively these rights of establishment and free movement of services ensure that nationals from EU Member State territories can be self-employed, own and manage a company, and provide services on a temporary basis under the same conditions as the State's own nationals, and receive services, without facing certain restrictions in the EU Single Market. Freedom of establishment and free movement of services form part of the EU Single Market, which comprises the free movement of goods, persons, services and capital.

This Instrument also concerns directly effective rights of freedom of establishment and free movement of services deriving from the EEA Agreement, FMOPA, and the Ankara Agreement and the Additional Protocol.

Section 4 of the European Union (Withdrawal) Act 2018 provides that the rights which flow into domestic law by virtue of section 2 (1) of the European Communities Act 1972 will continue to be recognised and available in domestic law. This includes the substance of directly effective rights in relation to free movement of services and establishment. If the UK does not exit the EU under the terms of a Withdrawal Agreement (i.e. a 'no deal' scenario), elements of reciprocity contained within directly effective rights of establishment and free movement of services, as derived from Articles in the TFEU, the EEA Agreement, FMOPA, the Ankara Agreement and the Additional Protocol, would cease to function effectively in the UK.

To address any inoperability and to ensure UK law continues to function effectively, with legal clarity, and that the UK is compliant with its World Trade Organisation (WTO) obligations, including the General Agreement on Trade in Services, these rights need to be disapplied.

Legal Advisers agree with the statement laid by the Welsh Government dated 15 July 2019 regarding the effect of these Regulations.

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019**

DATE **29 July 2019**

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

The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 (“2019 Regulations”)

The law which is being amended

- Commission Regulation (EC) No 1299/2007 on the recognition of producer groups for hops;
- Commission Regulation (EC) No 589/2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs;
- Commission Implementing Regulation (EU) No 511/2012 on notifications concerning producer and interbranch organisations and contractual negotiations and relations provided for in Council Regulation (EC) No 1234/2007 in the milk and milk products sector;
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products;
- Council Regulation (EU) No. 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products;
- Regulation (EU) No. 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 Delegated Regulation (EU) No 2016/232 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to certain aspects of producer cooperation;
- Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy; and
- The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc) (EU Exit) Regulations 2019 (S.I. 2019/821).

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 of both an administrative and legislative nature to the Secretary of State, exercisable by them alone. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006 ("GoWA"). A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

Functions transferred to the Competition and Markets Authority

The conferral of an administrative function on the Competition and Markets Authority potentially engages paragraph 10 of Schedule 7B to GoWA. 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/AX5BZYHq>

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.

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

142 - The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 25 July 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 38
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	4 September 2019
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	5 September 2019

Commentary

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

This instrument amends provisions of European Union ("EU") legislation relating to the EU Common Agricultural Policy and the Common Organisation of Agricultural Markets, including in particular a number of legislative functions which are currently carried out by the European Commission. Under the amendments, these functions will instead be carried out by public authorities in the United Kingdom ("UK"). This will enable these legislative functions to continue to be used at a national level after the UK leaves the EU.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 29 July 2019 regarding the effect of these Regulations:

1. The Welsh Government has stated the following in its written statement:
 - “This instrument transfers functions of both an administrative and legislative nature to the Secretary of State, exercisable by them alone. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006 (“GoWA”). **A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government. [emphasis added]**
 - (Functions transferred to the Competition and Markets Authority) The conferral of an administrative function on the Competition and Markets Authority potentially engages paragraph 10 of Schedule 7B to GoWA. 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 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. 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.

6. Some of the amendments made by this instrument enable the Secretary of State to make regulations using a negative instrument. These powers include a power to make consequential, incidental, supplementary, transitional or savings provisions. Although the UK Government considers any such amendments are likely to be minor, it is possible that such provisions could enact provisions that carry significant weight or effect and would be more suited to the affirmative procedure.

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

Legal Advisers draw attention to paragraphs 3 and 4 of the above commentary on the statement by the Welsh Government in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Health and Safety (Amendment) (EU Exit) Regulations 2018**

DATE **29 July 2019**

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

The Health and Safety (Amendment) (EU Exit) Regulations 2018

The retained EU Law which is being amended

- EU Regulation, Commission Implementing Regulation (EU) No. 1112/2014

Domestic Legislation

- The Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995
- The Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995
- The Borehole Sites and Operations Regulations 1995
- The Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996
- The Health and Safety (Safety Signs and Signals) Regulations 1996
- The Control of Substances Hazardous to Health Regulations 2002
- The Control of Artificial Optical Radiation at Work Regulations 2010
- The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015
- The Control of Major Accident Hazards Regulations 2015
- The Ionising Radiations Regulations 2017
- The Genetically Modified Organisms (Contained Use) Regulations 2014

The SIs impact in relation to Wales:

In terms of the SIs impact in Wales, it makes amendments to the following regulations in so far that they relate to environmental aspects which are within devolved competence. They will address deficiencies and redundant references in health and safety legislation arising from the UK's exit from the European Union.

The Control of Major Accident Hazards Regulations 2015

These Regulations are being amended in relation to the provision of information to the public, and the requirement to provide information to and advise Member States, provide

information to the European Commission and in relation to the contents of external emergency plans which will no longer be appropriate once the UK leaves the EU.

The Genetically Modified Organisms (Contained Use) Regulations 2014

These Regulations are being amended to remove a redundant reference and to amend requirements for the competent authority to notify European Economic Area (EEA) States and report to the European Union which will no longer be appropriate once the UK leaves the EU.

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

The SIs (where relevant) to Wales are within devolved competence, however, in these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principal is that it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments.

The purpose of the amendments

A variety of community measures in the field of health and safety at work have been adopted under Article 153 of the Treaty on the Functioning of the EU Including Directives, most notably Directive 89/391/EEC on the introduction of measures to encourage improvements in the health and safety of workers at work ('the Framework Directive'). Other measures include directly acting Regulations. Domestic health and safety regulations support and implement the measures adopted by the EU.

The European Union Withdrawal Act 2018 ('EUWA') will allow EU-derived legislation to be fixed to ensure it operates properly and effectively once the UK has left the EU. These amendments address deficiencies in health and safety legislation arising from the exit of the UK from the EU. This instrument amends provisions which will for example, become inappropriate or redundant.

This instrument amends the relevant legislation to ensure that existing protections and regulatory frameworks are maintained and continue to work in the same way once the UK has left the EU.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://beta.parliament.uk/statutory-instruments/TaCkRtJW>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May 2018.

UK MINISTERS ACTING IN DEVOLVED AREAS

143 - The Health and Safety (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 18 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Negative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 40
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Negative
Date of consideration by the Joint Committee on Statutory Instruments	23 January 2019
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	14 January 2019

Commentary

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

These Regulations make miscellaneous amendments to eleven pieces of secondary legislation and one directly acting EU Regulation, when it is brought into UK law on the UK's withdrawal from the EU. The amendments relate to matters which have been identified as deficiencies in the legislation arising from the UK's withdrawal from the EU, ensuring that EU derived health and safety protections will continue to be available in domestic law after exit day.

These Regulations do not make any policy changes beyond the intent of ensuring continued operability of the relevant legislation.

Standing Order 30C.3(ii) requires the Welsh Government's written statement to "specify any impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence". The Welsh Government's statement dated 29 July 2019 does not identify which legislative powers of the Assembly or executive powers of the Welsh Ministers are affected by this instrument. Therefore, Legal Advisers recommend that clarification is sought on which devolved powers are affected.

In a letter to the Chair of the Constitutional and Legislative Affairs Committee dated 26 July 2019, the Counsel General provided an update on the review that has been carried out by Welsh Government of the UK Government's programme of EU Exit SIs in areas devolved to Wales. In relation to this instrument, the Counsel General stated:

"[The Health and Safety (Amendment) (EU Exit) Regulations 2018] was laid in Parliament for sifting before the changes to Standing Orders, resulting in 30C, were agreed. Consent for the SI was, though, sought and given and we shall be notifying the Assembly of this SI too."

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

As it is unclear from the Welsh Government's statement dated 29 July 2019 the impact the Regulations may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Storage of Carbon Dioxide (Amendment and Power to Modify) (EU Exit) Regulations 2018**

DATE **29 July 2019**

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

The Storage of Carbon Dioxide (Amendment and Power to Modify) (EU Exit) Regulations 2018

The retained EU Law which is being amended

- EU Directive 2009/31

The 2018 Regulations contain a number of provisions which fall entirely within devolved competence; these provisions amend the following legislation.

Domestic Legislation

- The Storage of Carbon Dioxide (Licensing etc) Regulations 2010
- The Storage of Carbon Dioxide (Termination of Licences) Regulations 2011
- Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011

The SIs impact in relation to Wales:

In terms of the SIs impact in Wales, it makes minor technical amendments to the following regulations in so far that they relate to environmental protection. They will address deficiencies and redundant references relating to the storage of carbon dioxide arising from the UK's exit from the European Union.

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

The SIs (where relevant) to Wales are within devolved competence, however, in these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principal is that it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments.

The 2018 Regulations transfer a function solely to the Secretary of State, where necessary to replicate a power exercised by the European Commission, which would allow technical

annexes to be modified on a UK basis to reflect scientific and technical developments post EU Exit.

The purpose of the amendments

The European Union Withdrawal Act 2018 ('EUWA') will allow EU-derived legislation to be fixed to ensure it operates properly and effectively once the UK has left the EU.

These amendments address deficiencies arising from the exit of the UK from the EU. This instrument amends provisions which will for example, become inappropriate or redundant.

After exit, without amendment the relevant EU law would not operate properly to such an extent that powers to continue carrying out statutory functions could be put in doubt.

This instrument amends the relevant legislation to ensure that existing protections and regulatory frameworks are maintained and continue to work in the same way once the UK has left the EU.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://beta.parliament.uk/statutory-instruments/MamodFeY>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May 2018.

UK MINISTERS ACTING IN DEVOLVED AREAS

144 - The Storage of Carbon Dioxide (Amendment and Power to Modify) (EU Exit) Regulations 2018

Laid in the UK Parliament: 17 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 42
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	09 January 2019
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	15 January 2019

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (“the CCS Directive”) establishes a legal framework for the environmentally safe geological storage of carbon dioxide. These Regulations amend secondary legislation which forms part of the United Kingdom’s implementation of the CCS Directive. The Regulations address failures of retained EU law to operate effectively and other deficiencies arising due to the United Kingdom’s withdrawal from the European Union. They also makes two minor amendments unrelated to the United Kingdom’s withdrawal from the European Union correcting outdated and incorrect cross-references.

Legal Advisers agree with the statement laid by the Welsh Government dated 29 July 2019 regarding the effect of these Regulations.

The letter dated 26 July 2019 from the Counsel General explains why the written statement has been made in 2019.

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

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



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Animals (Legislative Functions) (EU Exit) Regulations 2019**
DATE **29 July 2019**
BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

The Animals (Legislative Functions) (EU Exit) Regulations 2019

The law which is being amended

European Directly Applicable Instruments

- Amendment of Council Regulation (EC) No 1255/97 concerning Community criteria for control posts and amending the route plan referred to in the Annex to Directive 91/628/EEC.
- Amendment of Regulation (EC) No 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products.
- Amendment of Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies.
- Amendment of Council Regulation (EC) No 21/2004 establishing a system for the identification and registration of ovine and caprine animals.
- Amendment of Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations.
- Amendment of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products. **(Reserved)**
- Amendment of Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption.
- Amendment of Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing.
- Amendment of Commission Regulation (EU) No 142/2011 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive

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

Animal health and welfare are subject areas which are within the legislative competence of the National Assembly for Wales. This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales. Functions transferred to the Secretary of State to be exercised concurrently with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

The purpose of the amendments

This affirmative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The 2019 Regulations make the modifications necessary to continue to apply the current rules set out in law post-EU Exit.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://beta.parliament.uk/work-packages/w7670fvZ>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

145 - The Animals (Legislative Functions) (EU Exit) Regulations 2019

Laid in the UK Parliament: 21 January 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 44
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	13 February 2019
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	5 February 2019

Commentary

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

This instrument provides for a series of legislative functions that are currently conferred by EU legislation upon the European Commission to be exercisable instead by public authorities in the United Kingdom, so that they can be exercised at national level after the UK leaves the EU.

The EU regulations concerned cover animal health and welfare. In each case, the legislative function is conferred upon the European Commission so that it can develop the technical details of the specific regime, without the frequent need to refer back to the EU Council and European Parliament.

This instrument provides for the legislative function in each case to be exercisable by UK authorities upon the UK's withdrawal from the EU. It is designed to ensure that the regimes continue to function without the need for primary legislation every time a change to technical matters is required.

The instrument contains provisions which enable the Welsh Ministers to exercise legislative functions in relation to Wales. The Welsh Ministers may also provide consent to the Secretary of State to exercise functions in relation to Wales.

Functions exercised by the Secretary of State with the consent of the Welsh Ministers may constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. This may be a relevant consideration in the context of the Assembly's competence to legislate in the future in the areas of animals health and welfare.

Legal Advisers agree with the statement laid by the Welsh Government dated 29 July 2019 regarding the effect of these Regulations but note that the instrument also amends Regulation (EU) 2016/1012 of the European Parliament and of the Council on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof. This EU regulation was not included in the list of amended law in the Welsh Government's written statement.

Legislative functions under this regulation will be exercisable as outlined above after the UK's withdrawal from the EU.

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019**

DATE **30 July 2019**

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

The Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 (“the 2019 Regulations”)

The Law which is being amended

- The Rural Development (Amendment) (EU Exit) Regulations 2019
- Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019
- Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019
- The Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019
- The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019

The purpose of the amendments

The 2019 Regulations amend the above Regulations as they contain a small number of minor errors which require correction in order to remove inconsistencies and ambiguities, ensuring that they are able to function as intended after EU Exit in a ‘no deal’ scenario. These corrections will clarify the measures they set out and ensure consistency with amendments made by other EU Exit SIs, and remove ambiguities where other retained EU CAP regulations and schemes are referenced. These amendments are wholly technical in nature and make no policy changes.

The corrections also address a technical deficiency in transitional arrangements, contained

within these Regulations, which will apply when the UK leaves the EU in a 'no deal' scenario. The period for which these arrangements have effect was defined by a specified end date, based on the UK withdrawing from the EU on 29 March 2019. This has been corrected so that these arrangements will apply for a set period of time calculated from EU 'exit day'. This means the agreed transitional arrangements can be realised regardless of the actual date of EU Exit.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/b9A1XpJf>

The amends to each Regulation is set out below:

- *Rural Development (Amendment) (EU Exit) Regulations 2019*. Amendments to this regulation correct drafting inconsistencies in previous EU Exit SIs and ensure operability. It also transfers administrative functions to the Welsh Ministers.
- *The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019*. This instrument makes a number of minor technical corrections to this regulation in order to remove ambiguity and inconsistencies and ensure operability.
- *The Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019*. Amendments to this regulation correct a minor error referencing a footnote in the retained EU Regulation introduced by a previous EU Exit SI to ensure operability.
- *The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019*. Amendments to this regulation makes corrections to ensure that agreed transitional arrangements will function as intended regardless of the date of EU exit. It further makes two minor corrections: correcting a reference to an Annex and substituting one instance of "relevant" for "appropriate".
- *Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019*. Amendments to this regulation makes corrections to ensure that agreed transitional arrangements will function as intended regardless of the date of EU exit.
- *Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019*. Amendments to this regulation makes corrections to ensure that agreed transitional arrangements will function as intended regardless of the date of EU exit.

Any impact the SI may have on the Welsh Ministers' executive competence

The 2019 Regulations transfer administrative functions so that they are exercisable by the Welsh Ministers without encumbrance. They do not transfer legislative functions.

