

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	Gareth Williams
Meeting date: 1 February 2021	Committee Clerk
Meeting time: 09.30	0300 200 6565
	SeneddLJC@senedd.wales

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

Informal pre-meeting (09.00–09.30)

- 1 Introduction, apologies, substitutions and declarations of interest**
09.30
- 2 Welsh Elections (Coronavirus) Bill: Evidence session**
09.30–10.30 (Pages 1 – 39)
Julie James, Minister for Housing and Local Government
Christopher Warner, Deputy Director – Constitution and Justice, Welsh Government
Dorian Brunt, Senior Lawyer, Welsh Government

[Welsh Elections \(Coronavirus\) Bill](#)

[Welsh Elections \(Coronavirus\) Bill – Explanatory Memorandum](#)

CLA(5)–04–21 – Briefing

CLA(5)–04–21 – Paper 1 – Bill summary

CLA(5)–04–21 – Paper 2 – Written statement, 27 January 2021

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

10.30–10.35

Negative Resolution Instruments

3.1 SL(5)729 –The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021

(Pages 40 – 57)

CLA(5)–04–21 – Paper 3 – Report

CLA(5)–04–21 – Paper 4 – Regulations

CLA(5)–04–21 – Paper 5 – Explanatory Memorandum

CLA(5)–04–21 – Paper 6 – Letter from the Minister for Finance and Trefnydd, 22 January 2021

CLA(5)–04–21 – Paper 7 – Written statement, 22 January 2021

Made Affirmative Resolution Instruments

3.2 SL(5)728 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2021

(Pages 58 – 75)

CLA(5)–04–21 – Paper 8 – Report

CLA(5)–04–21 – Paper 9 – Regulations

CLA(5)–04–21 – Paper 10 – Explanatory Memorandum

CLA(5)–04–21 – Paper 11 – Letter from the Minister for Health and Social Services, 21 January 2021

CLA(5)–04–21 – Paper 12 – Written statement, 21 January 2021

4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered

10.35–10.40

4.1 SL(5)703 – The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

(Pages 76 – 78)

CLA(5)–04–21 – Paper 13 – Report

CLA(5)–04–21 – Paper 14 – Welsh Government response

**4.2 SL(5)707 – The National Health Service (Charges to Overseas Visitors)
(Amendment) (Wales) (EU Exit) Regulations 2020**

(Pages 79 – 83)

CLA(5)–04–21 – Paper 15 – Report

CLA(5)–04–21 – Paper 16 – Welsh Government response

**4.3 SL(5)723 – The Health Protection (Coronavirus, International Travel and
Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021**

(Pages 84 – 87)

CLA(5)–04–21 – Paper 17 – Report

CLA(5)–04–21 – Paper 18 – Welsh Government response

**4.4 SL(5)725 – The Health Protection (Coronavirus, International Travel) (Wales)
(Amendment) (No. 2) Regulations 2021**

(Pages 88 – 91)

CLA(5)–04–21 – Paper 19 – Report

CLA(5)–04–21 – Paper 20 – Welsh Government response

**4.5 SL(5)726 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales)
(Amendment) Regulations 2021**

(Pages 92 – 96)

CLA(5)–04–21 – Paper 21 – Report

CLA(5)–04–21 – Paper 22 – Welsh Government response

**5 Subordinate legislation that raises issues to be reported to the
Assembly under Standing Order 21.7**

10.40–10.45

**5.1 SL(5)727 – The Candidate Election Expenses (Senedd Elections) Code of
Practice 2021**

(Pages 97 – 130)

CLA(5)–04–21 – Paper 23 – Report

CLA(5)–04–21 – Paper 24 – Code of Practice

CLA(5)–04–21 – Paper 25 – Explanatory Memorandum

6 Statutory Instruments requiring Senedd consent (Statutory Instrument Consent Memorandums)

10.45–10.50

6.1 SICM(5)39 – The Electronic Commerce Directive (Education, Adoption and Children)(Amendment etc.) Regulations 2021

(Pages 131 – 152)

