

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video conference via Zoom	<b>Gareth Williams</b>
Meeting date: 11 May 2020	Committee Clerk
Meeting time: 10.00	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on [www.senedd.tv](http://www.senedd.tv)

Informal pre-meeting (09:30–10:00)

**1 Introduction, apologies, substitutions and declarations of interest**  
10:00

**2 Instruments that raise issues to be reported to the Senedd under  
Standing Order 21.2 or 21.3**

10:00–10:05

Made Affirmative Resolution Instruments

**2.1 SL(5)540 – The Health Protection (Coronavirus Restrictions) (Wales)  
(Amendment) (No. 2) Regulations 2020**

(Pages 1 – 21)

CLA(5)–14–20 – Paper 1 – Report

CLA(5)–14–20 – Paper 2 – Regulations

CLA(5)–14–20 – Paper 3 – Explanatory Memorandum

CLA(5)–14–20 – Paper 4 – Letter from the First Minister to the Llywydd, 24  
April 2020



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

10:05–10:10

Made Affirmative Resolution Instruments

**3.1 SL(5)542 – The Direct Payments to Farmers (Crop Diversification Derogation) (Wales) Regulations 2020**

(Pages 22 – 32)

CLA(5)–14–20 – Paper 5 – Report

CLA(5)–14–20 – Paper 6 – Regulations

CLA(5)–14–20 – Paper 7 – Explanatory Memorandum

CLA(5)–14–20 – Paper 8 – Letter from the Minister for Environment, Energy and Rural Affairs to the Llywydd, 29 April 2020

**4 Paper(s) to note**

10:10–10:15

**4.1 Letter from the Minister for Environment, Energy and Rural Affairs: Statutory Instrument Consent Memorandum on The Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020**

(Page 33)

CLA(5)–14–20 – Paper 9 – Letter from the Minister for Environment, Energy and Rural Affairs, 4 May 2020

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

10:15

**6 Legislative Consent Memorandum on the Agriculture Bill – draft report**

10:15–10:30

(Pages 34 – 51)

CLA(5)–14–20 – Paper 10 – Draft report

**7 Legislative Consent Memorandum on the Fisheries Bill – draft report**

10:30–11:00

(Pages 52 – 88)

CLA(5)–14–20 – Paper 11 – Draft report

CLA(5)–14–20 – Paper 12 – Letter from the Minister for Environment, Energy and Rural Affairs, 1 May 2020

**8 Making Justice work in Wales – forward work planning discussion**

11:00–11:20

(Pages 89 – 100)

CLA(5)–14–20 – Paper 13 – Forward work planning

**Date of the next meeting – 18 May**

# SL(5)540 – The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020

## Background and Purpose

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These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations (“the principal regulations”) and came into force at 12.01 a.m. on 25 April 2020.

The principal Regulations have previously been amended by the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 which came into force at 12.01 a.m. on 7 April 2020.

Specifically, these Regulations amend regulations 3 (termination directions), regulations 4 – 6A (physical distancing requirement), regulation 8 (restrictions on being outside the place people live), regulation 10 (enforcement) and make further minor and consequential amendments to the principal Regulations.

These Regulations are made under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The purpose of the principal Regulations, which these Regulations amend, is to:

- put restrictions on the movement of individuals, setting out circumstances in which they may leave the place where they live and preventing gatherings of groups of more than two people, except in certain circumstances; and
- require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, to protect against the risks to public health arising from coronavirus.

The principal Regulations also revoked the Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020 (“the Business Closure Regulations”) and the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020 (“the Leisure Businesses Regulations”).

## Procedure

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Made affirmative: the Regulations have already been made, but require Senedd approval for them to stay into force for more than 28 days.

## Technical Scrutiny

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

## Merits Scrutiny

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



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

The Explanatory Memorandum that accompanies these Regulations sets out the Welsh Government's assessment of the interference with certain individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights.

Whilst no specific articles are referred to in this Explanatory Memorandum, the Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020, addressed that the following articles were engaged in respect of those Regulations: Article 8 – right to respect for private and family life; Article 11 - freedom of assembly and association; and Article 1 of the First Protocol – protection of property.

It appears that the articles noted above in relation to previous amending regulations, are engaged in respect of these Regulations. It also appears that article 9 of the European Convention on Human Rights – freedom of thought, conscience and religion, is engaged in respect of regulation 4 of these Regulations (which amends regulation 8 of the principal Regulations). This right is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights in the same manner as with articles 8 and 11 of the European Convention. The Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

A Government response is required to explain which specific articles the Welsh Government considers are engaged in respect of these Regulations, and to provide additional reasons to explain why the Welsh Government believes engaging these individual rights are justified for the purposes of these Regulations.

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

These Regulations, like the principal Regulations and previous amending regulations, are made in exercise of the powers conferred on the Welsh Ministers by sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act. Unlike the Business Closure Regulations and the Leisure Businesses Regulations, the Welsh Ministers have not relied on the enabling power contained in section 45C(4)(d) of the 1984 Act. Section 45C(4)(d) of the 1984 Act enables the Welsh Ministers to include in regulations a "special restriction or requirement". For these purposes, a special restriction or requirement is "a restriction or requirement which can be imposed by a justice of the peace by virtue of section 45G(2), 45H(2) or 45I(2)" of the 1984 Act. Those restrictions and requirements include the closure of premises (section 45I(2)(a) of the 1984 Act).

The omission of section 45C(4)(d) of the 1984 Act from the list of enabling powers relied on by the Welsh Ministers was raised as a technical point that required further explanation. A Welsh Government response to the point was received after the Committee considered the previous amending regulations. At the same time, the Welsh Government issued a response to the point raised in relation to the principal Regulations, which were the subject to a report to Members considered by Plenary.