Any impact the SI may have on the legislative competence of the National Assembly for Wales

The 2019 Regulations have no impact on the National Assembly for Wales' legislative competence.

Why consent was given

As set out above, the 2019 Regulations correct a small number of minor errors which require correction in order to remove inconsistencies and ambiguities, ensuring that they are able to function as intended after EU Exit in a 'no deal' scenario.

UK MINISTERS ACTING IN DEVOLVED AREAS

146 - The Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 24 July 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 46
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	4 September 2019
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	5 September 2019

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.

These Regulations amend transitional provisions contained in the Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019 (S.I. 2019/821), the Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/822) and the Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/824) to take account of subsequent amendments to the definition of “exit day” in the European Union (Withdrawal) Act 2018 (c. 16). The original drafting relied on the original planned exit day of 29 March 2019.

These Regulations also make minor amendments to correct errors in the Rural Development (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/764), the Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/765), the Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/812) and the Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019.

The statutory instruments amended by these Regulations amend retained EU law in relation to the Common Agricultural Policy and agricultural market measures.

Legal Advisers agree with the statement laid by the Welsh Government dated 30 July 2019 regarding the effect of these Regulations. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their limited effect.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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

DATE **7 August 2019**

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

The Law which is being amended

- Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers
- Commission Delegated Regulation (EU) 2018/273 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties

The purpose of the Regulations

The 2019 Regulations primarily amend wine legislation but also make minor operational amendments to food information rules. The 2019 Regulations will make necessary changes to EU regulations to ensure that laws in this area will remain operable after the UK leaves the EU. It will make various changes to ensure that provisions concerning the trade in wines, monitoring production and maintaining records will operate correctly after exit.

It will ensure that the responsibilities for monitoring and controls are re-allocated appropriately.

It will also set out various changes that will reflect the interdependencies with other legislation, primarily that made by HMRC to ensure that transition from Single Customs Union controls to UK specific customs controls operate correctly.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Any impact the SI may have on the legislative competence of the National Assembly for Wales and/or the Welsh Ministers' executive competence

The 2019 Regulations transfer certain limited functions to the Secretary of State, exercisable on a UK-wide basis. In relation to Wales, the functions being transferred to the Secretary of State are exercisable only with consent from Welsh Ministers. It is appropriate that the Secretary of State undertakes these functions on a UK-wide basis as they transfer a role which requires a single coordinating body across the UK.

The functions transferred so that they are exercisable by the Secretary of State with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006. Any Assembly Bill seeking to remove or modify such functions requires consultation with the relevant UK Government Minister.

Why consent was given

Consent has been given for the UK Government to make corrections in relation to, and on behalf of, Wales on matters relating to Wine, and to food information rules, for reasons of efficiency, expediency and due to the technical nature of the amendments. The Regulations make a number of technical changes, and supplement other corrections which were included in an earlier EU exit SI (The Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019), ensuring deficiencies have been fully addressed. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

147 - The Food and Drink (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 10 July 2019

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	16 July 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	23 July 2019
Date sifting period ends in UK Parliament	3 September 2019
Written statement under SO 30C:	Paper 48
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

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

Commentary

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

These Regulations primarily amend wine legislation but also make minor operational amendments to food information rules. The key aim of the Regulations is to ensure that appropriate rules are in place to cover the movement and control of wine products from both a regime and excise perspective. These controls relate to documents that are to accompany wine product movements and any certification requirements. Similar changes are also introduced to rules on the records and declarations that must be kept in relation to the production and trade of wines and which set out the bodies that are responsible for carrying out those controls and checks.

The Regulations make the Secretary of State the liaison body responsible for official contact with third countries relating to matters covered by the Regulations for wine products imported into, or exported from, the United Kingdom. The Secretary of State must not act as such a liaison body without the consent of the Welsh Ministers in relation to wine products imported into or exported from Wales.

The Regulations oblige the Secretary of State to publish certain information and lists in relation to the authorities which carry out certain processes regarding the import and export of wine. The Secretary of State must not publish such information and lists where they apply in relation to Wales without the consent of the Welsh Ministers.

Minor changes are also made to food information laws to make them compatible with legislation that has been introduced by HMRC to replace certain other laws which will cease to operate after the UK leaves the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 7 August 2019 regarding the effect of these Regulations. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019**

DATE **7 August 2019**

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

The law which is being amended

Amendment of secondary legislation

- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019

Amendment of retained EU legislation

- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in 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.

The purpose of the amendments

The 2019 Regulations amend provisions of the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 that contain transitional provisions, to take account of subsequent amendments to the definition of “exit day” in the European Union (Withdrawal) Act 2018.

The 2019 Regulations also correct inconsistencies in the drafting of the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 and deal with minor missed inoperabilities.

The 2019 Regulations also insert provisions into the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 that will transfer functions exercisable in relation to Wales to the Secretary of State without encumbrance in relation to certain functions set out in Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

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

The 2019 Regulations insert provisions into the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 that will transfer functions exercisable in relation to Wales to the Secretary of State without encumbrance

The relevant functions are set out in articles 158(5), 159 and 163(3) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products:

- The recognition of Producer Organisations in the fruit and vegetable sector.
- Ancilliary functions relating to the recognition of Interbranch Organisations (including for such organisations in the milk and milk products sector), such as carrying out checks and enforcement.

The subject matter of the 2019 Regulations is within the legislative competence of the National Assembly for Wales, as it relates to agriculture and the Common Agricultural Policy (CAP), and does not fall under any of the reservations in Schedule 7A to the Government of Wales Act 2006. As a result, the UK Government, in accordance with the Intergovernmental Agreement, should have sought the Welsh Ministers' consent to make the 2019 Regulations.

The functions transferred so that they are exercisable by the Secretary of State constitute functions of a Minister of the Crown for the purposes of paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006. Any Assembly Bill seeking to remove or modify such functions requires consultation with the relevant UK Government Minister.

Why consent was not given

The Welsh Government's position is that agriculture and the CAP are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes the subject matter of the 2019 Regulations is reserved. Therefore, the UK Government has not requested Welsh Ministerial consent. We have written to the UK Government to inform them of our view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence.

UK MINISTERS ACTING IN DEVOLVED AREAS

148 - The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 24 July 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 50
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	4 September 2019
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	5 September 2019

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. It is proposed that they be made under the affirmative procedure.

The Common Market Organisation ("CMO") is the framework for the market measures provided for under the Common Agriculture Policy ("CAP"), providing the framework for the market support schemes set up in the various agricultural sectors. The CMOs were set up as a means of meeting the objectives of the CAP and in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to manage market volatility, incentivise collaboration between and competitiveness of agricultural producers and facilitate trade.

The Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 (“the principal Regulations”) (SI 2019/828) addressed operability issues created by the United Kingdom leaving the EU relating to policy areas in the CMO to ensure that the CMO can continue to operate effectively after EU exit.

The principal Regulations also made amendments to existing EU legislation that forms part of UK law relating to the CMO, and provided 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.

The present Regulations amend the principal Regulations in the manner described in the Welsh Government statement that is annexed to this Report.

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 7 August 2019 regarding the effect of the present Regulations.

1. The Welsh Government’s written statement refers to the present Regulations as ‘the 2019 Regulations’ although the Regulations being amended (2019/828) were also made in 2019.
2. A copy of the statement is annexed to this report. It sets out the purpose of the amendments, the impact on devolved competence and the reason why consent was not given.
3. The principal Regulations changed references to Member States in Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products. In most cases, references to the Secretary of State were substituted. Chapter III of Title II of Part II of Regulation 1308/2013 deals with producer organisations and associations and interbranch organisations. The principal Regulations substituted ‘the Secretary of State’ for ‘Member States’ throughout that Chapter except in paragraph 3 of Article 163 where it substituted ‘the appropriate authority’, which would have been the Welsh Ministers in relation to Wales. Nevertheless, it appears, in the context of all the other changes made by the principal Regulations to Regulation 1308/2013, that this was a drafting error that is now being rectified.

4. It does not appear to constitute a change of policy. Rather, it is an accurate reflection of the earlier policy, to which the Welsh Ministers also did not consent, for reasons explained in the written statement of 1 March 2019 in relation to the principal Regulations.
5. The Welsh Government states that European legislation being amended relates to agriculture, which is clearly devolved. The UK Government, in its Explanatory Memorandum to the present Regulations, states that: "This instrument relates to the reserved policy areas of regulation of international trade, import and export controls, and regulation of anti-competitive practices and agreements." An examination of Chapter III suggests that, for the purposes of the devolution settlement, the recognition of producer organisations does indeed relate to the devolved subject of agriculture, and that any connection to the reservations identified by the UK Government is 'loose or consequential'. It would not, therefore, relate to those reserved matters.
6. The principal Regulations, as amended by the present Regulations, therefore have the effect of imposing a common framework in breach of the Intergovernmental Agreement between the UK and Welsh Governments. The Welsh Ministers have written to the UK Government to express their concerns, and it would be appropriate for the Assembly to take a keen interest in the response that they receive.

The above summary and the content of the Welsh Government's statement confirm the effect of the Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Import of and Trade in Animals and Animal Products
(Amendment etc.) (EU Exit) (No. 2) Regulations 2019**

DATE **15 August 2019**

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

The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

The Law that is being amended

- The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019
- The Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019
- The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019

European Directly Applicable instruments amended by the 2019 Regulations

- Commission Decision 94/360/EC
- Commission Decision 1997/794/EC
- Commission Decision 2000/571/EC
- Commission Decision 2000/572/EC
- Commission Decision 2001/812/EC
- Commission Decision 2003/779/EC
- Commission Regulation (EC) No 136/2004
- Commission Regulation (EC) No 282/2004
- Commission Regulation (EC) No 1739/2005/EC
- Commission Decision 2006/168/EC
- Commission Decision 2007/275/EC
- Commission Decision 2007/777/EC
- Commission Regulation (EC) No 798/2008
- Commission Regulation (EC) No 119/2009
- Commission Regulation (EC) No 206/2009
- Commission Decision 2009/712/EC
- Commission Regulation (EU) No 206/2010

- Commission Decision 2010/470/EC
- Commission Regulation (EU) No 605/2010
- Commission Decision 2011/163/EC
- Commission Implementing Decision 2011/215/EU
- Commission Implementing Decision 2011/630/EU
- Commission Regulation (EU) No 28/2012
- Commission Implementing Regulation (EU) 139/2013
- Commission Implementing Decision 2013/519/EU
- Regulation (EU) No 576/2013
- Commission Implementing Decision 2013/764/EU
- Commission Implementing Regulation (EU) 2018/659
- Modifications of Directive 97/78/EC

The purpose of the amendments

The purpose of the 2019 Regulations is to make technical operability changes by way of modifications and applications of glosses to cross referenced Directive provisions under Section 8 of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to existing EU legislation. In light of the next scheduled Exit Day of the 31st October 2019, there is now time to make modifications to cross referenced provisions that are referred to in EU retained legislation that are relevant to the import of animals and animal products.

In addition, the amendments in Part 2 of the Regulations make provision which enables the Welsh Ministers to exercise administrative functions in relation to Wales on a concurrent basis so that the Welsh Ministers may exercise their powers in relation to Wales. On those occasions where it is thought necessary, the Secretary of State may exercise the same function in relation to Wales but only with the Welsh Ministers’ consent. The functions relate to the checks of third country products as laid out in Commission Decision 94/360/EC and determining the location of border inspection posts under Commission Decision 2001/812/EC.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/hOJj87eH>

Any impact the SI may have on the Welsh Ministers’ executive competence

The 2019 Regulations will extend the Welsh Ministers’ executive powers by conferring administrative functions on the Welsh Ministers in relation to Wales.

The functions conferred on the Welsh Ministers by Part 2 of the 2019 Regulations are to be exercised concurrently by the Secretary of State with the consent of the Welsh Ministers.

The functions relate to the following:

- adherence to frequency of checks of third country products as laid out in Commission Decision 94/360/EC
- determining location of border inspection posts under Commission Decision 2001/812/EC

Any impact the SI may have on the legislative competence of the National Assembly for Wales

Animal health is a matter which falls within the legislative competence of the National Assembly and is therefore devolved.

Functions transferred to the Secretary of State on a concurrent basis may constitute functions of a Minister of the Crown for the purposes Schedule 7B to the Government of Wales Act 2006 (GoWA 2006). This may operate as a constraint on the Assembly's competence to legislate in the future in these areas. In order to mitigate that risk, Welsh Government officials are working with the Office of the Secretary of State for Wales with a view to amending Schedule 7B to GoWA 2006 by an Order under section 109A of that Act.

Why consent was given

As set out above, the 2019 Regulations make a number of technical operability changes to existing EU legislation.

The import and export of live animals into and out of the EU is currently facilitated through border inspection posts (BIPs). As a result of the continuation of the EU's current practices in certification and monitoring through documentation and TRACES, this trade will continue to flow through BIPs. It is important that the current operation of the BIPs is maintained as this will ensure the continued free flow of trade. There are, at present, no BIPs in Wales. The functions include not only the operation of the BIPs, but also the approval of new BIPs which allows for a UK wide approach whilst allowing the Welsh Ministers to exercise these functions independently should a Welsh Port or Airport decide that a BIP is commercially viable and begin the process to create one. The BIPs currently operating in the UK are managed by a combination of local authorities, APHA and Official Veterinarians. These competent authorities have specific expertise to allow for the operation of the BIPs.

UK MINISTERS ACTING IN DEVOLVED AREAS

150 - The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Laid in the UK Parliament: 5 August 2019

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed Negative
Date of consideration by the House of Commons European Statutory Instruments Committee	9 September 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	5 September 2019
Date sifting period ends in UK Parliament	19 September 2019
Written statement under SO 30C:	Paper 52
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	Recommended for upgrade
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

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

These Regulations aim to ensure that the current operation of border inspection posts in the United Kingdom is maintained in order to continue free flow of trade after exit day.

Directly applicable EU legislation contains references to Council Directives. These references require modification so as to provide clarity for the continuation of the existing legal framework, when Council Directives will cease to apply to the UK. These Regulations modify references to Council Directives so that the references are no longer dependent on Council Directives applying in the UK.

In addition, the Regulations enable the Welsh Ministers to exercise certain functions in relation to border inspection posts in Wales. These functions will be exercisable concurrently with UK Ministers.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 15 August 2019 regarding the effect of these Regulations.

- The Regulations create functions that can be exercised by the Welsh Ministers and UK Ministers on a concurrent basis. Under Schedule 7B to the Government of Wales Act 2006 (the 2006 Act), the Assembly cannot remove or modify such concurrent functions (in so far as they are exercised by UK Ministers) without UK Government consent.
- While this impacts negatively on the Assembly's legislative powers (albeit in a relatively minor field), the Welsh Government's written statement says that Welsh Government officials and UK Government officials are in discussions, with a view to limiting that negative impact by amending Schedule 7B to the 2006 Act (by an order under section 109 of the 2006 Act).
- The Committee may wish to seek further information from the Welsh Government as to how Schedule 7B to the 2006 Act may be amended.