CLA(5)–04–21 – Paper 26 – Statutory Instrument Consent Memorandum

CLA(5)–04–21 – Paper 27 – Regulations

CLA(5)–04–21 – Paper 28 – Explanatory Memorandum

CLA(5)–04–21 – Paper 29 – Letter from the Deputy Minister for Health and Social Services,

CLA(5)–04–21 – Paper 30 – Written statement

CLA(5)–04–21 – Paper 31 – Commentary

7 Papers to note

10.50–10.55

7.1 Letter from the Minister for Environment, Energy and Rural Affairs: The Official Controls (Temporary Measure) (Covid–19) (Amendments) Regulations 2021

(Page 153)

CLA(5)–04–21 – Paper 32 – Letter from the Minister for Environment, Energy and Rural Affairs. 25 January 2021

7.2 Correspondence with the Lord Chancellor and Secretary of State for Justice: Making Justice work in Wales

(Pages 154 – 155)

CLA(5)–04–21 – Paper 33 – Letter from the Lord Chancellor and Secretary of State for Justice, 28 January 2021

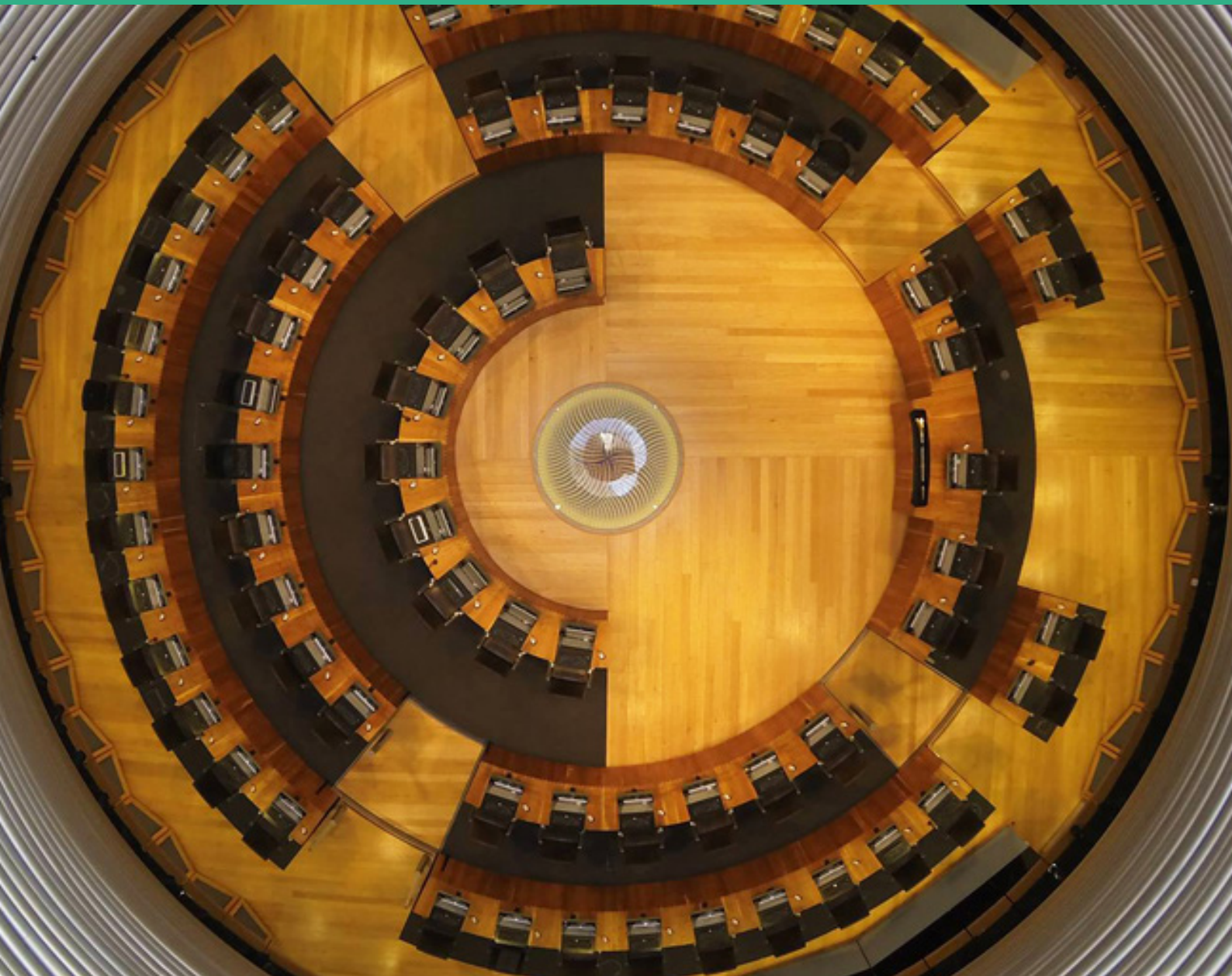
CLA(5)–04–21 – Paper 34 – Letter to the Lord Chancellor and Secretary of State for Justice, 22 December 2020