The Welsh Government response to the principal Regulations in relation to enabling powers stated that their view:



*“referring to section 45C(4) of the 1984 Act in relation to these Regulations would be unhelpful and inaccurate. The examples given in that subsection are specific and do not reflect the wide-ranging nature of the substantive provisions of the Regulations; provisions which we consider to be necessary and proportionate in light of the nature of the current health emergency and in line with the kind of provision envisaged by the UK Parliament when it enacted Part 2A of the 1984 Act.”*

The Welsh Government's response is very clear and helpful, noting that the way sections 45C(1) and (3)(c) of the 1984 Act are drafted as broad enabling powers and that there is no need to specify section 45C(4)(d) of the 1984 Act.

In light of that helpful response, the only issue that remains is that the approach taken in relying on enabling powers for these Regulations, and the principal Regulations and previous amending regulations, is different to that taken in respect of the Business Closure Regulations and the Leisure Businesses Closure Regulations. That does not affect the validity of these Regulations in any way, but it does give rise to inconsistency between the approach in these Regulations and the approach in the (now revoked) Business Closure Regulations and the Leisure Businesses Closure Regulations.

A Government response is required in respect of the inconsistency between enabling powers relied upon in Welsh Government regulations.

## Implications arising from exiting the European Union

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

## Government Response

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A Welsh Government response is required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**5 May 2020**



Senedd Cymru  
**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
Welsh Parliament  
**Legislation, Justice and Constitution Committee**

*Regulations made by the Welsh Ministers, laid before the National Assembly for Wales under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of the National Assembly for Wales within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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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

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**2020 No. 452 (W. 102)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (Wales) (Amendment)  
(No. 2) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (the “principal Regulations”).

Regulation 2 replaces paragraph (4) of regulation 3 of the principal Regulations with a more flexible provision that enables a requirement or restriction imposed by the principal Regulations to be terminated in relation to specific businesses or services (or descriptions of businesses or services), specific categories of persons or particular areas of Wales. A new paragraph (4A) is also inserted into regulation 3 of the principal Regulations to make clear that the termination of a requirement or restriction does not

affect things which happen before the termination takes effect.

Regulation 3 amends regulations 4, 5, 6 and 6A of the principal Regulations so as to require persons responsible for businesses or services carried on in premises of the types listed below to take all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises (unless the persons are members of the same household or are a carer and the person being cared for), to ensure the number of persons allowed to enter is limited so as to enable those measures to have effect, and to ensure that a distance of 2 metres is maintained between persons waiting to enter . The premises are—

- (a) premises used as cafés or canteens at a hospital, care home, school, prison or military establishment or used to provide food and drink to homeless persons;
- (b) premises that, although generally required to be closed under regulation 4(4) of the principal Regulations, are open for the purposes of broadcasting, or on the request of the Welsh Ministers or a local authority, or to provide services online, by telephone or by post;
- (c) holiday accommodation that is permitted to remain open to provide accommodation to certain persons, or for a purpose requested by the Welsh Ministers or a local authority, or to provide services online, by telephone or by post;
- (d) any part of a shop that would otherwise be required to close under regulation 6(2) of the principal Regulations but is permitted to remain open to respond to orders and enquiries received online, by telephone or by post (for example to provide facilities for the uplift of orders placed online, generally known as a “click and collect” service).

Regulation 4 makes a number of amendments to regulation 8 of the principal Regulations concerning the requirement that a person not leave the place where they are living without a reasonable excuse, including—

- (a) amending paragraph (1) to clarify that the restriction on leaving the place where a person is living without reasonable excuse also includes remaining away from that place without reasonable excuse;
- (b) clarifying the drafting of paragraph (2)(a) to resolve the tautology of having a “need to obtain basic necessities” and making it clear that persons can visit banks and similar



establishments to both withdraw and deposit money;

- (c) making clear that it is a reasonable excuse to exercise more than once a day if needed because of a particular health condition or disability;
- (d) to specify that visiting a burial ground or garden of remembrance to pay respects is a reasonable excuse.

Regulation 5 makes amendments to regulation 10 of the principal Regulations to clarify the application of enforcement provisions.

Regulation 6 contains further minor and consequential amendments to the principal Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

*Regulations made by the Welsh Ministers, laid before the National Assembly for Wales under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of the National Assembly for Wales within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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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

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**2020 No. 452 (W. 102)**

**PUBLIC HEALTH, WALES**

**The Health Protection (Coronavirus  
Restrictions) (Wales) (Amendment)  
(No. 2) Regulations 2020**

*Made at 11:45 a.m. on 24 April 2020*

*Laid before the National Assembly for  
Wales at 2:45 p.m. on 24 April 2020*

*Coming into force at 12.01 a.m. on 25 April  
2020*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984(1).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency,

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(1) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, is the Welsh Ministers.

it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, the National Assembly for Wales.

### **Title, coming into force and application**

**1.**—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020 and they come into force at 12.01 a.m. on 25 April 2020.

(2) In these Regulations, “the principal Regulations” means the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020<sup>(1)</sup>.

### **Termination directions**

**2.** In regulation 3 of the principal Regulations, for paragraph (4) substitute—

“(4) The Welsh Ministers may, if they consider it appropriate to do so having regard to the need to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Wales with the coronavirus, publish a direction terminating a requirement or restriction in relation to—

- (a) a specified business or service or a specified description of business or service;
- (b) a specified description of persons;
- (c) a specified part of Wales.

(4A) The termination of a restriction or requirement by a direction does not affect—

- (a) any punishment incurred in respect of any offence committed under these Regulations before the restriction or requirement is terminated,
- (b) any fixed penalty notice issued under regulation 13 in relation to conduct occurring before the restriction or requirement is terminated, or
- (c) any investigation, legal proceeding or remedy in respect of—
  - (i) any such offence or conduct, or
  - (ii) any alleged offence under these Regulations that is alleged to have been committed before the restriction or requirement is terminated,

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<sup>(1)</sup> S.I. 2020/353 (W. 80) as amended by the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020 (S.I. 2020/399 (W. 88)).

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such punishment or penalty may be imposed, as if the termination had not occurred.”