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

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



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019**

DATE **7 August 2019**

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

The law which is being amended

European Directly Applicable Instruments

Council Regulation (EU) No 1308/2013
Council Regulation (EU) No 1370/2013
Commission Regulation (EC) No 589/2008
Commission Regulation (EC) 617/2008
Commission Regulation (EEC) No 2568/91
Commission Implementing Regulation (EU) No 29/2012 Commission Regulation (EC) No 543/2008
Commission Delegated Regulation (EU) No 2015/1366
Commission Implementing Regulation (EU) No 2015/1368
Commission Implementing Regulation (EU) 2017/39
Commission Delegated Regulation (EU) 2017/40
Commission Regulation (EC) No 1974/2006
Regulation (EU) No 1303/2013
Regulation (EU) No 1305/2013

Domestic legislation

The Eggs and Chicks (England) Regulations 2009
The Poultrymeat (England) Regulations 2011
The Olive Oil (Marketing Standards) Regulations 2014 (“the Olive Oil Regulations”) (only the Olive Oil Regulations are applicable in relation to Wales).

Revoked EU Legislation

Commission Delegated Regulation (EU) No 611/2014

Commission Implementing Regulation (EU) No 615/2014

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

Common Market Organisation is primarily a devolved subject matter.

The 2019 Regulations transfer both administrative and legislative functions.

Administrative functions are transferred so that they are variously exercisable by the Welsh Ministers without encumbrance; by the 'competent authority' without encumbrance (though the competent authority is the Welsh Ministers by virtue of the Eggs and Chicks (Wales) Regulations 2010 and the Poultrymeat (Wales) Regulations 2011); and by the Secretary of State acting alone, subject to the agreement of the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs.

Legislative functions are transferred so that they are variously exercisable by the Welsh Ministers without encumbrance; by the Welsh Ministers acting alone, or by the Secretary of State where the subject matter of regulations is outside devolved competence; by the Welsh Ministers acting alone, or by the Secretary of State subject to the consent of the Welsh Ministers; and by the Secretary of State acting alone, but only with the consent of the Welsh Ministers where the subject matter of regulations is within devolved competence.

Functions transferred on a concurrent basis so that they are not only exercisable by the Welsh Ministers, but also by the Secretary of State subject to the consent of the Welsh Ministers, may constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in future in the areas in question.

Functions are transferred so that they are exercisable by the Secretary of State alone, but only subject to the consent of the Welsh Ministers, constitute functions of a Minister of the Crown for the purposes of Schedule 7B. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The purpose of the amendments

The 2019 Regulations amends retained European Union ("EU") legislation relating to the common organisation of agricultural markets ("Common Market Organisation" or "CMO") with a common objective of, directly or indirectly, supporting prices received by agricultural producers. This Instrument will address operability issues created by the United Kingdom ("UK") leaving the EU. The 2019 Regulations will ensure that the CMO can continue to operate effectively after EU Exit.

The 2019 Regulations also makes minor amendments to retained EU law relating to support for rural development and the maritime and fisheries fund.

These 2019 Regulations make amendments to retained directly applicable EU legislation in relation to food marketing standards. The 2019 Regulations will ensure marketing standards in the food sector will be operable following the UK's exit from the EU. The objective is to maintain all existing marketing standards relevant for the UK market on Day 1.

After EU Exit and without amendment, the above retained EU legislation would contain inoperable provisions that would prevent the delivery of market support schemes to the agricultural sector.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS	
149 - The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019 <i>Laid in the UK Parliament: 25 July 2019</i>	
Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 54
SICM under SO 30A (because amends primary legislation)	N/A
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	04/09/19
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	05/09/19
<p>Commentary</p> <p>These Regulations are proposed to be made by the UK Government under section 8 of the European Union (Withdrawal) Act 2018.</p> <p>This instrument amends retained European Union ("EU") legislation relating to the common organisation of agricultural markets ("Common Market Organisation" or "CMO").</p> <p>The CMO is the framework for the market measures provided for under the Common Agriculture Policy ("CAP") since its inception. It provides the framework for the market support schemes set up in the various agricultural sectors.</p> <p>After EU Exit, without amendment, the retained EU legislation will contain inoperable provisions that would prevent the UK government and the Devolved Administrations from being able to deliver the market support</p>	

schemes to the agricultural and fisheries sector. This instrument will address operability issues created by the UK leaving the EU to ensure that the CMO can continue to operate effectively after EU Exit

The regimes will continue to function after the UK's withdrawal from the EU in a similar way to how they did previously. This instrument changes the identity of the bodies carrying out the specified functions and converts the EU procedures to UK procedures, as appropriate.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 7 August 2019 regarding the effect of these Regulations.

The written statement says that:

“Functions transferred on a concurrent basis so that they are not only exercisable by the Welsh Ministers, but also by the Secretary of State subject to the consent of the Welsh Ministers, may constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in future in the areas in question.”

In another written statement (relating to The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019), the Welsh Government stated that the issue of concurrent functions impacting on the legislative competence of the Assembly will be addressed by amending Schedule 7B to the Government of Wales Act 2006 (by a section 109 order).

However, there is no similar suggestion in this written statement. It may be useful to seek clarity from the Welsh Government as to why that is the case.

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.

Agenda Item 12

DRAFT MEDIA RELEASE FOR THE INTERPARLIAMENTARY FORUM ON BREXIT

The House of Commons has hosted the eighth Interparliamentary Forum on Brexit. The forum provides an opportunity for interparliamentary dialogue between legislatures within the United Kingdom, to support more effective scrutiny of Brexit related issues.

Representatives of committees scrutinising Brexit-related issues in the Scottish Parliament, House of Commons and House of Lords met to discuss progress on the review of Intergovernmental relations and development of common frameworks. Unfortunately, Members from the National Assembly for Wales were unable to attend on this occasion. Officials from the Northern Ireland Assembly were in attendance as observers.

Members agreed a joint letter to the newly appointed Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove, regarding the scrutiny role for UK and devolved parliaments and inviting him to attend the forum at a future meeting. The Forum also discussed the role of devolved institutions in the negotiation of international agreements. Arabella Lang, House of Commons Parliament and Treaties Hub and Eleanor Hourigan, Counsel on the Joint Committee on Human Rights provided a presentation on the current system of treaty scrutiny and proposals for reform.

Participants agreed the following statement after the forum:

“There remains great uncertainty about how the Brexit process will develop. The Forum’s strength is in its ability to bring together Members of differing political backgrounds from across the UK to discuss important questions relating to Brexit and devolution. The Forum has written to the new Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove, to reiterate its recommendations for the UK and devolved parliaments to have a role in scrutinising intergovernmental relations as part of the JMC review.

“We had a productive discussion on the importance of developing mechanisms for greater parliamentary scrutiny of governments in their negotiation of future international treaties and other agreements including the importance of timely and regular information sharing with regards to the UK governments’ negotiating mandate.

“The Forum agreed that parliamentary scrutiny of international treaties is a matter for all of the legislatures of the UK and have asked officials to consider models for scrutiny across the legislatures.

“We intend to meet again in Cardiff in November 2019.

MEMBERS IN ATTENDANCE

House of Commons

Sir Bernard Jenkin MP, Public Administration and Constitutional Affairs Committee

Sir Patrick McLoughlin MP, European Statutory Instruments Committee

Sir William Cash MP, European Scrutiny Committee

House of Lords

The Earl of Kinnoull, EU Committee

Lord Jay of Ewelme, EU Committee

Lord Blencathra, Delegated Powers and Regulatory Reform Committee

Lord Kirkwood of Kirkhope, Secondary Legislation Scrutiny Committee

Scottish Parliament

Joan McAlpine MSP, Convener of the Culture, Tourism, Europe and External Affairs Committee

Claire Baker MSP, Deputy Convener of the Culture, Tourism, Europe and External Affairs Committee

Bruce Crawford MSP, Convener of the Finance & Constitution Committee

Adam Tomkins MSP, Deputy Convener of the Finance & Constitution Committee

Officials

Officials from the Northern Ireland Assembly and National Assembly for Wales were in attendance as observers.



PACAC (Public Administration and Constitutional Affairs Committee)

House of Commons · London SW1A 0AA

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

Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster
Minister for the Cabinet Office
70 Whitehall
London
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5 September

Thank you for letter of 24 August, setting out next steps for the programme of work on the IGR review.

I am writing to you on behalf of the Interparliamentary Forum on Brexit. The Inter-Parliamentary Forum (IPF) is a meeting of representatives from scrutiny committees in the House of Commons, the House of Lords, the Scottish Parliament and the National Assembly for Wales. (Officials from the Northern Ireland Assembly currently attend as observers, pending the restoration of the Northern Ireland Executive).

The IPF provides a means for structured dialogue between parliamentarians in the devolved legislatures and Westminster on Brexit and other issues of common interest (such as the Common Frameworks being developed on matters such as food standards and air quality). It has developed the practice of meeting every two or three months, with its venue rotating between London, Cardiff and Edinburgh. Over the last two years the IPF has fostered an environment where parliamentarians have been able to share their thoughts on key issues around leaving the EU and establish useful working relationships between the legislatures. The IPF also provides a valuable opportunity for ministers to hear the views of senior parliamentarians engaged in scrutiny of Brexit from all legislatures in the UK.

The Forum has established effective dialogues with ministers in the UK and devolved governments, with ministers attending Forum meetings to discuss developments in their areas of responsibility (under the Chatham House rules). This included developing a productive relationship with your predecessor Rt Hon David Lidington, who welcomed the IPF's contribution to ongoing IGR work. We are keen to continue that relationship with you.

The Forum has also previously raised some important concerns that you should be aware of. There has been a clear view expressed by committees of the Forum, and the Forum itself, that the current Joint Ministerial Committee (JMC) intergovernmental relations mechanisms are not fit for purpose. The review of intergovernmental relations, including the JMC structures and Memorandum of Understanding, announced at the JMC (Plenary) on 14 March 2018 has been welcomed by the Forum. David Lidington indicated to PACAC on 20 May 2019 that proposals from the review would be published by the end of the year. However, we have grown concerned about

the length of time the review has taken. On 3 July the Scottish and Welsh Governments also stressed to the UK Government the need for greater urgency in completing the review. David Lidington also wrote to the Scottish Parliament's Finance and Constitution Committee on 3 July setting out the recent UK Government publication of the IGR agreement on joint working and the five principles contained within, the Forum remains clear that the IGR review must reflect the views and recommendations of the various committees and we continue to be open to a dialogue on these issues. We seek confirmation that the new Cabinet remains committed to the IGR review and would appreciate an update on when the review will be concluded as well as a timetable for when proposals will be made available to committees in the UK and devolved Parliaments so that they can be considered and scrutinised.

Your predecessor confirmed he valued the core principles of transparency, accountability and respect for the confidentiality of discussions which we recommended should be explicitly recognised by the IGR review. We note that the IGR agreement on joint working explicitly recognises confidentiality and accountability. In our last letter to David Lidington, the Forum highlighted the common concern expressed by committees with regards to the lack of information sharing and transparency in the current IGR arrangements. The Forum recommended that, as a minimum, the agreement between the Scottish Parliament and Scottish Government be replicated across all Parliaments, noting that a similar agreement now exists between the National Assembly for Wales and the Welsh Government. We recommended that any final IGR agreement explicitly recognises the core principles of respect for confidentiality, transparency and accountability with regard to the role of the UK and Devolved Parliaments in IGR.

We also recommended that the final IGR agreement explicitly commits to providing timely information to the UK and Devolved Parliaments on IGR meetings, decisions and the content of agreements. Responding to the IPF your predecessor acknowledged the 'importance of information-sharing between the executive and legislative confirming that the UK Government is currently investigating how to improve Parliamentary scrutiny'. We wanted to stress to you the importance of a clear commitment from the UK Government to transparency and information sharing in the IGR proposals and to the UK government proactively sharing this information with Committees and the IPF in advance of the IGR reviews' conclusion. We would welcome your views on the IPF's recommendation and an update on the UK Government investigations.

We look forward to further dialogue with you on these and other issues and to the publication of proposals from the IGR review. We also invite you to speak with the IPF about the review and other issues in the near future.



Sir Bernard Jenkin MP
Chair, Public Administration and Constitutional Affairs Committee



Llywodraeth Cymru
Welsh Government

17 July 2019

Dear Mick,

The European Grouping of Territorial Cooperation (EU Exit) Regulations 2019

Thank you for your letter regarding the above named regulation.

I am writing to provide a response to your question on why the Welsh Government has decided against making its own regulations in this policy area and why both the Welsh Minister and Secretary of State need to agree to an application from a Welsh Authority.

The EU Regulation on a European Grouping of Territorial Cooperation (EGTC) sets out that the objective of an EGTC is to facilitate and promote territorial cooperation, therefore the operation of an EGTC may not be purely economical in nature. Once established, the EGTC is a legal entity and, although third country membership is allowable, its registered office must be in an EU Member State with the EGTC being considered an entity of that Member State and partly governed by the law of that Member State.

Although participation of an EU Member State does not require a prior international agreement to be signed and ratified by national parliaments, participation of a third country in an EGTC can result in an agreement between the Member States involved and that third country. Therefore, we consider that the reservation under the 'New Schedule 7A to the Government of Wales Act 2006', paragraph 10 (1) and (2) which refers to 'relations with territories outside the United the Kingdom' applies. This means that, where any authority within the UK is seeking to join an EGTC in an EU Member State, there would be a need for an overall decision by the Secretary of State as the Welsh Ministers would not have the legislative competence to create the overall framework for this agreement, despite potentially having the spending/funding powers. For example, in order to enter the arrangement to create an EGTC framework, the reservation is engaged under the revised schedule 7A, as mentioned above. Going forward, whilst Welsh Ministers could then participate under the framework, any modifications would require the input of the UK Government. It then follows that the Welsh Ministers competence would not be broad enough because, although the powers are sufficient to allow participation in an EGTC framework, this would only be the case once the EGTC framework has been set up by the UK Government.

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

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

I hope you find the above a sufficient explanation.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid, with a small dot at the end of the last word.

Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd

Minister for Finance and Trefnydd

Elin Jones AM, Llywydd

Jeremy Miles AM, Counsel General

17 July 2019

Dear Llywydd and Counsel General,

Senedd and Elections (Wales) Bill

I write further to the Stage 1 debate on the general principles of the Bill on 10 July 2019 and our previous [correspondence](#) on this Bill.

During the debate the Counsel General confirmed his intention to table amendments to the Bill in relation to the accountability of the Electoral Commission and that he will delay moving a financial resolution until he is able to provide this information.

In the Counsel General's letter of 25 June 2019, he also noted that discussions are continuing between the Welsh Government and the UK Treasury about the mechanism for funding the Electoral Commission. However, the two main options under consideration both assume that funding will transfer from the UK Consolidated Fund to the Welsh Consolidated Fund. Whilst I understand this is a complex area which may require Crown consent, it is vital the Finance Committee is afforded an opportunity to consider the amendments and their financial implications in relation to these issues prior to Stage 2 proceedings.

Given that Stage 2 proceedings are scheduled for 9 October, I would ask that amendments are tabled in sufficient time to enable consideration by the Finance Committee prior to the Assembly being asked to agree to the financial resolution. Alongside the tabled amendments we would expect accompanying financial information in relation to the accountability and funding arrangements of the Electoral Commission.

Depending on your intentions with regard to moving a Financial Resolution, we would like to invite you both to attend a meeting of the Finance Committee on **Thursday 19 September or Wednesday 25 September**, to ensure the new provisions receive the scrutiny they require. As such, I would be grateful if the amendments and financial information are tabled in advance of your attendance to facilitate the session.



I should be grateful if your officials could liaise with the Finance Committee's clerking team SeneddFinance@Assembly.Wales regarding your preferred date and arrangements for the meeting.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Llyr', is centered within a light yellow rectangular box.

Llyr Gruffydd AM
Chair of the Finance Committee





Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Tŷ Hywel
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23 July 2019

The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019

Dear Mick,

Thank you for your letter regarding the Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019 (2019 Regulations).