- 8 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**
10.55
- 9 Welsh Elections (Coronavirus) Bill – consideration of evidence**
10.55–11.25
- 10 Supplementary Legislative Consent Memorandum on the Environment Bill – consideration of draft report**
11.25–11.40 (Pages 156 – 186)
CLA(5)–04–21 – Paper 35 – Draft report
CLA(5)–04–21 – Paper 36 – Letter from the Minister for Environment, Energy and Rural Affairs, 26 January 2021
CLA(5)–04–21 – Paper 37 – Letter to the Minister for Environment, Energy and Rural Affairs, 23 December 2020
CLA(5)–04–21 – Paper 38 – Letter from the Minister for Environment, Energy and Rural Affairs, 28 August 2020
CLA(5)–04–21 – Paper 39 – Legal Advice Note
- 11 United Kingdom Internal Market Act – briefing**
11.40–11.45 (Pages 187 – 194)
CLA(5)–04–21 – Paper 40 – Research Service briefing
- 12 Common Frameworks – update**
11.45–11.50 (Pages 195 – 197)
CLA(5)–04–21 – Paper 41 – Letter from the Chair of the External Affairs and Additional Legislation Committee, 28 January 2021

Date of the next meeting – 8 February 2021

Welsh Elections (Coronavirus) Bill: Bill Summary

January 2021



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Welsh Elections (Coronavirus) Bill: Bill Summary

January 2021

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1. Background

The next Senedd general election (the “**2021 Election**”) is scheduled for Thursday 6 May 2021.

On 15 June 2020, the First Minister **outlined** that arrangements for the 2021 Election may need to be adjusted in connection with the Coronavirus pandemic.

The **First Minister has stated** that he is ‘very committed’ to having an election in May 2021. In Plenary, **he expressed** it was “not right that this Senedd should be extended beyond its current term” and felt strongly that “the Senedd needs a democratic refresh”.

However, in the same statement, the First Minister noted that the Welsh Government wants:

[...] an election in which every Welsh citizen feels that they can go to the polling station and is not put off from doing so because the state of public health at the time might be very off-putting to them. It’s just foolish not to be willing to contemplate that and to think about how we would cope with it were we to be faced by it.

The First Minister **has expressed that** it would be irresponsible of the Welsh Government “not to make plans in case the pandemic is so serious in May [2021] where it wouldn’t be safe to hold an election”.

Elections Planning Group

The Welsh Government established an Elections Planning Group in June 2020 to consider the potential impact of Coronavirus on the administration of the 2021 Election, and whether adjustments were needed to the relevant legislation to ensure a safe election.

The Group met five times and its **report** was published on 6 November 2020. The report was **debated** in Plenary on 17 November.

Members across the political spectrum agreed that, as far as possible, the 2021 Election should go ahead as planned in May. There was general agreement that contingency arrangements should be put in place to make the election as safe as possible. However, the Group did not agree on all matters. Most notably, there was no overall consensus on the need for contingency arrangements to postpone the election.