**Physical distancing requirement in relation to certain premises**

3.—(1) Regulations 4, 5, 6 and 6A of the principal Regulations are amended as follows.

(2) After regulation 4(5) insert—

“(5A) Paragraph (5B) applies—

- (a) to premises used to carry on a business or provide a service mentioned in subparagraph (1)(a), (b) or (c) of paragraph 2 of Schedule 1, or
- (b) where premises used to carry on a business or provide a service listed in Part 2 or 3 of Schedule 1 are used for a purpose mentioned in paragraph (5).

(5B) Where this paragraph applies, the person responsible for carrying on the business or providing the service must, during the emergency period, take all reasonable measures to ensure —

- (a) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),
- (b) that persons are only admitted to the premises in sufficiently small numbers to make it possible to maintain that distance, and
- (c) that a distance of 2 metres is maintained between persons waiting to enter the premises (except between two members of the same household, or a carer and the person assisted by the carer).”

(3) After regulation 5(3A) insert—

“(3B) Paragraph (3C) applies where premises used for a business listed in Part 3 of Schedule 1 are used—

- (a) to provide accommodation in accordance with paragraph (3), or
- (b) to carry on the business in accordance with paragraph (3A).

(3C) Where this paragraph applies, the person responsible for carrying on the business must,

during the emergency period, take all reasonable measures to ensure—

- (a) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),
- (b) that persons are only admitted to the premises in sufficiently small numbers to make it possible to maintain that distance, and
- (c) that a distance of 2 metres is maintained between persons waiting to enter the premises (except between two members of the same household, or a carer and the person assisted by the carer).”

(4) In regulation 6, after paragraph (2) insert—

“(2A) Where premises are not closed because they are premises required in order to carry on a business as permitted by paragraph (2)(a), the person responsible for carrying on the business must, during the emergency period, take all reasonable measures to ensure—

- (a) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),
- (b) that persons are only admitted to the premises in sufficiently small numbers to make it possible to maintain that distance, and
- (c) that a distance of 2 metres is maintained between persons waiting to enter the premises (except between two members of the same household, or a carer and the person assisted by the carer).”

(5) In regulation 6A, for paragraph (2) substitute—

“(2) Paragraph (1) does not apply to premises—

- (a) used in the carrying on of a business, or provision of a service, listed in Schedule 1, or
- (b) to which regulation 6(2A) applies.”

**Restriction on persons leaving or being outside of the place where they live**

4.—(1) Regulation 8 of the principal Regulations is amended as follows.

(2) In paragraph (1), after “living” insert “or remain away from that place”.

(3) In paragraph (2)—

(a) for sub-paragraph (a) substitute—

“(a) to obtain supplies from any business or service listed in Part 4 of Schedule 1 including—

(i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;

(ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;

(aa) to obtain money from or deposit money with any business or service listed in paragraphs 38 or 39 of Schedule 1;”

(b) for sub-paragraph (b) substitute—

“(b) to take exercise, no more than once a day (or more frequently if this is needed because of a particular health condition or disability), either—

(i) alone,

(ii) with other members of the person’s household, or

(iii) with the person’s carer;”

(c) after sub-paragraph (g) insert—

“(ga) to visit a cemetery, burial ground or garden of remembrance to pay respects to a deceased person;”

(d) in sub-paragraph (i)—

(i) in paragraph (i), for “the person’s child” substitute “a child in relation to whom the person is the parent, or has parental responsibility for, or has care of”;

(ii) in paragraph (iii), in the English language text, for “Department of Work” substitute “Department for Work”;

(e) in sub-paragraph (l), for “necessary” substitute “the move cannot be postponed”.

**Enforcement**

5.—(1) Regulation 10 of the principal Regulations is amended as follows.

(2) In paragraph (1)—

- (a) omit “reasonably believes that”;
- (b) in sub-paragraph (a)—
  - (i) at the beginning insert “has reasonable grounds for suspecting that”;
  - (ii) after “4,” insert “5(3C),”;
- (c) in sub-paragraph (b), at the beginning insert “considers”.

(3) In paragraph (2), for “considers” substitute “has reasonable grounds for suspecting”.

(4) For paragraph (3) substitute—

“(3) A relevant person may—

- (a) when exercising the power in paragraph (2)(a) or (b), direct P to follow such instructions as the relevant person considers necessary;
- (b) use reasonable force in the exercise of the power in paragraph (2)(b).”

(5) In paragraph (5), for “purpose of paragraph (4)” substitute “purposes of this regulation”.

(6) In paragraph (7), for “considers” substitute “has reasonable grounds for suspecting”.

(7) For paragraph (8) substitute—

“(8) A relevant person exercising the power in paragraph (7)—

- (a) to direct a gathering to disperse, or
- (b) to remove a person to the place where they are living,

may use reasonable force, if necessary, in exercise of the power.

(8A) Where a relevant person has reasonable grounds to suspect that a person (“P”) is in a gathering in contravention of regulation 8(5) and is a child accompanied by an individual (“I”) who has responsibility for P—

- (a) the relevant person may direct I to take P to the place where P is living, and
- (b) I must, so far as reasonably practicable, ensure that P complies with any direction or instruction given by the relevant person to P.

(8B) A relevant person may only exercise a power in paragraph (7) or (8A) if the relevant person considers that it is necessary and proportionate to do so.”

(8) In paragraph (9)—

- (a) for “A” substitute “If a relevant person considers it necessary and proportionate for the purposes of preventing, or terminating, a contravention of regulation 9(4), the”;

(b) after “force” insert “, if necessary,”.

(9) In paragraph (12), after “4,” insert “5(3C),”.

### **Minor and consequential amendments**

**6.**—(1) The principal Regulations are amended as follows.

(2) In regulation 1(3)(e), after paragraph (iii) insert—

“(iv) any child;

(v) any person who is a vulnerable adult within the meaning given by section 60(1) of the Safeguarding Vulnerable Groups Act 2006<sup>(1)</sup>.”