I note your concerns that the Written Statement is not specific enough to ascertain the impact that the Regulations may have on the Assembly's legislative competence. I hope therefore that the analysis set out below proves helpful.

In relation to the Marine Strategy provisions, as set out in the Written Statement, the National Assembly for Wales has some legislative competence within the marine area in relation to Wales, subject to reservations such as shipping, oil and gas. As a result, prior to making regulations under the new Part 6 of the Marine Strategy Regulations 2010, the Secretary of State must obtain the consent of the Welsh Ministers where regulations apply in relation to Wales (as defined in section 158(1) of the Government of Wales Act 2006 (GoWA 2006)). 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 UK Government.

The National Assembly for Wales has legislative competence in relation to air quality, water and environmental noise, subject to the reservations in Schedule 7A to the Government of Wales Act 2006 (for example, Section C15 (water and sewerage)). There are no specific impacts as a result of this SI on the Assembly's legislative competence in these areas, beyond the issues noted in the written statement surrounding the application of Schedule 7B restrictions to potential concurrent functions.

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

I can confirm that the Welsh Government is working with the Wales Office to address the unforeseen legislative competence issue which is a product of the concurrent powers created during the EU exit SI correction programme. The Wales Office agrees that this issue needs to be fixed and we are working with them on the detail of the s109 Order which will address it.

I will keep you informed of developments.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid, with a small dot at the end of the last word.

Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

John Griffiths AM
Chair
Equality, Local Government and Communities Committee
National Assembly for Wales
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23 July 2019

Dear John,

Voting rights for prisoners

I would like to thank the Committee for your detailed consideration of issues relating to the voting rights of prisoners. I write to respond on behalf of the Assembly Commission to your report, specifically to the recommendations aimed at the Commission.

As you are aware, the Commission consulted the public on this issue in 2018 as part of its *Creating a Parliament for Wales* consultation on potential reforms to the Assembly's electoral and operational arrangements. The consultation responses highlighted legal, ethical and democratic complexities as well as practicalities that required detailed consideration to inform further discussion and debate on this issue. I am grateful to the Committee for responding positively to my invitation to deliberate this issue.

At the heart of any consideration of this matter is the importance of ensuring that our electoral franchise is compatible with the European Convention on Human Rights. During your inquiry you heard detailed evidence from a range of well-informed stakeholders. While not all of your recommendations were supported by all Committee members, your report nevertheless provides a firm basis for further consideration of this issue in relation to both Assembly and local government elections in Wales.

The Commission considered your report on 15 July, in particular your first recommendation:

"We recommend that the Welsh Government and National Assembly for Wales Commission introduce legislation to give all those Welsh prisoners who are



serving custodial sentences of less than four years the right to vote in devolved Welsh elections. Mohammad Asghar and Mark Isherwood do not agree with this recommendation" (**Recommendation 1**).

The Commission considered whether it would be appropriate for it to address the issue of prisoner voting, whether by amendment to the Senedd and Elections (Wales) Bill or in a future piece of Assembly Commission legislation. The Commission concluded that as the Welsh Government retains responsibility for the conduct of elections in Wales, the decision on whether and when legislation should be introduced in respect of prisoner voting rights sits with the Welsh Ministers. This is particularly because of the complexities regarding implementation that were identified by your Committee. The Commission's view, therefore, is that it is a matter for the Welsh Ministers to respond to **recommendations 1, 2, 7 and 8**.

Although not specifically recommended by the Committee, the Commission considered whether in its view the Senedd and Elections (Wales) Bill, currently in Stage 2 of its legislative scrutiny, could provide a suitable vehicle for progressing any legislative proposals in this regard.

The Commission noted the comments of the Constitutional and Legislative Affairs Committee in its **report** on the general principles of the Senedd and Elections (Wales):

"the publication of the [Equality and Local Government and Communities Committee's] report does not... equate to Stage 1 scrutiny of a Bill containing specific provisions on prisoner voting that give effect to policy intentions. Extending voting rights to ... prisoners represents a significant change to the electoral franchise. The legislative provisions that would be required to deliver such a change should, in line with good practice on law-making, be included in a Bill on introduction."

As such, without taking a view on the merits or otherwise of the recommendations made by the Equality, Local Government and Communities Committee, the Commission does not consider that amendments should be introduced to the Senedd and Elections (Wales) Bill to address this issue. To do so would mean that a fundamental change to Assembly voting rights would take place without Stage 1 scrutiny of the detailed proposals.

The Commission agrees with **recommendation 3** in respect of the need for any legislation to be in place at least six months before it is to take effect. This important principle is reflected in the representations I have made to Business Committee in relation to the timetable for the scrutiny of the Senedd and Elections (Wales) Bill. The proposed timetable would allow for the Bill to receive Royal Assent six months prior to the July 2020 canvass for the purposes of the 2021 Assembly election.



Thank you again for your consideration of these complex and important constitutional matters.

Yours sincerely



Elin Jones

Chair, Assembly Commission

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Our Ref: LG/0284/19

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

SeneddCLA@assembly.wales

25 July 2019

Dear Mick

**Constitutional and Legislative Affairs Committee report on the Welsh Government's
Legislative Consent Memorandum on the Agriculture Bill**

Thank you for the Committee's consideration and reports on the Legislative Consent Memorandum ('LCM') and Supplementary Legislative Consent Memorandum ('SLCM') in relation to the UK Agriculture Bill.

I have carefully considered the Committee's recommendations and officials are working with the UK Government on a package to address concerns. You will appreciate this involves complex discussions with UKG and other administrations, however, I am pleased with progress made. I am providing the information I am currently able to in the annex to this letter. My officials would like to provide a technical briefing, in confidence, on the issues still subject to discussion with UK Government if you would find that helpful. As you know, the Bill is currently delayed in Parliament and I will provide a full response once the Bill continues its passage. In addition, I intend to update the Explanatory Notes to the Bill and lay before the Assembly an Explanatory Statement to supplement the LCMs. The Explanatory Statement will provide additional information on the Bill including how the regulation making powers will be used, justification of procedures and mechanisms for ensuring transparency and involvement of the National Assembly.

I would like to highlight certain parts of the package to demonstrate my commitment to transparency, my respect for the Assembly's role in scrutinising legislation and that I have listened and taken account of Assembly views.

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

Wales Agriculture Bill

I confirm it is still my intention to take the powers in Schedule 3 to the UK Bill. These powers are needed so we can begin to move to new systems of support when ready to do so.

I remain committed to bringing forward a Wales Agriculture Bill and the First Minister has provided an update on our plans as part of his statement on the Government's Legislative Programme on 16th July. A Welsh Agriculture Bill will be most effective if it is introduced in the next Assembly. It is important to legislate once and to legislate well. This is an opportunity to be ambitious and wide-ranging, going further than a simple farm support scheme and consider issues such as the rights of tenant farmers. I launched Sustainable Farming and our Land on 9th July which sets out ambitious proposals for the future, including paying farmers for the actions they take to respond to the climate emergency, reducing emissions and capturing carbon. Using the results of this consultation, we will bring forward a White Paper before the end of this Assembly to pave the way for legislation.

I want to give the legislative reassurance sought to underpin the express commitments Ministers have already made on this. I have, therefore, instructed officials to progress a "sunset" clause so that relevant provisions in the UK Agriculture Bill expire from the end of 31 December 2024.

WTO Agreement on Agriculture

I am happy to provide the further assurances requested about the Bilateral Agreement between the UK and Welsh Governments on the WTO powers.

The WTO clause raises important and complex constitutional, legal and policy considerations. It engages both devolved and reserved areas. Policy relating to international relations and the regulation of international trade is reserved, whilst that relating to agriculture and the observation and implementation of international obligations, is devolved and within legislative competence. As I have said previously, the Welsh Government and UK Government disagree on the status of the WTO provisions. I am not prepared to concede the Welsh Government position on this point, especially given the broader constitutional implications. However, I have agreed a way forward with the Secretary of State which is without prejudice to the matter.

What matters most to me is ensuring there are no constraints on Welsh Government competence. My negotiations have, therefore, focussed on strengthening the governance mechanism underpinning the use of the WTO clause to aim to achieve this.

I have discussed this issue with the Secretary of State several times and was very clear the consultation commitment initially proposed by the Secretary of State was unacceptable and could be used to constrain Wales' competence to make agricultural policy. Equally, we recognised a unilateral veto over the power to make WTO regulations would be difficult for the UK Government to concede, since it has the responsibility for representing the nations of the United Kingdom at the WTO. We agreed our officials should develop a range of legislative and non-legislative options to address my concerns and that these options should be developed around the precedent of the discussions with UK Government on the European Union (Withdrawal) Act 2018 which led to the Inter-Governmental Agreement (IGA). Overall, my negotiating objective was to secure the strongest possible role for Welsh Ministers in the use of the powers.

This is what we have achieved. Through the agreement, I have secured a very strong role for Wales in both the initial making of the regulations under the clause and the ongoing use of those regulations. This is much stronger than the initial consultation commitment and includes an explicit commitment on the Secretary of State to proceed by consensus, underpinned by a clear and transparent mechanism. While this is not an absolute protection, it sets the bar extremely high. I recognise there may be situations where consensus is more difficult to find and Welsh Government officials proposed the mechanism for resolving differences which forms part of the Agreement. This is a robust and transparent mechanism, ensuring Ministers' views are properly taken into account and, crucially, including recourse to an independent panel or to Parliament in the most serious cases. If, for example, the Welsh Government does not agree proposed regulations and the UKG decides to proceed, the

Secretary of State must provide Parliament with statements from UK and Welsh Governments. Whilst not an absolute veto, both Houses of Parliament would have to deliberately agree to approve the regulations and thus override devolved Ministers' objections on the basis of full information. If helpful, officials can consider whether the Assembly could be notified and have the opportunity to comment on subordinate legislation as it is prepared. I will review the effectiveness of the process in due course and consider whether any adjustments are needed to strengthen it.

Red Meat Levy

At my request, a new clause resolving the long standing issue of repatriation of red meat levy has been laid by the UK Government and now forms part of the Bill. The new clause confers powers on Ministers, acting jointly, to establish a scheme that requires agricultural boards within Great Britain to redistribute levy between themselves. Officials will now continue to develop a scheme in parallel to the legislation progressing through Parliament to ensure a fair system is in place as soon as possible.

Inter-Institutional Relations and working

I am considering a range of potential amendments and commitments to place additional duties on the Welsh Government and ensure a clear role for the Assembly in scrutinising secondary legislation.

***Brexit and our Land* update and next steps**

On 9 July I launched the *Sustainable Farming and our Land* consultation, which seeks views on our revised policy proposals for supporting Welsh farmers. The consultation will run until 30 October 2019. We will also be commencing a co-design programme later in the year. This will allow us to explore some of the practical aspects of the proposed scheme in a collaborative approach, which would not be fully possible using only a written consultation process. I will provide the indicative timeline for development of the proposed new scheme requested once I have further clarity about future funding and have analysed responses to the consultation. I would like to reiterate that no decisions will be made on future schemes until consultation responses have been reviewed, that the Basic Payment Scheme (BPS) will remain unchanged up to and including 2020, and that existing schemes will not be removed before any new schemes are ready.

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is written in a cursive, flowing style.

Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Welsh Government response to the Constitutional and Legislative Affairs Committee report (published 04 January 2019) on the Welsh Government's Legislative Consent Memorandum on the Agriculture Bill

CLAC Recommendation	Welsh Government Response
<p>Recommendation 1</p> <p>The Cabinet Secretary should write to this Committee in response to the clarification we request in paragraphs 101 and 107 of this report.</p>	<p>Accept</p> <p>I wrote to the Secretary of State last summer setting out my expectations for discussions and negotiations on the Bill to take place in line with the Inter Government Agreement (IGA) on the European Union (Withdrawal) Act 2018 and the Establishment of Common Frameworks.</p> <p>I considered carefully early in 2018 the feasibility of introducing a Wales Agriculture Bill in the National Assembly by September 2018. Given the complexity and significance for the agriculture sector of the UK's departure from the EU, I concluded further time was needed to carry out careful, thorough and considered policy development and consultation with those affected. I announced on 10th July that I was considering including Welsh specific provisions in the UK Government's Agriculture Bill on a time limited basis to provide powers to begin phased transition until Welsh primary legislation takes effect.</p> <p>Last July I agreed to work with UKG to provide the Welsh Ministers with powers in the UK Bill to continue existing schemes following our exit from the EU and to develop new policies to allow for a smooth transition from the Common Agricultural Policy to a new land management programme.</p> <p>The UK Government's legislative vehicle was appropriate for Wales and the circumstances deemed it practical to include the provisions to be able to provide certainty to Welsh farmers that the Government will have powers in place to support them when the UK leaves the EU. Without such powers, we may not be able to continue paying agricultural support beyond 2020 or to move towards proposed new support systems. This is on a temporary basis until an Agriculture Bill can be introduced in the Assembly. Welsh Government instructions were sent to the Office of the Parliamentary Counsel in August 2018.</p> <p>I remain committed to introducing a Wales Agriculture Bill as soon as is practicable and appropriate. The First Minister provided an update on this in his statement on the Government's Legislative Programme. A Welsh Agriculture Bill will be most effective if it is introduced in the next Assembly. It is important</p>

	to legislate once and to legislate well. This is an opportunity to be ambitious and wide-ranging, going further than a simple farm support schemes to look at issues such as the rights of tenant farmers. I launched Sustainable Farming and our Land on 9 th July. Using the results of this consultation, we will bring forward a White Paper before the end of this Assembly to pave the way for legislation.
Recommendation 2 The Cabinet Secretary should write to this Committee and clarify whether the only provision needed for the Welsh Ministers to have legal authority to make direct payments to farmers in 2020 (and beyond) is contained in paragraph 8 of Schedule 3 to the Bill, as agreed at committee stage in the House of Commons.	Accept in principle Brexit has created unprecedented uncertainty and I want to ensure provision is made to allow the amendment of retained EU law and to enable transition to proposed new schemes so that Welsh farmers are not disadvantaged.
Recommendation 3 The Cabinet Secretary should seek to amend the UK Agriculture Bill to insert a sunset provision to the effect that Schedule 3 will no longer apply after the Fifth Assembly.	Accept in principle I have listened to the concerns of the Assembly Committees regarding the absence of a “sunset” clause. I have instructed officials to progress a “sunset” clause so that relevant provisions in the Bill expire from the end of 31 December 2024. Officials are working with Parliamentary Counsel and UK Government to prepare a suitable provision that gives the legislative reassurance sought by the Committees in addition to the express commitment already given that the Welsh Government will bring forward a Wales Agriculture Bill in a suitable timeframe. I intend for this provision to be brought forward as a Government amendment.
Recommendation 4 The Cabinet Secretary should respond to the 34 th report of the Delegated Powers and Regulatory Reform Committee, entitled Agriculture Bill (HL Paper 194) published on 17 October 2018 before the start of proceedings in the House of Lords and copy that response to this Committee.	Reject I have listened to the concerns expressed by the House of Lords Delegated Powers and Regulatory Reform Committee and National Assembly Committees regarding the number and appropriateness of delegated powers within the Bill. In strict accountability terms it would not be appropriate for the Welsh Ministers to respond directly to DPRRC. The Secretary of State for Environment and Rural Affairs will be replying to the DPRCC presently and I will provide a copy of his letter to the Committee.
Recommendation 5 We recommend that the Cabinet Secretary reviews all procedures attached to the regulation-making powers delegated to the Welsh Ministers under the UK Agricultural Bill, taking account of the views we express in this report.	Accept I have reviewed all powers and procedures. Welsh Government and Defra are working together to address concerns across the Bill. This work is ongoing and I will provide the Assembly with the information requested as soon as I am in a position to do so.