(3) In regulation 4(5)—

(a) in sub-paragraph (a), after “Part 2” insert “of Schedule 1”;

(b) for sub-paragraph (b) substitute—

“(b) premises used for the businesses or services listed in Part 2 or 3 of Schedule 1 for any purpose as may be requested by the Welsh Ministers or a local authority;”

(c) in sub-paragraph (c)(ii), omit “orders”.

(4) In regulation 5(3A), omit sub-paragraph (a).

(5) In regulation 6(2)(a)(ii), after “orders” insert “or enquiries”.

(6) In regulation 7—

(a) in the Welsh language text, for “cam”, in each place it occurs, substitute “mesur”;

(b) in the Welsh language text, for “cymrir”, in each place it occurs, substitute “cymerir”;

(c) in the Welsh language text of paragraph (4), omit “wedi ei gymryd”;

(d) after paragraph (4) insert—

“(4ZA) Paragraph (3) does not apply to the grounds surrounding a crematorium, including any burial ground or garden of remembrance.”;

(e) in the Welsh language text of paragraph (5)(b), omit “wedi ei gymryd”.

(7) In regulation 7A(1)—

(a) after sub-paragraph (a) insert—

“(aa) regulation 4(5B),

(ab) regulation 5(3C),”;

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<sup>(1)</sup> 2006 c. 47. The definition of “vulnerable adult” in section 60(1) was amended by s. 65(2)(b) of the Protection of Freedoms Act 2012 (c. 9).



- (b) in sub-paragraph (b), after “6(1)” insert “or (2A)”;
  - (c) in the Welsh language text, in the words after sub-paragraph (d), for “camau” substitute “mesurau”.
- (8) In regulation 8—
- (a) in paragraph (2)(d)—
    - (i) in the Welsh language text, for “cymorth” substitute “cynhorthwy”;
    - (ii) after “emergency assistance” insert “to any person”;
  - (b) in paragraph (2)(m), in the Welsh language text, for “newid” substitute “niwed”;
  - (c) in paragraph (5)(d)(iii), after “emergency assistance” insert “to any person”.
- (9) In regulation 12(1)(a), after “4,” insert “5(3C),”.
- (10) In Schedule 1—
- (a) in the Welsh language text of paragraph 2(2)(b), for “pan y cymrir pob cam” substitute “pan gymerir pob mesur”;
  - (b) in paragraph 22, after “except for” insert “livestock markets and”;
  - (c) in paragraph 24, at the end insert “(except for livestock auctions)”;
  - (d) in paragraph 38, for “and cash points” substitute “, savings clubs, cash points and undertakings which by way of business operate currency exchange offices, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers.”

*Mark Drakeford*

First Minister, one of the Welsh Ministers

At 11:45 a.m. on 24 April 2020

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020**

This Explanatory Memorandum has been prepared by 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 Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020.

Vaughan Gething  
Minister for Health and Social Services

24 April 2020

## **1. Description**

These Regulations amend the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (“the principal Regulations”) which—

- put restrictions on the movement of individuals, setting out circumstances in which they may leave the place where they live and preventing gatherings of groups of more than two people, and;
- require the closure of certain businesses and impose requirements on other businesses, as well as duties to close certain public footpaths and land, to protect against the risks to public health arising from coronavirus.

## **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the National Assembly for Wales. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus.

The Regulations cease to have effect at the end of the period of 28 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the National Assembly for Wales.

### European Convention on Human Rights

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate. A number of provisions see an addition to the list of specified reasonable excuses, which people may rely upon to leave, or remain away from, the place where they are living, including the need for people with particular health conditions or disabilities to exercise more than once a day and to allow people to visit a cemetery, burial ground or garden of remembrance to pay respects to a deceased person.

## **3. Legislative background**

The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act.

The 1984 Act and Regulations made under it provide a legislative framework for health protection in England and Wales. Part 2A of the 1984 Act was inserted by the Health and Social Care Act 2008, and provides a legal basis to protect the public from threats arising from infectious disease.

Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. It includes powers to impose restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. Section 45F enables the making of supplementary provision including provision for the enforcement of restrictions and requirements imposed under the Regulations and the creation of offences.

The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister, as respects Wales, means the Welsh Ministers.

#### **4. Purpose and intended effect of the legislation**

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19 or “coronavirus”.

The amendments achieved through these Regulations include:

- Requiring cafés accessible by the public in hospitals, as well as canteens in schools, prisons and for use by the armed forces, to ensure all reasonable physical distancing measures are put in place.
- Requiring businesses that are providing facilities for “order and collect” services to take all reasonable measures to ensure a distance of 2 metres is maintained between persons on the premises where those facilities are provided (and between persons waiting to enter those premises). “Click and collect” facilities are already permitted to remain open, this amendment ensures that they are subject to the same requirements as any other establishment which is permitted to remain open under the regulations.
- Amending the requirement that a person must not leave the place where they live without a reasonable excuse to provide that a person must not leave nor remain away from the place where they live without such an excuse.
- Enabling currency exchanges, savings clubs and money transmission services to remain open so as to allow people to access money and to send money to other persons.

- Extending the definition of a vulnerable person to include other groups of people that could benefit from assistance and to whom providing supplies etc. would amount to a “reasonable excuse” for being away from a person’s place of residence.
- Extending the reasonable excuse of leaving the place where you live for the purposes of exercise to allow for exercise more than once a day when that is necessary because of a particular health condition or disability. For example, certain persons with autism may be recommended to exercise more than once a day as part of a set routine.
- Making it clear that visiting a cemetery or other burial ground or garden of remembrance to pay respects to a deceased person is a reasonable excuse for leaving the place where you live.