<p>Recommendation 6</p> <p>The Cabinet Secretary should lay before the National Assembly a supplementary document to the LCM which:</p> <ul style="list-style-type: none"> ▪ outlines the outcome of the review in recommendation 5; ▪ justifies why it is appropriate to seek a regulation-making power in each case within the UK Agriculture Bill; ▪ justifies the choice of procedure in each case, taking account of our view that there should be a presumption in favour of the affirmative procedure given that no decisions have yet been taken on how the regulation-making powers will be used; ▪ explains any decision to reject recommendation 3; ▪ explains and provides a practical example of where the negative procedure may be necessary because of the need for urgency; ▪ explains the process by which it will seek amendment of the UK Agriculture Bill where that is deemed appropriate. 	<p>Accept</p> <p>I will lay an Explanatory Statement before the National Assembly with this information. Work is in hand to address the committee's concerns in recommendation 6 and I anticipate being in a position to provide the information requested when the Bill moves to report stage. My officials would like to provide a technical briefing on the issues still subject to discussion if you would find that helpful.</p>
<p>Recommendation 7</p> <p>The information collated under recommendation 6 related to the delegation of powers to the Welsh Ministers should be made available to MPs for report stage on the UK Agriculture Bill.</p>	<p>Accept</p> <p>It is my intention to provide all parties with the information requested in good time for the next stage of the Bill.</p>
<p>Recommendation 8</p> <p>The Cabinet Secretary should ensure that the explanatory notes to accompany the UK Agriculture Bill on its introduction to the House of Lords should include information collated under recommendation 6 related to the delegation of powers to the Welsh Ministers.</p>	<p>Accept</p> <p>A revised set of Explanatory Notes has been prepared and will be published along with the information collected in response to recommendation 6 when the Bill resumes its passage.</p>
<p>Recommendation 9</p> <p>The Cabinet Secretary should explain to this Committee why it may not be necessary to amend clause 26 of the UK Agriculture Bill to resolve the issues that have been of concern to the Welsh Government. In so doing, the Cabinet Secretary should explain whether the inter-governmental agreement she spoke of would, in</p>	<p>I provided details of the Bilateral Agreement with the UK Government on the use of the WTO clause (now clause 28) in my Written Statement on 21 March. This provides a robust and transparent mechanism for involving the Welsh Ministers in decision making and for resolving disputes on matters relating to the UK's</p>

<p>effect, allow UK Ministers to act in devolved areas without any scrutiny by the National Assembly.</p>	<p>compliance with the WTO Agreement on Agriculture.</p> <p>The WTO clause is complex and engages devolved and reserved areas. While policy relating to international relations and the regulation of international trade is reserved, that relating to agriculture and the observation and implementation of international obligations is devolved. I have secured the strongest possible role for the Welsh Ministers in the use of the powers and I no longer consider it necessary to amend the Bill. Subordinate legislation on devolved matters will continue to be laid before the Assembly for scrutiny in the usual way.</p> <p>I note the Committee's further concerns made in the report on the SLCM. However, I continue to believe this represents a good result which should not constrain Wales' competence to make agricultural policy and legislation.</p>
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Welsh Government response to the Constitutional and Legislative Affairs Committee report (published June 2019) on the Welsh Government's Supplementary Legislative Consent Memorandum on the Agriculture Bill

<p>Recommendation 1</p> <p>The Minister should provide details on how, in her approach to and handling of the Agriculture Bill, she has complied with the requirements of the Inter-Institutional relations agreement between the National Assembly for Wales and the Welsh Government, particularly paragraphs 8 and 14 to 17 of that Agreement</p>	<p>I am committed to the principle of transparency and the legitimate role of the Assembly in scrutinising activity of the Welsh Government. This needs to be balanced – as the IIR agreement recognises – with the need for confidential inter-governmental discussion between the administrations within the United Kingdom, for example, in situations where negotiations on particular issues are taking place.</p> <p>The Welsh Government's approach and handling of the WTO clause in the Bill complies with the requirements of the IIR Bilateral Agreement. I wrote to the Committee on 24 May informing them of dates of future Inter-Ministerial Group EFRA meetings where the Agriculture Bill is discussed along with other Brexit related issues. A summary of discussions is published after each meeting and can be found here. https://www.gov.uk/government/publications/commitment-from-the-inter-ministerial-group-for-environment-food-and-rural-affairs</p> <p>In future, I will provide a copy of the meeting summary to the Committee along with other relevant information to ensure they are aware of our discussions.</p> <p>Negotiations on the Bilateral Agreement were complex and sensitive and I provided the Committee with as much information as was</p>
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	<p>appropriate during this time. I provided full details in my Written Ministerial Statement of 21 March which is published on the websites of the Welsh Government and National Assembly. https://gov.wales/written-statement-future-land-management-programme-update-and-next-steps</p> <p>I have asked my officials to consider how best to keep the Assembly informed in confidence in situations where negotiations on particular issues are taking place.</p>
<p>Recommendation 2</p> <p>We believe a procedure comparable to the procedure outlined in Standing Order 30C should be developed, that recognises the terms of the Bilateral Agreement, and which applies to the relevant regulations made under the Agriculture Bill, once enacted.</p>	<p>Accept in part</p> <p>I am committed to the principle of transparency and the legitimate role of the Assembly in scrutinising activity of the Welsh Government.</p> <p>Experience of the EU Withdrawal Act SIs showed that the SO30C did not work to give Assembly Members the information they needed to do that. Officials are reviewing SO30C, and it is of course open to the Business Committee to conduct their own review if they wish. We propose this review as part of the broader piece of work on how the executive and legislature can work best together in the interests of the people of Wales. I will of course consider how best to involve the Assembly in regulations relating to the WTO clause once this work has concluded.</p>

Mick Antoniw AM
Chair of Constitutional Affairs and Legislation Committee
National Assembly for Wales
Cardiff
CF99 1NA

26 July 2019

Dear Mick,

Thank you for your letter on the Welsh Government's plans for legislation in the next term.

The programme of EU Exit SIs is now largely completed, though we are anticipating that the Welsh Ministers will be asked to consent to approximately 20 further UK SIs between this month and spring 2020 as an outline estimation. We will be laying SO30C written statements for each of these SIs, though until the drafting of these SIs has been finalised we are not able to predict how many will require a Statutory Instrument Consent Memorandum.

We are not intending to lay any further Welsh EU Exit SIs for sifting to be in force by the 31 October exit day. There may be a small number of EU Exit SIs laid for sifting over the coming two years, to address matters which are not critical for exit day. We are anticipating that a couple of EU Exit SIs subject to the affirmative procedure will be laid in the National Assembly after summer recess.

With regards to the Welsh Government's business as usual subordinate legislation, the nature of this work can mean that items regularly need to be brought forward at pace in response to events or identified issues, resulting in the rescheduling of less urgent items. As a consequence I am not able to provide a response to your request which would not likely be subject to change. Based on activity in the autumn term of previous years, the Welsh Ministers would normally expect to make approximately 50 items of business as usual subordinate legislation between 1 September and 31 December, however the impact of EU Exit may mean the level of activity is different this autumn.

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

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

The Counsel General and Brexit Minister has written to you separately to provide an update on the section 109 Order.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca". The script is cursive and fluid.

Rebecca Evans AC/AM

Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywydd

26 July 2019

Voting rights for prisoners

Dear Elin

Thank you for your response to our report on voting rights for prisoners. I am writing to seek some further clarity on next steps.

In your response, you state that it is the Commission's view that the decision as to whether the franchise in relation to prisoner voting should be changed "sits with the Welsh Ministers."

The Welsh Government have also responded, but have only done so in relation to the recommendations that we made towards them. A copy of this response is enclosed. They state, in response to recommendation 1, that the part concerning Assembly elections is "directed to the Llywydd and it would be for her, in the first instance, to respond to in the context of the Senedd and Elections (Wales) Bill."

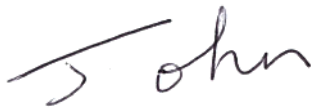
We would now like to seek clarity on how the issues around prisoner voting and the Assembly franchise will be dealt with, and who will be responsible for this issue. We would appreciate a response by 18 September, to enable it to be considered as part of the Assembly debate on 25 September.

I am also writing to the Minister for Housing and Local Government about this issue.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely





John Griffiths

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Enclosure: Welsh Government response to Voting Rights for Prisoners report.

Cc: Mick Antoniw, Chair, Constitutional and Legislative Affairs Committee





Ein cyf/Our ref - MA-P-JJ/2557/19

John Griffiths AC/AM
Chair
Equality, Local Government and Communities Committee
National Assembly for Wales
Tŷ Hywel
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CF99 1NA
SeneddCommunities@assembly.wales

19 July 2019

Dear John

Written Response by the Welsh Government to the report of the Equality, Local Government and Communities Committee entitled Voting Rights for Prisoners

I should like to thank you and the Equality, Local Government and Communities Committee for their valuable work in this emotive and important area of Voting Rights for Prisoners. The Committee's consideration of the oral and written evidence presented before them has produced an insightful report and recommendations. The accompanying response addresses the recommendations made, wholly or partly, to the Welsh Government only.

The Welsh Government has long supported the principle of at least some prisoners from Wales being enabled to vote in Welsh elections.

Your report identifies the key issues and quite properly highlights the strong views both for and against giving prisoners the vote. I note your comments about balancing the complex moral, ethical, legal and practical issues and I am grateful for the detailed interrogation of these issues which your Committee undertook in its inquiry.

The Committee's report and the evidence you compiled will certainly help inform the Welsh Government's consideration of the issues around legislating for prisoner voting for local

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

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

government elections. We shall work with all the stakeholders and partners, as identified in the report; in doing so we shall pay particular attention to providing as much reassurance as possible to victims and potential victims of crime.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AC/AM

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Detailed Responses to the recommendations of the report, Voting Rights for Prisoners, are set out below:

Recommendation 1

The Committee recommends that:

The Welsh Government and National Assembly for Wales Commission introduce legislation to give all those Welsh prisoners who are serving custodial sentences of less than four years the right to vote in devolved Welsh elections. Mohammad Asghar and Mark Isherwood do not agree with this recommendation.

Response: Accept

The Welsh Government believes that enabling at least some prisoners to vote will send very strong and positive messages to prisoners that they still have a stake in society and, in turn, that they have responsibilities towards society as a whole. Enfranchisement based on sentence length will strike a reasonable balance; we agree that a custodial sentence of four years is an appropriate threshold, which acknowledges the nature, gravity and circumstances of the offending. Accordingly, the Welsh Government will work to introduce legislation in this Assembly to enable prisoners from Wales serving a custodial sentence of less than four years to vote in devolved local government elections. We shall work closely with the UK Government and partners to implement such legislation. We estimate that some 1,900 prisoners out of a total of about 4,800 prisoners from Wales would be enfranchised.

The recommendation concerning Assembly elections is directed to the Llywydd and it would be for her, in the first instance, to respond in the context of the Senedd and Elections (Wales) Bill.

Financial Implications – The financial implications of providing for prisoner voting will be addressed as part of the negotiations which will take place with the UK Government.

Recommendation 2

The Committee recommends that:

If the general franchise is extended to 16 and 17 years olds, the Welsh Government and National Assembly for Wales Commission introduce legislation to give 16 and 17 year olds in custody the vote on the same basis as prisoners over 18 years old. Mohammad Asghar and Mark Isherwood do not agree with this recommendation.

Response: Accept

The Welsh Government is committed to extending the franchise for devolved elections to 16 and 17 year olds generally. In considering the case for 16 and 17 year olds in custody, we accept the Committee's recommendation. Treating such young people in custody differently from adult prisoners could cause confusion and administrative complexity. This would be the case particularly for those young people who had to transfer to adult prison to complete a sentence of four years or more, at which point they would have to be treated as an adult prisoner and, most likely, lose the right to vote. Accordingly, we shall work to introduce legislation in this Assembly to enable young people from Wales who are in custody and serving a custodial sentence of less than four years to vote in local government elections. We shall work closely with the UK Government and partners to implement such legislation. There are usually between 21 and 28 young people (aged up to 18 years) from Wales in custody.

The recommendation concerning Assembly elections is directed to the Llywydd and it would be for her, in the first instance, to respond in the context of the Senedd and Elections (Wales) Bill.

Financial Implications – The financial implications of providing for prisoner voting will be addressed as part of the negotiations which will take place with the UK Government.

Recommendation 3

The Committee recommends that:

Both the Welsh Government and the Assembly Commission commit to ensuring that any relevant legislation changing the franchise is in place at least six months before any election which is due to occur.

Response: Accept

The Welsh Government agrees that this is an entirely sensible precaution based on the advice of the Electoral Commission and Elections Administrators. The Welsh Government will work closely with all stakeholders and partners to ensure all relevant legislation will be in place before an election where prisoners and young people in custody are entitled to vote.

The recommendation concerning Assembly elections is directed to the Llywydd and it would be for her, in the first instance, to respond in the context of the Senedd and Elections (Wales) Bill.

Financial Implications – None – the staffing and administrative costs associated with making legislation will be absorbed within administrative budgets.

Recommendation 4

Is addressed to the Electoral Commission only.

Recommendation 5

The Committee recommends that:

The Welsh Government discuss and come to agreement with the UK Government to ensure all prisons with Welsh prisoners designate an Election Co-ordinator within the prison staff.

Response: Accept

The Welsh Government agrees that designating an Election Co-ordinator within the staff of each prison would be a sensible idea and would provide an important source of advice and support for prisoners seeking to exercise their right to register and to vote. The lack of evidence that prisoners currently eligible to vote actually exercise that right suggests that every prison should have an election co-ordinator, not merely those with prisoners from Wales. We shall follow up with the UK Government.

Financial Implications – Any financial implications will depend on the circumstances in each prison which accommodates eligible prisoners from Wales and will be the subject of future negotiations with the UK Government.

Recommendation 6

The Committee recommends that:

The Welsh Government and Electoral Commission pursue a Memorandum of Understanding with the UK Government and Prison Service to ensure that all eligible prisoners are registered to vote and are supported to take part in any elections for which they are eligible.

Response: Accept

The Welsh Government believes that the UK Government and Her Majesty's Prison and Probation Service should be doing this already for the prisoners currently eligible to vote. The lack of evidence that such prisoners exercise their right supports the case for having a Memorandum of Understanding so prisoners from Wales are able to participate in relevant elections at least. We shall follow up with the UK Government.

Financial Implications – None – the Welsh Government's staffing and administrative costs associated with negotiating a Memorandum of Understanding will be absorbed within administrative budgets.

Recommendation 7

The Committee recommends that:

The Welsh Government and National Assembly for Wales Commission introduce legislation for prisoners to register either at their last home address, the address they will be released to or via a declaration of local connection. In doing so they should ensure relevant safeguards are put in place to protect victims and potential victims of crimes.

Response: Accept in Principle

The Welsh Government will consider all elements of the recommendation. If an election takes place soon after conviction, the prisoner may still be registered at their home address; in addition, existing legislation (in section 7B of the Representation of the People Act 1983) already allows the existing categories of prisoners eligible to vote to register using a declaration of local connection. We would seek to legislate to enable prisoners from Wales to register on the same basis for relevant elections. Registration on the basis of a future address would be novel; a person's validity as an elector in a certain area has always been based on their residence in that area or having an established and demonstrable other local connection with that area. We shall need to examine whether it is practicable, particularly whether it would be compatible with the new canvass arrangements, and whether it is appropriate to introduce the facility for a single category of voter. We shall consult organisations representing victims to ensure necessary safeguards are built in to any new systems for registration.

Financial Implications – None – the staffing and administrative costs associated with making such legislation will be absorbed within administrative budgets. The costs of implementation will depend on discussions with the UK Government and electoral registration officers.

Recommendation 8

The Committee recommends that:

The Welsh Government and National Assembly introduce legislation to enable prisoners who are eligible to vote to do this either via postal or proxy voting. Discussions should take place with the UK Government to ensure that any logistical barriers are minimised.

Response: Accept

Prisoners currently eligible to vote, would be entitled to do so whilst still in custody via postal or proxy voting only. We see no reason to change this arrangement and would not introduce polling stations into prisons.

Financial Implications – None – the staffing and administrative costs associated with making such legislation will be absorbed within administrative budgets. The costs of implementation will depend on discussions with the UK Government. .

Recommendation 9

The Committee recommends that:

As part of the work in setting up a Memorandum of Understanding detailed in recommendation 6, the Welsh Government explores with the UK Government, how registered candidates, elected politicians and participating party representatives could have access to meet with prisoners.

Response: Accept

Much of this is already covered in Prison Service Order 4650, the Prison Service's existing guidance to prison governors about prisoner voting rights. The Welsh government will work with the UK Government to update the guidance.

Financial Implications – None – the costs will be part of the negotiation referred to under recommendation 6.

Recommendation 10

The Committee recommends that:

The Welsh Government discuss and seek agreement with the UK Government on providing access to Welsh media, both print and broadcast for those prisons with a sizable Welsh population.

Response: Accept

The Welsh Government understands that prisoners in prisons located in Wales have access to such media, but we accept the case for prisoners from Wales accommodated in prisons in England to have access also. We shall follow up with the UK Government.

Financial Implications – Any financial implications will depend on the circumstances of each prison and will be addressed in the discussions which will follow with the UK Government.

Recommendation 11

Is addressed to the Electoral Commission only.

Minister for Housing and Local Government

26 July 2019

Voting rights for prisoners

Dear Julie

Thank you for your response to our report on voting rights for prisoners. We have also received a response from the Llywydd on behalf of the Assembly Commission. I have enclosed a copy.

You will note that the Llywydd states that it is the view of the Assembly Commission that “the decision on whether and when legislation should be introduced in respect of prisoner voting rights sits with the Welsh Ministers.”

We would now like to seek clarity on how the issues around prisoner voting and the Assembly franchise will be dealt with, and who will be responsible for this issue. We would appreciate a response by 18 September, to enable it to be considered as part of the Assembly debate on 25 September.

I am also writing to the Llywydd about this issue.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely



John Griffiths

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Enclosure: Correspondence from the Llywydd

Cc: Mick Antoniw, Chair, Constitutional and Legislative Affairs Committee



John Griffiths AM
Chair
Equality, Local Government and Communities Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

23 July 2019

Dear John,

Voting rights for prisoners

I would like to thank the Committee for your detailed consideration of issues relating to the voting rights of prisoners. I write to respond on behalf of the Assembly Commission to your report, specifically to the recommendations aimed at the Commission.

As you are aware, the Commission consulted the public on this issue in 2018 as part of its *Creating a Parliament for Wales* consultation on potential reforms to the Assembly's electoral and operational arrangements. The consultation responses highlighted legal, ethical and democratic complexities as well as practicalities that required detailed consideration to inform further discussion and debate on this issue. I am grateful to the Committee for responding positively to my invitation to deliberate this issue.

At the heart of any consideration of this matter is the importance of ensuring that our electoral franchise is compatible with the European Convention on Human Rights. During your inquiry you heard detailed evidence from a range of well-informed stakeholders. While not all of your recommendations were supported by all Committee members, your report nevertheless provides a firm basis for further consideration of this issue in relation to both Assembly and local government elections in Wales.

The Commission considered your report on 15 July, in particular your first recommendation:

"We recommend that the Welsh Government and National Assembly for Wales Commission introduce legislation to give all those Welsh prisoners who are



serving custodial sentences of less than four years the right to vote in devolved Welsh elections. Mohammad Asghar and Mark Isherwood do not agree with this recommendation" (**Recommendation 1**).

The Commission considered whether it would be appropriate for it to address the issue of prisoner voting, whether by amendment to the Senedd and Elections (Wales) Bill or in a future piece of Assembly Commission legislation. The Commission concluded that as the Welsh Government retains responsibility for the conduct of elections in Wales, the decision on whether and when legislation should be introduced in respect of prisoner voting rights sits with the Welsh Ministers. This is particularly because of the complexities regarding implementation that were identified by your Committee. The Commission's view, therefore, is that it is a matter for the Welsh Ministers to respond to **recommendations 1, 2, 7 and 8**.

Although not specifically recommended by the Committee, the Commission considered whether in its view the Senedd and Elections (Wales) Bill, currently in Stage 2 of its legislative scrutiny, could provide a suitable vehicle for progressing any legislative proposals in this regard.

The Commission noted the comments of the Constitutional and Legislative Affairs Committee in its **report** on the general principles of the Senedd and Elections (Wales):

"the publication of the [Equality and Local Government and Communities Committee's] report does not... equate to Stage 1 scrutiny of a Bill containing specific provisions on prisoner voting that give effect to policy intentions. Extending voting rights to ... prisoners represents a significant change to the electoral franchise. The legislative provisions that would be required to deliver such a change should, in line with good practice on law-making, be included in a Bill on introduction."

As such, without taking a view on the merits or otherwise of the recommendations made by the Equality, Local Government and Communities Committee, the Commission does not consider that amendments should be introduced to the Senedd and Elections (Wales) Bill to address this issue. To do so would mean that a fundamental change to Assembly voting rights would take place without Stage 1 scrutiny of the detailed proposals.

The Commission agrees with **recommendation 3** in respect of the need for any legislation to be in place at least six months before it is to take effect. This important principle is reflected in the representations I have made to Business Committee in relation to the timetable for the scrutiny of the Senedd and Elections (Wales) Bill. The proposed timetable would allow for the Bill to receive Royal Assent six months prior to the July 2020 canvass for the purposes of the 2021 Assembly election.



Thank you again for your consideration of these complex and important constitutional matters.

Yours sincerely



Elin Jones

Chair, Assembly Commission

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our: ref MA - L/CG/0592/19

Mick Antoniwn AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
SeneddCLA@assembly.wales

26 July 2019

Dear Mick,

A review of the UK Government's programme of EU Exit SIs in areas devolved to Wales to date has been undertaken and I am writing to keep you informed of developments.

It has emerged that, subsequent to consent being given by Welsh Ministers for two SIs under the terms of the Intergovernmental Agreement and after a period of time had elapsed, their titles were changed prior to their being laid in Parliament. The Welsh Government was not informed of these changes by Whitehall. This meant that the system that we had established to track the laying of UK SIs in areas devolved to Wales, in order to comply with the requirement to notify the National Assembly of them under Standing Order 30C, did not identify that they had been laid and initiate the notification process.

These SIs are:

- The Animals (Legislative Functions) (EU Exit) Regulations 2019; and
- The Storage of Carbon Dioxide (Amendment and Power to Modify) (EU Exit) Regulations 2018.

However, I can confirm that while the titles of these SIs changed, the content to which Welsh Ministers had consented did not and we are taking this opportunity to provide notification of the SIs to the Assembly. The title changes made it impossible, given that the U.K. Government would not routinely notify us of SIs being laid to identify these regulations, in the context of the substantial volume of secondary legislation being considered at this time

Bae Caerdydd • Cardiff Bay
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

The review found a further UK SI in an area devolved to Wales to which I wish to draw your attention, The Health and Safety (Amendment) (EU Exit) Regulations 2018. This SI was laid in Parliament for sifting before the changes to Standing Orders, resulting in 30C, were agreed. Consent for the SI was, though, sought and given and we shall be notifying the Assembly of this SI too.

This completes the information about the UK Government's EU Exit SIs in areas devolved to Wales that were laid in Parliament ahead of the anticipated exit day on 29 March.

I want to thank you again for your Committee's diligence in scrutinising both the Welsh and UK SI programme arising from the extraordinary circumstances surrounding Brexit. We will, of course, continue to work with the Committee on these matters as we approach and pass exit day.

I attach the Written Statements on the three above SIs to this letter for ease of reference and we will lay these with the Table Office.

I am copying this letter to the Minister for Finance and Trefnydd.



Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Agenda Item 13.10



By email

09/08/2019

Re: Involvement in the first Future Generations Report

Dear Mick,

Producing a Future Generations Report is one of my duties in the Well-being of Future Generations Act. It must provide advice on improvements public bodies should make in order to set and meet well-being objectives which are the commitments they chose to make to improve the economy, society, environment and culture of their area. My report will also include information on the progress to date and on what should happen in the future. The Report will be published in May 2020.

This will be the first Future Generations report and will include the following main chapters: 'considering where we are and should go culturally (5 Ways of working and 7 core areas); where we are and should go in achieving the well-being goals (including objectives and steps); a particular consideration of our areas of focus (transport, planning, housing, ACEs, skills, alternative models for the health system, decarbonisation, budgeting and procurement); recommendations and ideas.

Using the five ways of working we intend to follow the involvement principle and in addition to our national conversation '[Our Future Wales](#)' and our online stories forum, '[The People's Platform](#)', I would like to give you an opportunity to help shape the content of my report and my recommendations. I also want to flag in the report, the resources which would be most useful to public bodies and would welcome suggestions as to reports, documentations and recommendations your committee would like to point out.

I would be grateful if you could send us any information or comments you would like me to consider by the 1st of November 2019. I am interested in particular in concerns, observations, opportunities or recommendations you think are most important, as well as a list of issues you think are of greatest importance to current generations and then to future generations to see if they differ.

I look forward to hearing the views of your committee.

If you wanted to talk in person, we could seek to organise a meeting with my colleagues who will also be visiting Ty Hywel's cafeteria in the autumn with Positif Politics and further information will be sent to you about this opportunity. We would welcome the opportunity to meet with you and your colleagues.

My office will also contact every Assembly Member separately to ask for their personal opinions and we are also preparing tailored 'Assembly Members briefing packs' that provide further information on my work to date and the priorities for the year ahead. You will receive this separately and individually. It will also include some examples of how the Act is being delivered in your area.

If you have any further questions, please don't hesitate to get in touch.

Regards,



Sophie Howe
Future Generations Commissioner for Wales

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

13 August 2019

Dear Mick

Senedd and Elections (Wales) Bill

I would like to thank the Committee for your detailed consideration of the general principles of the Senedd and Elections (Wales) Bill and for your comprehensive report. I enclose the Assembly Commission's response to your report and recommendations.

In addition to the detailed response set out in the annex to this letter, I would like to address some of the key points raised in your report.

Responsibility for electoral administration

Recommendations 7 and 10 of your report relate to electoral administration; in particular where responsibility lies in respect of different aspects of electoral administration and registration processes. During the Stage 1 debate on 10 July I explained that electoral administration is a matter for the Welsh Government, not the Commission. I have discussed the Committee's recommendations with the Counsel General, and anticipate he will respond formally to these recommendations in due course.

Minimum voting age: awareness-raising and citizenship education

The Senedd and Elections (Wales) Bill will enfranchise 16 and 17 year-olds in Wales. The Commission wants to ensure that these young people are supported and encouraged to exercise their right to vote. Your report and recommendations rightly highlight the importance of a reduction in the minimum voting age being accompanied by awareness-raising campaigns and citizenship and political education. The Welsh Government is leading on this work and has established a Democratic Renewal Group as a vehicle for



strategic planning and delivery. I have discussed your recommendations in respect of the funding and delivery of this work with the Counsel General; he has agreed to address these matters in his response to your report.

Financing and accountability of the Electoral Commission

I welcome the Committee's agreement that the Electoral Commission should become accountable to the Assembly for its work in respect of devolved Welsh elections. I note your recommendation that section 27 should be removed from the Bill and that detailed provisions should be included in either a stand-alone Bill or the forthcoming Local Government Bill which the Welsh Government is proposing.

I explained during the Stage 1 debate that my preference would have been to include fully formed proposals in the Bill on introduction and accept that as an important principle. However, it was not possible to conclude the policy development work required in respect of this issue before the Bill was introduced. As you will be aware, discussions have been taking place between the Assembly Commission, Electoral Commission and Welsh Government as well as our counterparts in Scotland and the UK Parliament.

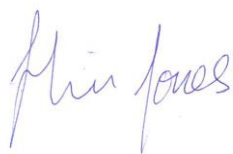
I welcome the commitment made by the Counsel General during the Stage 1 debate to provide further information on the proposed arrangements after the summer recess. I also welcome the indication from the Counsel General that the Welsh Government will not seek the Assembly's agreement to a financial resolution in respect of the Bill until further information on the policy to be given effect by amendments to section 27, and the estimated financial implications, is available for scrutiny.

Thank you again for your scrutiny of this important constitutional legislation and for recommending that the Assembly agrees to its general principles. I look forward to debating these issues further as the Bill progresses through the Assembly.

Yours sincerely

Elin Jones

Llywydd, on behalf of the Assembly Commission



Annex: Response of the Assembly Commission to the Constitutional and Legislative Affairs Committee's Stage 1 recommendations on the Senedd and Elections (Wales) Bill

This annex outlines the Assembly Commission's response to recommendations to the Commission or Llywydd included in the Constitutional and Legislative Affairs Committee's report of 28 June 2019 on the Senedd and Elections (Wales) Bill.

Recommendation 1. *All Bills relating to significant constitutional issues should be published in draft and accordingly, time should be built into the legislative process to enable this to happen.*

Agree in principle

The Commission agrees with this recommendation. However, on this occasion, the Commission's objective was to lower the voting age to 16 in time for the 2021 Assembly elections. This tight timescale did not allow time to consult on all aspects of the Bill in draft form. The alternative would have been to delay its implementation until 2026 which the Commission did not consider acceptable.

The Commission did consult on the draft Bill provisions relating to the name change in 2016-17, and in 2018 consulted on the recommendations of the Expert Panel on Assembly Electoral Reform (but not the specific text of a draft Bill).

The Commission also worked closely with the electoral community, political parties and other stakeholders to take their views into account during the development of the Bill. Individual Assembly Members and the public were kept informed of the Commission's policy decisions relating to the Bill via regular statements and public announcements.

The Commission agrees that time should- wherever possible- be built into the legislative process to enable consultations to take place on draft Bills related significant constitutional issues.

Recommendation 2. *Bills should be introduced into the National Assembly that can be reasonably considered to be fully developed at the point of introduction.*

Agree



The Commission agrees with the principle of legislative transparency that underpins this recommendation.

The Commission understands the Committee's concerns regarding significant amendments relating to the financing and accountability of the Electoral Commission being tabled at Stage 2. See response to recommendations 16 and 17 below.

Recommendation 3. *If the Bill is passed, on receiving Royal Assent the Assembly Commission should publish a revised version of Annex 9 to the Explanatory Memorandum.*

Agree

The Commission agrees with this recommendation.

Recommendation 7. *The Llywydd should issue a written statement:*

- *setting out where responsibilities lie for each aspect of the changes needed to the electoral administration and registration processes;*
- *addressing the funding concerns expressed by the Association of Electoral Administrators and local government relating to implementing electoral registration reforms;*
- *setting out the current position on updates needed to Electoral Management Systems and clarifying the cost of the updates*

This is a matter for the Welsh Government, not the Llywydd.