In addition, further technical amendments have been made to the drafting in relation to:

- Clarifying the description of ‘the person’s child’ in relation to the reasonable excuse of leaving the place where the person lives for the purposes of accessing childcare or educational facilities.
- Drafting improvements to the reasonable excuses listed in sub-paragraphs (a) and (l) of regulation 8(2) to resolve the tautological nature of the original drafting.
- Clarifying that it is a reasonable excuse to go to a bank or similar establishment to both withdraw and deposit money.
- Ensuring consistency in the reasons for which both Part 2 (cultural and leisure) and Part 3 (holiday accommodation) businesses can be asked to open premises; namely for any purpose at the request of either local authorities or the Welsh Ministers.
- Ensuring physical distancing measures are in place in businesses asked to open at the request of local authorities or the Welsh Ministers.
- Clarifying the powers of enforcement in regulation 10 of the principal Regulations, to ensure consistency as regards the test that an officer is to apply when deciding whether to use the enforcement power and clarifying the powers available in relation to the dispersal of public gatherings.
- The Welsh language text of the principal Regulations to ensure linguistic consistency.

The Welsh Ministers are required to keep the need for the restrictions under review every 21 days. As soon as the Welsh Ministers consider that any restriction or requirement is no longer necessary to prevent, protect against,

control or provide a public health response to the incidence or spread of infection in Wales with coronavirus, the Welsh Ministers must publish a direction terminating it.

The principal Regulations (and these amendments) expire at the end of the period of six months beginning with the day on which they come into force – they came into force on 27 March 2020 and will therefore expire on 27 September 2020.

It is critical to take all reasonable steps to limit onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 11 March 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

The Welsh Ministers consider that restrictions and requirements imposed by the Regulations are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

The restrictions form part of the UK response to coronavirus. Restrictions have also been put in place by regulations made by the Secretary of State in relation to businesses, public spaces and the movement of individuals in England.

## **5. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these amending Regulations. Individuals and businesses have been informed about the restrictions in the principal Regulations through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales, the First Minister of Wales and the Prime Minister.

## **6. Regulatory Impact Assessment (RIA)**

There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.



Elin Jones, AM  
Llywydd  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

24 April 2020

Dear Elin,

**The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020**

I have today made the Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020 under sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. I attach a copy of the statutory instrument and I intend to lay this statutory instrument and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the National Assembly for Wales by 21 May 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report.

I am copying this letter to Rebecca Evans AM, Minister for Finance and Trefnydd, Mick Antoniw AM, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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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.

# Agenda Item 3.1

## SL(5)542 – The Direct Payments to Farmers (Crop Diversification Derogation) (Wales) Regulations 2020

### Background and Purpose

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These Regulations make a derogation from Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing direct payments to farmers under support schemes within the framework of the common agricultural policy. Under these Regulations, the crop diversification requirements are disapplied in Wales in respect of claim year 2020.

### Procedure

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Made Affirmative.

### Technical Scrutiny

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

### Merits Scrutiny

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

### Implications arising from exiting the European Union

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Regulation (EU) No. 1307/2013, has been incorporated into domestic law (from Exit day) by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2) for claim year 2020. The Direct Payments to Farmers (Legislative Continuity) Act 2020 provides the legal basis to continue paying direct payments to farmers for claim year 2020.

### Government Response

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A Welsh Government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**May 2020**





*Regulations made by the Welsh Ministers, laid before the National Assembly for Wales in accordance with Article 71A(3) of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing direct payments to farmers under support schemes within the framework of the common agricultural policy for approval by resolution of the National Assembly for Wales within twenty-eight days beginning on the day on which the Regulations were made, subject to extension for periods of dissolution, or recess for more than four days.*

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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

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**2020 No. 470 (W. 108)**

**AGRICULTURE, WALES**

**The Direct Payments to Farmers  
(Crop Diversification Derogation)  
(Wales) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make a derogation from Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing direct payments to farmers under support schemes within the framework of the common agricultural policy. Under these Regulations, the crop diversification requirements are disapplied in Wales in respect of claim year 2020.

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.

*Regulations made by the Welsh Ministers, laid before the National Assembly for Wales in accordance with Article 71A(3) of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing direct payments to farmers under support schemes within the framework of the common agricultural policy for approval by resolution of the National Assembly for Wales within twenty-eight days beginning on the day on which the Regulations were made, subject to extension for periods of dissolution, or recess for more than four days.*

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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

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**2020 No. 470 (W. 108)**

**AGRICULTURE, WALES**

**The Direct Payments to Farmers  
(Crop Diversification Derogation)  
(Wales) Regulations 2020**

<i>Made</i>	<i>28 April 2020</i>
<i>Laid before the National Assembly for Wales</i>	<i>29 April 2020</i>
<i>Coming into force</i>	<i>30 April 2020</i>

The Welsh Ministers, in exercise of the powers conferred on them by Articles 69(1) and 70(4) of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework

of the common agricultural policy<sup>(1)</sup> make the following Regulations.

The Welsh Ministers consider that, in order to resolve problems arising from flooding in Wales, it is necessary and justifiable to derogate from the provisions in that Regulation for claim year 2020 as respects crop diversification requirements, the extent and period of that derogation being in the Welsh Ministers' opinion, strictly necessary.

**Title, commencement, application and interpretation**

1.—(1) The title of these Regulations is the Direct Payments to Farmers (Crop Diversification Derogation) (Wales) Regulations 2020.

(2) These Regulations come into force on 30 April 2020.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations, “Regulation (EU) No. 1307/2013” means Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and

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(1) Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009 (OJ No L 347, 20.12.2013, p. 608). Regulation (EU) No. 1307/2013, has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2) but only for claim year 2020 (see section 1(2)(a) of that Act and section 1(7) of that Act for the definition of “claim year”). The Act also incorporated other EU legislation relating to the CAP direct payment scheme but they are not relevant to these Regulations. The Direct Payments to Farmers (Legislative Continuity) Act 2020 provides the legal basis to continue paying direct payments to farmers for claim year 2020 (Article 137 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (19 October 2019) provided that Regulation (EU) No. 1307/2013 does not apply to the UK for claim year 2020). Regulation (EU) No. 1307/2013 has been amended by regulations 2, 3(4) and 7 of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91). The amendments made by the Regulations addressed the failures in Regulation (EU) No. 1307/2013 to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union. In particular, the Regulations amended Article 69(1) of Regulation (EU) No. 1307/2013 so that the power to make derogations is exercisable by the Welsh Ministers (see Article 4(1)(r) and (s) of Regulation (EU) No. 1307/2013 for the definitions of “relevant authority” and “appropriate authority”). There are other amendments to Regulation (EU) No. 1307/2013 but they are not relevant to these Regulations.

repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ No L 347, 20.12.2013, p. 608), as it forms part of domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020<sup>(1)</sup>.