The Commission agrees that it would be beneficial for a written statement to be made on these matters. The Llywydd has discussed this recommendation with the Counsel General, who agrees that these are matters best addressed by the Welsh Government, given their responsibility for funding and overseeing the implementation of the electoral registration reforms.

The Counsel General will respond to this recommendation.

Subject to any resolution to the contrary under Standing Order 26.27, the Llywydd intends to lay a revised Explanatory Memorandum and Regulatory Impact Assessment after Stage 2 has been completed, which will include updates on costs.



Recommendation 8. *The Llywydd should consider the feasibility of amending the Bill to create a duty on local authorities to promote awareness of how looked-after children can register as local government electors.*

Agree in principle

The Commission agrees that local authorities should promote awareness of how looked-after children can register to vote. It has given consideration to whether the Bill should be amended as recommended by the Committee.

The Social Services and Well-Being (Wales) Act 2014 outlines that the principal duty of local authorities in relation to looked-after children is that *“a local authority looking after any child must safeguard and promote the child’s well-being”*. The definition of ‘well-being’ includes *“securing rights and entitlements”*. Therefore, local authorities have an existing duty to consider *securing rights and entitlements* which would include their right to vote.

Consequently, the Commission considers there to be no need for such a duty to be included in this Bill, and to include such a duty could lead to confusion. The Llywydd has discussed this issue with the Counsel General and he is of the same view.

Section 145 (Ministerial power to issue codes) of that Act gives the Welsh Ministers powers to issue Codes setting out requirements and/or guidance. A Code in relation to looked-after children was issued in 2015.

Recommendation 9. *The Llywydd should, during the Stage 1 debate, provide an assurance that advice from the Information Commissioner’s Office has been received and duly considered in the drafting of the Bill.*

Disagree

No specific advice from the Information Commissioner’s Office was received or considered during the drafting of the Bill.

Data protection was a primary concern in the preparation of the Bill. There are specific provisions in Part 3 of the Bill which seek to protect the information of people under the age of 16. Sections 23 to 25 (protection of information and prohibitions on disclosure) place prohibitions on the disclosure of information about young people for purposes other than those set out in the Bill (which include, for example, disclosure of the information to the young person themselves or for the purposes of registering young people or conducting an election).



The provisions contained in the Bill closely mirror those of the Scottish Elections (Reduction of Voting Age) Act 2015. That Act has been in effect since 2015, and the Assembly Commission is not aware that any significant data protection issues have arisen.

In light of the Committee's recommendation, the Llywydd has written to the Information Commissioner to seek additional assurance that the Bill's provisions on data protection are as robust as they need to be. The Assembly Commission will consider whether any advice received in response requires any amendments to be brought forward, and will provide a further update to the Committee.

Recommendation 11. *The Llywydd should publish, at the earliest opportunity, the membership and terms of reference for the stakeholder group, including the key milestones and timeframes for delivery.*

This is a matter for the Welsh Government, not the Llywydd.

The Welsh Government has established a Democratic Renewal Group to support the work associated with the extension of the franchise. It met for the first time on 2 July 2019. The Commission agrees that details of the membership and terms of reference of this stakeholder group should be published at the earliest opportunity. The Llywydd has discussed this recommendation with the Counsel General, who agrees that this is a matter for the Welsh Government.

The Counsel General will respond to this recommendation.

Recommendation 15. *The Llywydd should issue a written statement at the earliest opportunity detailing the funding being provided by each body contributing to awareness-raising and education in readiness for the 2021 Assembly election.*

Agree in principle

The Bill's Regulatory Impact Assessment sets out the costs of awareness-raising to be provided by the Assembly Commission (£150,000), local authorities (£866,200) and the Electoral Commission (£75,900).

In addition, in a letter to the Llywydd dated 30 January 2019 from the Minister for Education and Minister for Housing and Local Government, the costs to the Welsh Government of communication and education campaigns related to extending the franchise were estimated to be between £895,000 and £945,000 over three years,



commencing in 2019/20. In subsequent discussions the Welsh Government have indicated that this sum comprises:

- £600,000 towards the production of resources for schools;
- £215,000 to £265,000 towards a communications campaign on registration and encouraging people to vote; and
- £80,000 towards research to inform the communication campaign.

The Welsh Government's figures do not distinguish between costs related to raising awareness of franchise changes for local government elections and for Assembly elections. Some of these activities will focus on raising awareness of the voting age for both Assembly and local government elections, rather than focusing on one election or the other.

The Llywydd has discussed this matter with the Counsel General. He noted during the Stage 1 debate on 10 July 2019 that whilst it is not possible for him to split the Government's awareness-raising costs between both elections, he will endeavour to provide further information to the Assembly on this matter.

Recommendation 16. *The Llywydd should amend the Bill to remove section 27 (financing and accountability of the Electoral Commission).*

Recommendation 17. *In the absence of a stand-alone Bill, the forthcoming local government Bill should include sections setting out the detailed arrangements for oversight of the Electoral Commission in this issue Wales by the National Assembly.*

Disagree

If there were another suitable legislative vehicle in which the financing and accountability of the Electoral Commission could be considered in time for the 2021 Assembly elections, the Commission's preference would be to amend the Senedd and Elections (Wales) Bill to remove section 27.

Consideration has been given to addressing through a stand-alone Bill. However, this approach would not make the most efficient use of the Assembly's limited time for legislative scrutiny, during a potentially demanding legislative period. In addition, the timescales involved in addressing this issue in a stand-alone Bill would make it more challenging to make the Electoral Commission accountable to, and financed by the Assembly for its role in delivering the 2021 Assembly election.



The Counsel General has indicated that Welsh Government is not minded to develop a stand-alone Bill on this matter. He has also noted that it would not be appropriate for Welsh Government to include provisions relating to the financing and accountability of the Electoral Commission in the Local Government Bill, which is expected to be introduced in autumn 2019.

The Counsel General has stated that he anticipates tabling amendments during Stage 2 of the Senedd and Elections (Wales) Bill. It is likely that this will, in practice, require the removal of section 27 and its replacement with alternative provisions.

The Counsel General has indicated that further information on his proposed amendments will be provided after the summer recess. He also indicated during the Plenary debate on 10 July that the Welsh Government will not table a financial resolution until those further details have been provided.

Recommendation 18. *The Llywydd and the Welsh Government should satisfy themselves that Schedule 1A of the 2006 Act, as inserted by section 29 (disqualification from Membership of the Senedd) of, and Schedule 2 to, the Bill, is appropriate.*

Agree

The Assembly Commission is considering these parts of the Bill and the Llywydd will discuss with the Counsel General any specific recommendations for change being considered by Welsh Government. Particular attention will be given to the specific offices identified by the Committee during Stage 1, with a view to determining whether to bring forward amendments in due course.

Recommendation 19. *The Llywydd should amend the Bill to remove section 36 (implementation of recommendations made by the Law Commission).*

Agree

Evidence raised during Stage 1 has been supportive of the principle of reforming electoral law based on proposals from the Law Commission. However, the Assembly Commission appreciates concerns raised by both the Committee and the Counsel General regarding the appropriateness of addressing this issue through use of subordinate legislation making powers.

As such, the Llywydd has tabled amendments to remove section 36 and paragraph 1(4)(b) (amendments 1 and 3 tabled on 19 July 2019). The Llywydd would expect to see, in due



course, the Welsh Government pursue the Counsel General's preferred approach of addressing Law Commission recommendations through an expedited primary legislation procedure.



Llyr Gruffydd AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

13 August 2019

Dear Llyr

Senedd and Elections (Wales) Bill

I would like to thank the Committee for your detailed consideration of the financial implications of the Senedd and Elections (Wales) Bill and for your comprehensive report. I enclose the Assembly Commission's response to your report and recommendations. This response also addresses matters you raised in your letter to me dated 27 June and reflects the discussion at our meeting on 9 July.

In addition to the detailed response set out in the annex to this letter, I would like to address some of the key points raised in your report.

Responsibility for electoral administration

A number of your recommendations relate to electoral administration, in particular where responsibility lies in respect of different aspects of electoral administration and registration processes and modernisation of electoral administration. During the Stage 1 Plenary debate on 10 July, I explained that electoral administration policy is a matter for the Welsh Government, not the Commission. I have discussed the Committee's recommendations with the Counsel General, and anticipate he will respond formally to these recommendations in due course.

Revised cost estimates

Some of your recommendations highlight the need for any revised cost estimates for the Bill to be reflected in an updated Regulatory Impact Assessment to be published after Stage 2. I confirm that, subject to any resolution to the contrary under Standing Order



26.27, the Commission intends to lay a revised Regulatory Impact Assessment following Stage 2 proceedings.

Financing and accountability of the Electoral Commission

Your report notes concern that provisions on the funding and accountability arrangements of the Electoral Commission, and the costs of those provisions, were not fully developed prior to the Bill's introduction.

I explained during the Stage 1 debate that my preference would have been to include fully formed proposals in the Bill on introduction. However, it was not possible to conclude the complex policy development work required in respect of this issue before the Bill was introduced.

I appreciate the importance of the Finance Committee having an opportunity to consider the policy and financial implications of changing the funding arrangements of the Electoral Commission.

As you will be aware, discussions have been taking place between the Assembly Commission, Electoral Commission and Welsh Government. I welcome the commitment made by the Counsel General during the Stage 1 debate to provide further information on the proposed arrangements after the summer recess. I also welcome the indication from the Counsel General that the Welsh Government will not seek the Assembly's agreement to a financial resolution in respect of the Bill until he provides further information on the proposals in response to the concerns your Committee raised with me.

In association with this further information from the Counsel General, I will also provide a further update on the Assembly Commission's preferred approach to scrutiny arrangements for the Electoral Commission.

As you are aware, I previously stated during the Stage 1 debate, that I believed a new Committee (a Llywydd's Committee) should be established to oversee the Electoral Commission's work. This scrutiny arrangement would be most appropriate in the case of the Electoral Commission being funded directly from the Welsh Consolidated Fund.

As outlined in my correspondence of 13 June 2019 to the Constitutional and Legislative Affairs Committee, if funding is alternatively provided via the Assembly Commission's budget, then I would be concerned that the establishment of a Llywydd's Committee:

"could give rise to an overlap with the Finance Committee's role in scrutinising the Assembly Commission's budget, leading to complex budgeting, reporting and audit



arrangements and potential lack of clarity over the body which is primarily responsible for scrutinising the Electoral Commission.”^[1]

Whichever, scrutiny arrangement is put in place, I consider that the funding and accountability arrangements put in place for the Electoral Commission should conform with the Finance Committee’s Statement of Principles. While the Counsel General is considering funding proposals, I will continue to discuss this matter with him. I look forward to providing a further update on this issue in due course.

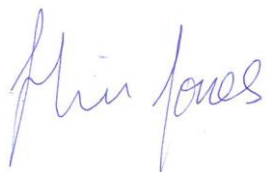
Finally, I concur with the Committee’s view- as expressed in your letter of 27 June- that any amendments to a Bill, which would result in direct charges to the Welsh Consolidated Fund, should be accompanied by a report from the Auditor General setting out his or her views on whether the charge is appropriate. Should the Senedd and Elections (Wales) Bill be amended in this way, I anticipate that such a report would be incorporated into a revised version of the Explanatory Memorandum, as required by Standing Order 26.28.

Thank you again for your scrutiny of this important constitutional legislation and for the invitation received on 17 July to attend a Committee meeting in late September to discuss this matter further. I will respond to that invitation as soon as possible.

Yours sincerely

Elin Jones

Llywydd, on behalf of the Assembly Commission



^[1] Letter to Constitutional and Legislative Affairs Committee, Financing and accountability of the Electoral Commission, 13 June 2019.



Annex: The Commission's response to the Finance Committee's stage 1 recommendations on the Senedd and Elections (Wales) Bill

This annex outlines the Assembly Commission's response to recommendations to the Commission or Llywydd included in the Finance Committee's report of 28 June 2019 on the Senedd and Elections (Wales) Bill.

Recommendation 1. *Whilst recognising the cost benefits of not replacing signage immediately, the Committee is concerned that this approach could lead to additional public confusion over the role of the Assembly and the Welsh Government. The Committee recommends the Llywydd and the Welsh Government work closely to ensure public awareness of the changes are clearly communicated.*

Agree

The Commission agrees it is important that there is clarity for the public about the name of their national legislature. It will continue to work closely with partners, including the Welsh Government, to ensure that the changes are communicated clearly and effectively, and that the name change fulfils its objective of improving understanding of the institution and its role.

Recommendation 2. *As the majority of costs for changes to the election franchise are estimated to fall on local authorities, the Committee recommends the Llywydd should undertake more research to validate or update these costs, or expand on how local authorities had endorsed the costs. This information should be included in the revised Regulatory Impact Assessment published following Stage 2 proceedings.*

Agree

The Llywydd will continue to have discussions with stakeholders, including local authorities, the Welsh Government and Electoral Commission, to provide assurances on costs. Subject to any resolution to the contrary under Standing Order 26.27, the Llywydd intends to lay a revised Explanatory Memorandum and Regulatory Impact Assessment after Stage 2 has been completed.

Recommendation 3. *The Committee recommends the Llywydd and the Welsh Government discuss the merits of introducing a single electoral register for Welsh local government and Assembly elections, since this might require less administrative workload for local authorities than maintaining 22 separate registers. The Llywydd and the Welsh Government should*



report back to the Finance Committee before the introduction of the proposed Local Government Bill.

This is a matter for the Welsh Government not the Llywydd.

The Senedd and Elections (Wales) Bill extends the Assembly's electoral franchise to 16- and 17-year-olds, but only makes minimal changes to the process by which electors are registered to enable the franchise to work effectively.

The Commission is not responsible for policy development in relation to the operation of electoral administration or registration. The Welsh Government has sought views on a single electoral register as part of its consultation on local government electoral reform. The Llywydd has discussed this recommendation with the Counsel General and agreed that he will respond to it.

Recommendation 4. *The Committee recommends that the potential cost savings for automatic registration are also explored by the Llywydd and the Welsh Government. The Llywydd and Welsh Government should report back to the Finance Committee before the introduction of the proposed Local Government Bill.*

This is a matter for the Welsh Government not the Llywydd

The Senedd and Elections (Wales) Bill extends the Assembly's electoral franchise to 16- and 17-year-olds but only makes minimal changes to the process by which electors are registered to enable the franchise to work effectively.

The Commission is not responsible for policy development in relation to the operation of electoral administration or registration. The Llywydd has discussed this recommendation with the Counsel General and agreed that he will respond to it.

Recommendation 7. *The Committee recommends this Bill should be amended to provide on the face of the Bill provisions to ensure that Assembly elections expenditure is published as soon as possible following Assembly elections and referendums.*

Assembly Commission to consider further

The Commission is not responsible for the operation of electoral administration. As such, this issue was not within the scope of the Commission's legislative strategy.

The Counsel General stated during the Stage 1 debate on 10 July that the Welsh Government do not consider it appropriate to address either the publication of Assembly



elections expenditure or returning officer fees in primary legislation, but that they do intend to address both those issues by other means.

The Llywydd is seeking further assurances from the Counsel General on behalf of the Assembly Commission. The Commission will then give further consideration to the Committee's recommendation and the Llywydd will write again to update the Committee.

Recommendation 9. *The Committee recommends that further work is undertaken to ensure the costs that will be incurred by local authorities in updating the Electoral Management System are robust. This information should be included in the revised Regulatory Impact Assessment published after Stage 2 proceedings and should detail the views of local authorities on the appropriateness of these costs.*

Agree

There may be limitations on the level of detailed information that can be disclosed about the costs of updating Electoral Management Systems, because of the commercial sensitivities associated with procurement processes. Within this limitation, the Commission will update the Regulatory Impact Assessment following Stage 2 proceedings in accordance with the Committee's recommendation.