(5) Expressions used in these Regulations have the same meaning as in Regulation (EU) No. 1307/2013.

### **Derogation from the crop diversification requirements**

2. For the purposes of Article 43(1) (direct payments: requirement to observe agricultural practices beneficial for the climate and the environment) of Regulation (EU) No. 1307/2013—

- (a) the following provisions of Regulation (EU) No. 1307/2013 do not have effect in relation to eligible hectares in Wales—
  - (i) Article 43(2)(a) (crop diversification as an agricultural practice beneficial for the climate and environment);
  - (ii) Article 44 (crop diversification requirements);
  - (iii) Annex IX, Section I, paragraph (1) (list of practices equivalent to crop diversification);
- (b) the first subparagraph of Article 43(9) of Regulation (EU) No. 1307/2013 has effect in relation to eligible hectares in Wales as if the reference to 44 was omitted.

3.—(1) Regulation 2 has effect until the end of claim year 2020.

(2) In these Regulations, “claim year 2020” is to be interpreted in accordance with section 1(7) of the Direct Payments to Farmers (Legislative Continuity) Act 2020.

*Lesley Griffiths*  
Minister for Environment, Energy and Rural Affairs,  
one of the Welsh Ministers  
28 April 2020

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(1) 2020 c. 2.

**The Direct Payments to Farmers (Crop Diversification Derogation) (Wales)  
Regulations 2020**

**Explanatory Memorandum**

This Explanatory Memorandum has been prepared by Rural, Economy and Legislation Division within the Department for Environment, Skills and Natural Resources and is laid before the Senedd 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 Direct Payments to Farmers (Crop Diversification Derogation) (Wales) Regulations 2020.

Lesley Griffiths

**Minister for Environment, Energy and Rural Affairs**

30 April 2020

## **1. Description**

1.1 The Direct Payments to Farmers (Crop Diversification Derogation) (Wales) Regulations 2020 (“the instrument”) will exempt farmers in Wales from the need to follow crop diversification requirements for the Basic Payment Scheme 2020 only.

1.2. The instrument modifies the application of provisions in Regulation (EU) No. 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ No L 347, 20.12.2013, p. 608 (“Regulation (EU) No. 1307/2013”).

## **2. Matters of special interest to the Legislative, Justice and Constitution Committee**

2.1 The instrument is being laid using powers conferred upon the Welsh Ministers under Articles 69(1) and 70(4) of Regulation (EU) No. 1307/2013.

Regulation (EU) No. 1307/2013, has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2) for claim year 2020. The Direct Payments to Farmers (Legislative Continuity) Act 2020 provides the legal basis to continue paying direct payments to farmers for claim year 2020. Article 137 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (19 October 2019) provided that Regulation (EU) No. 1307/2013 does not apply to the UK for claim year 2020.

Regulation (EU) No. 1307/2013 has been amended by regulations 2, 3(4) and 7 of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91) (“the 2020 Regulations”). The amendments made by the 2020 Regulations addressed the failures in Regulation (EU) No. 1307/2013 to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union. In particular, the 2020 Regulations amended Article 69(1) of Regulation (EU) No. 1307/2013 so that the power to make derogations is exercisable by the Welsh Ministers (for the definitions of “relevant authority” and “appropriate authority” see Article 4(1)(r) and (s)), and inserted Article 70(4) which provides that Regulations may contain consequential, supplementary, transitional and saving provisions.

Article 69(1) provides that the Welsh Ministers may make regulations which are both necessary and justifiable in an emergency in order to resolve a specific problem. The Welsh Ministers consider that, in order to resolve the specific problems arising from the extreme winter weather and flooding in Wales, it is necessary and justifiable to exercise emergency powers to derogate from the provisions in Regulation (EU) No. 1307/2013 for claim year 2020 as respects crop diversification requirements.

The derogation only applies for claim year 2020. “Claim year 2020” is defined by reference to section 1(7) of the Direct Payments to Farmers (Legislative

Continuity) Act 2020 (c. 2) which provides that “claim year” followed by a year, means the period of 12 months beginning with 1 January in that year. The derogation therefore lasts less than 12 months in accordance with Article 69(3) of Regulation (EU) No. 1307/2013

Article 71(3) of Regulation (EU) No. 1307/2013 provides that regulations made under Article 69(1) are subject to the made-affirmative procedure.

It was necessary to wait for the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (“2020 Regulations”) to be made before making this instrument to ensure continuity of approach for definitions and interpretation. The consequential amendments made by the 2020 Regulations are needed because the EU Direct Payments legislation was incorporated into UK law on Exit Day, rather than at the end of the Implementation Period. The amendments ensure that the retained Direct Payments legislation is treated in the same way as legislation under the European Union (Withdrawal) Act 2018.

The 2020 Regulations make consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020 on a UK-wide basis. The 2020 Regulations were made on 27 April 2020, laid before Parliament on 28 April and came into force on 30 April.

### **3. Legislative background**

3.1 Since September 2019, Wales has been experiencing higher than average rainfall. In addition, Storm Ciara and Storm Dennis have caused widespread flooding across parts of Wales.

3.2 Farming stakeholders have reported that farmers have been experiencing difficulties cultivating crops as a result, either because they cannot access flooded land or land is too wet to plant. This could potentially impact their ability to meet crop diversification requirements for the 2020 Basic Payment Scheme. Failure to meet crop diversification requirements makes a claim ineligible for the greening element of Basic Payment Scheme, which accounts for approximately 30% of the total value of BPS.

3.3 The current crop diversification rules require that:

- (a) on holdings with between 10 and 30 hectares of arable land at least two different crops must be grown on that land and the largest crop must not cover more than 75% of that arable land; and
- (b) on holdings with more than 30 hectares of arable land, at least three different crops must be grown on that land, the largest crop must not cover 75% of that arable land and the two largest crops together must not cover more than 95% of that arable land.

3.4 In Wales in 2019, 405 of farmers require 3 crops, whilst a further 127 farmers require 2 crops to meet the crop diversification rules to qualify for Greening payments.

3.5 This instrument will remove the crop diversification requirement completely for the 2020 Basic Payment Scheme year. This will mean that farmers in Wales will not have to comply with the crop diversification requirements to plant more than one crop in 2020, and also do not need to provide any evidence to show they have attempted to comply but failed for 'force majeure' reasons in order to receive payment in full done so to the contrary.

3.6 Welsh farmers will qualify for full Greening payment via permanent pasture and Ecological Focus Area declarations only.

#### **4. Purpose and intended effect of the legislation**

##### Regulation (EU) 1307/2013 of the European Parliament

4.1 Regulation 2 of this instrument disapplies Articles 43(2)(a) and 44 and Annex IX, Section I, paragraph (1) of Regulations (EU) 1307/2013 in respect of claim year 2020 in terms of crop diversification. Regulation 3 of this instrument confirms that regulation 2 only has effect for claim year 2020, which is defined by reference to section 1(7) of the Direct Payments to Farmers (Legislative Continuity) Act 2020.

#### **5. Consultation**

5.1 The Welsh Government has received representations from several stakeholders requesting a relaxation of crop diversification requirements. Additionally, a very rapid, verbal consultation with major stakeholders showed strong support for this change.

#### **6. Regulatory Impact Assessment (RIA)**

6.1 A Regulatory Impact Assessment has not been prepared for this instrument because it does not affect many businesses and the amounts involved are below the threshold for producing an Impact Assessment.





Ein cyf/Our ref – MA/LG/1273/20

Elin Jones AM  
Llywydd  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

29 April 2020

Dear Elin,

**The Direct Payments to Farmers (Crop Diversification Derogation) (Wales) Regulations 2020**

The Direct Payments to Farmers (Crop Diversification Derogation) (Wales) Regulations 2020 were made on 28 April under powers conferred by Articles 69(1) and 70(4) of Regulation (EU) No.1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (“Regulation (EU) No. 1307/2013”). The Regulations come into force on 30 April 2020.

I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with Article 71A(3) of Regulation (EU) No. 1307/2013, this instrument must be laid before and approved by the Senedd for Wales by 1 June 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 20 May 2020.

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

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Caerdydd • Cardiff  
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[Correspondence.Lesley.Griffiths@gov.wales](mailto:Correspondence.Lesley.Griffiths@gov.wales)

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 am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw AM, Chair of the Legislative, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Service and Julian Luke, Head of Policy and Legislation Committee Service.

Regards

A handwritten signature in blue ink, appearing to read 'Lesley', with a long, sweeping underline that extends to the left and then curves back under the text.

**Lesley Griffiths AC/AM**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

Lesley Griffiths AC/AM  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

Agenda Item 4.1



Llywodraeth Cymru  
Welsh Government

Mick Antoniw AM  
Chair,  
Legislation, Justice and Constitution Committee  
[Mick.Antoniw@assembly.wales](mailto:Mick.Antoniw@assembly.wales)

4 May 2020

Dear Mick,

This letter is to inform you that today, I have laid a Statutory Instrument Consent Memorandum before the Senedd in respect of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020, as required by Standing Order (SO) 30A.

The SI ensures that the retained EU Direct Payments legislation is treated in the same way as legislation under the European Union (Withdrawal) Act 2018, there is no divergence in policy between the Welsh Government and the UK Government in this case.

Yours sincerely,

**Lesley Griffiths AC/AM**  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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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.

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# Agenda Item 6

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

Document is Restricted

# Agenda Item 7

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

Document is Restricted

Lesley Griffiths AC/AM  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA-LG-1429-20

Mick Antoniw AM  
Chair  
Legislation, Justice and Constitution Committee

SeneddLJC@assembly.wales

1 May 2020

Dear Mick

I am writing further to my attendance at the evidence session on 16 March, regarding the Legislative Consent Memorandum in relation to the UK Fisheries Bill. I committed to write to the Committee on a number of the matters raised.

### Clause 23

I wanted to clarify one of the points we discussed around Clause 23 – power of the Secretary of State to determine fishing opportunities. During scrutiny I was asked if amendments will be made to the Bill in relation to the concerns I raised previously on clause 23. I want to clarify, we are not seeking any amendments.

This remains a red line issue for me because it is paramount this power is exercised in a manner which respects the devolution settlement. I have reached an agreement with the UK Government to set out in the UK Fisheries Framework Memorandum of Understanding (MoU), or an alternative route if we both agree it is more suitable, more detail on the intended use of the power within clause 23 which will include strengthened consultation processes. I have attached a letter from Victoria Prentis MP which re-confirms this commitment.

We expect the MoU to be in place by the end of the Implementation Period and my officials are working closely with Defra and the Devolved Administrations to progress all elements of the Framework. I am comforted by the collaborative and respectful way all four UK administrations are working together to deliver the UK Fisheries Framework.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
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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.

## Dispute Resolution Mechanism

We discussed dispute resolution mechanisms and I have always maintained the importance of there being adequate dispute resolution arrangements in place. I want to provide reassurances on this matter. Dispute avoidance processes linked to portfolio level structures are already in place and well established. These are the Senior Officials Programme Board and where Ministerial escalation is required, via the Inter-Ministerial Group – Environment, Fisheries and Rural Affairs (IMG-EFRA).