Recommendation 10. *The Committee recommends that any future Assembly Commission proposed Bills include the most up-to date information available to ensure the Finance Committee is able to effectively scrutinise all costs associated with the proposals.*

Agree

Any future Assembly Commission-proposed Bills will continue to be accompanied by Regulatory Impact Assessments which set out best estimates as required by Standing Orders. This will ensure that both the Finance Committee, and the wider public, are able to accurately and transparently assess their potential cost implications.

Recommendation 11. *The Committee recommends the Llywydd includes the Welsh Government's costs in relation to raising awareness of the extension to the franchise to 16 year olds in the revised Regulatory Impact Assessment published following Stage 2 proceedings.*

Agree



The Bill's Regulatory Impact Assessment sets out the costs of awareness-raising to be provided by the Assembly Commission (£150,000), local authorities (£866,200) and the Electoral Commission (£75,900).

In addition, in a letter to the Llywydd dated 30 January 2019 from the Minister for Education and Minister for Housing and Local Government, the costs to the Welsh Government of communication and education campaigns related to extending the franchise were estimated to be between £895,000 and £945,000 over three years, commencing in 2019/20. In subsequent discussions the Welsh Government have indicated that this sum comprises:

- £600,000 towards the production of resources for schools;
- £215,000 to £265,000 towards a communications campaign on registration and encouraging people to vote; and
- £80,000 towards research to inform the communication campaign.

The Welsh Government's figures do not distinguish between costs related to raising awareness of franchise changes for local government elections and for Assembly elections. Some of these activities will focus on raising awareness of the voting age for both Assembly and local government elections, rather than focusing on one election or the other.

The Llywydd has discussed this matter with the Counsel General. He noted during the Stage 1 debate on 10 July 2019 that whilst it is not possible for him to split the Government's awareness-raising costs between both elections, he will endeavour to provide further information to the Assembly on this matter.

Recommendation 12. *The Committee recommends the Llywydd, the Welsh Government and the Electoral Commission ensure that civil society such as schools and youth organisations are included on the Wales Electoral Co-ordination Board, Welsh Government External Board of Advisors and any other collaborative boards that are working to promote voter awareness, to ensure they are able to input into the design of voter awareness material.*

Agree

The Commission agrees that we need to work in partnership with civil society, and in particular youth organisations and schools, to deliver a successful change in the franchise for the 2021 elections and beyond.



The Welsh Government has established a Democratic Renewal Group to support the work associated with the extension of the franchise. It met for the first time on 2 July 2019. Its work will be led by a Steering Group, which includes the Welsh Government, the Assembly Commission, the Electoral Commission and the Welsh Local Government Association. This Steering Group will steer the work of a number of themed working groups. It is envisaged that one of these working groups will consider issues around Votes at 16 and will include organisations involved in the development of the approach to raising awareness of the changes to the franchise, including local authorities, and organisations representing young people.

The Wales Electoral Coordination Board (WECB) is coordinated by the Electoral Commission. Assembly Commission officials attend Board meetings in an advisory capacity. While this is a matter for the WECB to consider, given its technical remit with a focus on the administration of elections, there may be more appropriate mechanisms for including partners in the development of this work on an ongoing basis.

Recommendation 13. *The Committee recommends that in relation to changes to the oversight and funding arrangements of the Electoral Commission that prior to Stage 2 proceeding, draft amendments and their cost implications should be provided, to allow the Finance Committee an opportunity to fully scrutinise them before a Committee of the Whole Assembly is required to dispose of amendments.*

Agree

The Commission agrees that it is appropriate for the Committee to have the opportunity to scrutinise the cost implications of the proposed amendments in relation to the Electoral Commission. The Llywydd had constructive discussions with the Chair of Finance Committee ahead of the Plenary debate and has also discussed this matter with the Counsel General who is leading on these proposals.

The Assembly must agree a financial resolution before Stage 2 proceedings can take place. Tabling the financial resolution is a matter for Welsh Government. During the Stage 1 debate on the general principles of the Bill, the Counsel General stated that he would not seek the Assembly's agreement to a financial resolution in respect of the Bill until he could provide further information on the proposals.

The Llywydd anticipate that this additional information will be broadly consistent with the figures previously supplied to the Committee during Stage 1. The Chief Executive and Clerk of the Assembly advised the Constitutional and Legislative Affairs Committee that:



- the Electoral Commission's annual costs are expected to be around £600,000, rising to £1.7 million depending on the electoral activity in a given year;¹ and
- the costs of the Assembly's scrutiny—over a 5 year term—will be comparable to those set out in the Bill's Regulatory Impact Assessment for the current section 27.

Recommendation 14. *Based on the Welsh Government's comments in regard to section 36 (implementation of recommendations made by the Law Commission), the Committee recommends the Llywydd considers amending the Bill to reflect the views of the Welsh Government*

Agree

Evidence raised during Stage 1 has been supportive of the principle of reforming electoral law based on proposals from the Law Commission. However, the Assembly Commission appreciates concerns raised by both the Committee and the Counsel General regarding the appropriateness of addressing this issue through use of subordinate legislation making powers.

As such, the Llywydd has tabled amendments to remove section 36 and paragraph 1(4)(b) (amendments 1 and 3 tabled on 19 July 2019). The Llywydd would expect to see, in due course, the Welsh Government pursue the Counsel General's preferred approach of addressing Law Commission recommendations through an expedited primary legislation procedure.

Recommendation 15. *The Committee recommends a provision for post-implementation review is included in the revised Regulatory Impact Assessment following Stage 2 proceedings, to ensure the Bill has met its policy objectives and that value for money has been achieved.*

Agree

Post-legislative scrutiny is an important part of the Assembly's law-making role. The Bill's Explanatory Memorandum and Regulatory Impact Assessment seek to provide sufficient

¹ Record of Proceedings, Constitutional and Legislative Affairs Committee, 29 April 2019.



information to inform any work of this nature that the Assembly or its committees wish to conduct. In particular, the EM and Regulatory Impact Assessment include:

- the Bill's policy objectives;
- outline implementation plans; and
- estimates of the financial and other impacts of the Bill.

Subject to any resolution to the contrary under Standing Order 26.27, the Llywydd intends to lay a revised Explanatory Memorandum and Regulatory Impact Assessment after Stage 2 has been completed. This will include an indication that the Commission would welcome post-legislative scrutiny of the legislation in respect of both its policy objectives and the value for money of its implementation. The Commission will also evaluate its own effectiveness in implementing those aspects of the legislation for which it is responsible.





Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
SeneddCLA@assembly.wales

23 August 2019

Dear Mick

I am writing in response to your letters of 11 and 30 July regarding statutory instrument consent memorandums (SICMs) and the Committee's position on when statutory instrument consent motions (Motions) should be tabled. Thank you for also sharing with me your correspondence with the Llywydd on this matter.

Firstly, I want to reassure the Committee that although Standing Orders place no obligation on Ministers to table a Motion in respect of a SICM, we have not changed our overall approach: in normal circumstances, it remains our intention to table Motions for SICMs. However, in respect of Brexit-related SIs, there are practical issues of timing to consider.

As the Committee knows, the context for the approach we have taken over the last 9-12 months is the programme of corrections to the statute book, to make sure it continues to work after we leave the EU. This has been an unprecedented undertaking: the volume of correcting SIs coming our way, and the limiting timescales surrounding them, meant that our normal practice regarding the handling of SICMs was simply not a practical proposition. We developed the current compromise to ensure that Brexit related SICMs would be dealt with in a timely manner, whilst also ensuring that they would be brought to the Assembly's attention. In deciding not to ourselves table SICMs in respect of these pieces of secondary legislation, we were very conscious that where any Member believed that a SICM should be debated by the Assembly, it would be open to them to table a Motion.

However, the programme to correct the statute book has been substantially completed, and we do not envisage that it will give rise to many further SICMs (if indeed there are any at all). Therefore I agree that it is the right time to examine this issue again, and I welcome the fact that your recently announced inquiry will do so.

As part of its work, I believe the Committee could usefully consider the practical timing issues which constrain the Assembly's ability to scrutinise UK SIs which amend primary legislation within devolved competence. This is primarily an issue where SIs are made under negative procedures, given that they are made before they are laid, and that the 21 day rule for coming into force is not a strict requirement. It would be helpful to have the

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

Committee's view on this issue. It would also be useful for the Committee to consider how – in a scenario where the Assembly debated and refused to give its consent to a UK SI made using negative procedures – it would expect Parliament to respond.

I understand that the Counsel General and Brexit Minister will be attending your Committee on 16 September, to give evidence in respect of your inquiry; this will be an opportunity to explore these issues in more detail. And I can assure you that we will give very careful consideration to any recommendations the Committee makes on this matter.

I am copying this letter to the Counsel General and Brexit Minister, to the Finance Minister and Trefnydd, and to the Llywydd.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Mark', with a stylized, cursive script.

MARK DRAKEFORD



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
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29 August 2019

Dear Mick,

I am writing to inform you that a meeting of the Finance Ministers' Quadrilateral will take place on 29 August.

The agenda will cover the UK Government's proposals for the Spending Round and Autumn Budget, EU Exit Funding, and Public Sector Pensions. The agenda also includes items on the Statement of Funding Policy and strengthening the finance machinery of government.

I will report to the Committee on the outcome of the meeting.

Yours sincerely,

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Agenda Item 13.15



Llywodraeth Cymru
Welsh Government

Llyr Gruffydd AM
Chair, Finance Committee
National Assembly for Wales
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3 September 2019

Dear Llyr,

Thank you for your letter of 17 July in relation to the Senedd and Elections (Wales) Bill. I would be happy to attend your Committee on Wednesday 25 September to give evidence in relation to the financing and accountability of the Electoral Commission. I can also confirm that I intend to table the relevant amendments and the accompanying financial information in advance of the session, to assist the Committee's deliberations, and that I will not be seeking the Assembly's approval of the Financial Resolution before the committee's meeting on 25 September.

I am copying this letter to the Llywydd.

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

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



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales,
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11 September 2019

Dear Mick,

I am writing to inform you, as per the inter-institutional relations agreement, that on 12 September 2019, I will attend the Joint Ministerial Committee (EU Negotiations).

The meeting will discuss Exit Readiness, EU negotiations and the common frameworks.

I will explain our view that faced by a choice between a no deal Brexit and remaining in the EU, we will campaign to remain and that we believe a referendum is now needed to resolve the impasse. The events of recent days have highlighted the need to continue to stress the view that a no deal Brexit must be avoided and that continuing uncertainty is doing deep damage to our economy.

In terms of readiness, I have always been clear that a 'no deal' would be catastrophic for Wales and the whole of the UK, and should be unthinkable. A 'no deal' exit from the EU will cause significant disruption and damage to our economy, having a very real impact on peoples' livelihoods.

In spite of this conviction, we are doing all that we can to prepare for leaving without a deal. But I will stress that it is simply not possible to mitigate all of the consequences; that significant funds will need to be made available to support the businesses and people of Wales through the turmoil; and that we cannot prepare in isolation, with our ability to prepare effectively hampered by UK Government reducing the amount of information shared with us.

I will continue to call for the devolved administrations to be represented in UK negotiating teams and stress our commitment to ensure that UK negotiating positions should not normally be advanced with the EU without the agreement of the Devolved Administrations for those matters within our competence. Furthermore I will press the need for rapid progress of the Dunlop Review.

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

I will reaffirm our commitment to the common frameworks process and continue to raise the need to consider common frameworks as part of the wider system of intergovernmental relations.

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee (EAAL).

A handwritten signature in black ink, appearing to read 'J Miles', with a stylized, cursive flourish at the end.

Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Agenda Item 15

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

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LEGISLATIVE CONSENT MEMORANDUM

BIRMINGHAM COMMONWEALTH GAMES BILL [HL] 2017-19

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 Birmingham Commonwealth Games Bill (the "Bill") was introduced in the House of Lords on 5th June 2019. The Bill can be found at:

<https://services.parliament.uk/bills/2017-19/birminghamcommonwealthgames.html>

Policy Objective(s)

3. The UK Government's stated policy objectives are to address a small number of areas which require a legislative response in respect of the preparations for the Commonwealth Games, which are due to take place in Birmingham in 2022.

Summary of the Bill

4. The Bill is sponsored by the Department for Digital, Culture, Media and Sport.
5. The Bill makes provision for the Commonwealth Games that are to be held principally in Birmingham in 2022, and for connected purposes.
6. This Bill provides for a number of operational measures required to support the delivery of the 2022 Commonwealth Games to be held predominantly in Birmingham (and venues across the West Midlands). It provides United Kingdom Ministers and the Organising Committee with the powers necessary to ensure delivery of aspects of the Games relating to funding of the Organising Committee, provisions regarding association with the Games, ticket touting, advertising and trading and transport.

Provisions in the Bill for which consent is required

7. Part 3 – Touting, Advertising and Trading Offences - Touting
Section 9 creates a temporary new offence to tout a Games ticket under specific circumstances. A person guilty of an offence under this section is liable to a fine.

8. Schedule 1 Section 9 – Ticket Touting: Providers Of Information Society Services

Schedule 1 is ancillary to the main ticketing offence in Section 9. It provides exceptions from the commission of the offence, subject to conditions, for service providers who act as mere conduits, who cache information, or who store information without knowledge that its provision constitutes an offence under section 9

9. Consent is required for these sections because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to the promotion of tourism and the economy of Wales. Although 'consumer protection' is a reserved matter under Schedule 7A of the Government of Wales Act 2006, the purpose of these provisions is to protect the brand and reputation of sporting venues in Wales which in turn helps to promote tourism and the economy of Wales which are both devolved matters.
10. Additionally, the provisions also fall within the legislative competence of the National Assembly for Wales in so far as they relate to the local authority functions of making byelaws. Preventing obstruction or nuisance by ticket touting could be something which falls within the good rule and government power in section 235 of the Local Government Act 1972. As the Assembly could legislate on these matters, then it could potentially legislate about the powers of local authorities to make byelaws where touting is causing a nuisance within its area.

Reasons for making these provisions for Wales in the Birmingham Commonwealth Games Bill

11. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill. The Bill creates a temporary offence around touting Games tickets. It is therefore appropriate to deal with these provisions in this UK Bill as it represents the most practical and proportionate legislative vehicle to enable the provisions to apply in Wales. It is also practical for reasons of timing and coherence. Taking the ticket touting offence forward in this UK Bill will enable it to be enacted across Wales at the same time as England.

Financial implications

12. There are no direct additional financial implications for the Welsh Government resulting from this Bill.
13. Part 3 of the Bill, Touting, Advertising and Trading Offences – Touting creates a new offence to tout a Games ticket under specific circumstances. A person guilty of an offence under this section is liable to a fine. The Justice Impact Assessment undertaken by the DCMS indicated that, based on the number of prosecutions for ticketing offences in London 2012 and the 2014 Glasgow Commonwealth Games there

would be fewer than five cases brought under the offence each year from when tickets go on sale to 2022 across the UK. The implication for Wales is therefore potential for one prosecution case at the most. DCMS has confirmed they have agreed to meet any downstream costs to the justice system in England and Wales arising from prosecutions under this offence.

Conclusion

14. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practical and proportionate legislative vehicle to enable the provisions to apply in Wales.

Yr Arglwydd Elis-Thomas AC/ AM
Deputy Minister, Culture, Sport and Tourism
June 2019

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

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