The detailed arrangements for governance in fisheries, including decision making, dispute avoidance and dispute resolution will also be covered, and existing arrangements will be strengthened, through the development of the UK Fisheries Framework. This is part of the UK Common Frameworks approach, which is supported by all fisheries administrations.

The fisheries administrations have a strong track record of working closely together to develop fisheries management policy and resolve disputes. In addition to regular Ministerial and Official level contact, all four fisheries administrations are signatories to the 2012 Concordat on the “Management Arrangements for Fishing Opportunities and Fishing Vessel Licensing in the United Kingdom”, which sets out ways of working.

It is, therefore, considered unnecessary to incorporate any additional processes into the UK Fisheries Bill. Additionally given the existence of the wider UK Framework which leads to the Joint Ministerial Committee, it would be inappropriate to introduce legislation which addresses dispute resolution solely for fisheries policies.

## Consent for clauses 28 – 32

I said I would update you on discussions with UK Government when they had concluded on whether clauses 28 – 32 require Senedd Cymru (Senedd) consent. My officials have discussed with Defra and our view remains these clauses do not require consent.

These provisions allow the Secretary of State, to create a charging scheme but the scheme will only apply to the holder of an English fishing licence, issued by the Secretary of State. The English fishing licence will be subject to a maximum catch provision, which will be determined by the Marine Management Organisation, and if the Secretary of State establishes a discard prevention charging scheme it will apply only to English fishing boats operating under licences issued by the Secretary of State who exceed their maximum catch provision. It is, therefore, an aspect of the regulation of English fishing boats.

The way in which such regulations will be relevant to Wales and the Welsh zone is English fishing boats will remain subject to such regulations when they are within Welsh waters, and within Scottish and Northern Irish waters.

It remains our view these clauses do not require Senedd consent because the scheme will be part and parcel of the regulation of English fishing boats, which is a matter for the Secretary of State.

## Sunset Provisions

I said I would revisit whether the Bill should include sunset provisions in relation to the Welsh provisions.

My position is clear and I see the Welsh provisions, not related to the common framework, as purely transitional subject to the introduction at the appropriate time of a Welsh Fisheries Bill.

We are working to deliver a fit for purpose Future Fisheries Policy and this needs to be done within reasonable timeframes, which enable us to reflect on the outcomes of Brexit and the impacts on our industry. The impacts are now compounded by the COVID-19 crisis. The need to respond to this unprecedented situation, shows why we must keep flexibility in our legal powers, given the need to respond to changing priorities and to refocus resources accordingly.

At this time, while I am committed to bringing forward a Welsh Fisheries Bill in the next term of the Senedd, I cannot guarantee when it will be included in the Senedd's Legislative Programme, and I do not want to create a risk of losing key powers we may need in the future by including sunset provisions in the UK Bill.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

**Lesley Griffiths AC/AM**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

CC Mike Hedges AM, Chair of Climate Change, Environment and Rural Affairs Committee





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**Victoria Prentis MP**  
Parliamentary Under Secretary of State

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Lesley Griffiths AM  
House of Commons  
London  
SW1A 0AA

Your ref: IM/LG/00265/20  
Our ref: MC2020/02128/GW

8 April 2020

Dear Lesley,

Thank you for your letter of 29 January to the former Minister of State about the Fisheries Bill. I am replying as the Minister responsible for this policy area. I apologise for the delay in responding. Defra is currently dealing with high volumes of correspondence due to COVID-19. Thank you for your understanding during this challenging time

It was good to speak to you on 9 March and I thank you for your letter of 11 February in which you confirmed that you would begin the legislative consent process, and for the subsequent Memorandum of Understanding (MoU) laid on 12 February.

I echo your view that the constructive collaboration between officials has led to a Bill that delivers effectively for fishing industries right across the UK. I am grateful for your confirmation that you were content with the approach taken to a UK wide framework in the Bill, including through the fisheries objectives, Joint Fisheries Statement, and fisheries management plans. Again, these provisions have been strengthened by officials working together and I would like to thank them.

You raised two further issues. Firstly, the Government of Wales Act (GoWA) 2006. I am aware that officials in the Welsh Office have shared drafting responsibilities of the section 109 GoWA Order with your officials, and that this work is at an advanced stage. The Government is clear that the consent requirements will not apply should the Assembly decide to remove the concurrent powers in the Fisheries Bill from Ministers of the Crown in future. As such I am assured that this matter is close to resolution and will not require an amendment to the Bill.

Secondly, the determination of fishing opportunities, as officials have discussed, the power set out in clause 23, which allows for the Secretary of State to determine fishing opportunities for the UK, is not a devolved matter. The determination of the UK quota cannot, by its nature, be a devolved function and is therefore a function of the Secretary of State. We agree that the implementation of the UK's international obligations is a devolved matter: managing the share of the UK's fishing opportunities allocated to Welsh Ministers in accordance with the UK's international obligations is of course a matter for Wales.

Clause 24 of the Bill obliges the Secretary of State to consult all Administrations before making or withdrawing a determination under clause 23. That said, I am happy to make clear through the MoU, or another route if we both agree that is more suitable, the commitment you previously received that we will set out the circumstances in which the power under Clause 23 will be exercised, and how consultation provisions could be strengthened beyond those set out in the Bill.

An early opportunity for putting consultation and cooperation into practice will come from the need to work together on defining additional quota, and considering how that might be allocated across the four Administrations. We will also work together on the Joint Fisheries Statement and on Fisheries Management Plans. We should also update the UK Quota Management Rules and this would again provide a good opportunity to collaborate.

I hope that these responses have provided you with the assurances you were seeking, and that you can now seek to recommend consent to the Assembly. I am hopeful that the legislative consent motion can be passed within the passage of the Bill through the House of Lords.

I would like to again thank you and your officials for your engagement this far and look forward to working with you as the Fisheries Bill progresses and on other matters too.

I am copying this letter to the Secretary of State for Wales.

Yours sincerely,



**VICTORIA PRENTIS MP**

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