Who was on the Elections Planning Group?

The Group consisted of political parties, Welsh and UK government officials, and stakeholders involved in running the election, such as the Electoral Commission and Returning Officers.

What did the Elections Planning Group find?

The Group agreed a set of **principles** and conclusions to support more detailed planning and preparations for the 2021 Election, including:

- The continuing aim should be for the Senedd elections to be held on 6 May as planned;
- To achieve this, it recommended considering ways of instilling flexibility into the election planning process which reflected public health advice;
- There should be an early drive to encourage postal vote applications, especially for voters who have previously been shielding or those considered vulnerable;
- Some degree of greater flexibility in respect of postal and proxy votes may be appropriate while maintaining appropriate checks to protect against the risk of voting fraud. However, the report stated this required further detailed consideration;
- Voting should be considered a ‘reasonable excuse’ for leaving the house if any Coronavirus regulations were in place at the time of an election; and
- The count could be conducted over an extended timeframe if this would greater protect the health and safety of those involved.

On 6 November 2020, the First Minister **confirmed in a written statement** that the Welsh Government would implement the areas of consensus reached by the Elections Planning Group.

The Elections Planning Group did not reach a consensus on extending the Llywydd’s powers to vary the date of Senedd elections. However, most political parties were **willing to consider** this as a “contingency measure in extremis”.

Power to vary the date of a Senedd general election

The date of a Senedd general election is set by statute.

Section 3 of the Government of Wales Act 2006 (“**GoWA**”) **provides that** each ordinary general Senedd election is to be held on the first Thursday in May in the

fifth calendar year following the previous ordinary general election. The previous (then) National Assembly general election took place on 5 May 2016.

The Llywydd has an existing power under Section 4 of GoWA to vary the date of a Senedd general election by up to one month, earlier or later, from the statutory election date.

It follows that the Llywydd, using the existing power, could vary the date of the 2021 Election to 6 June 2021, but no later. The Llywydd has full discretion in determining what circumstances would make the use of this power appropriate.

The only option for varying the 2021 Election beyond 6 June is via primary legislation.

Responsibility for running Senedd elections

Returning Officers are responsible for running Senedd elections within the parameters of election conduct rules, set out in legislation.

The Welsh Ministers have powers to make provisions about the conduct of Senedd elections (and other matters relating to Senedd elections) under Section 13 of GoWA.

The current conduct rules, created under these powers, are contained in the **National Assembly for Wales (Representation of the People) Order 2007**, as amended (the “**Conduct Order**”). The Conduct Order is discussed in greater detail in the Key Provisions section of this Bill Summary (under the analysis of Section 10).

The Bill’s Explanatory Memorandum states that ‘[w]hilst the Welsh Ministers make the secondary legislation, there is a clear distinction in roles and responsibilities, the conduct and administration of the election being a matter for Returning Officers’.

In October 2020, the Electoral Commission prepared a **guide** outlining the role and responsibilities of Returning Officers for the 2021 Election.

It stated that Constituency Returning Officers are ‘personally responsible for the conduct of the Senedd election’, including:

- Administering the nomination process;
- Encouraging participation;

- Provision and equipment of polling stations, including staffing;
- Conduct of the poll;
- Management of the postal vote process;
- Verification and counting of the votes for both the constituency contest and that part of the regional contest that falls within the constituency; and
- Declaring the constituency result.

The Bill's Explanatory Memorandum also states that actions are being taken by Returning Officers and electoral administrators to mitigate risks associated with running the election during the pandemic, including encouraging the use of postal voting and planning for social distancing measures.

Coronavirus: Background

The four governments of the UK have introduced various measures to protect public health and respond to the Coronavirus pandemic over the past year.

On 14 December 2020, the Welsh Government published its **updated Coronavirus control plan** ("Control Plan"). The Control Plan sets out four alert levels and contains key indicators to determine which alert level should apply. Specific key indicators include the number of cases per 100,000 of the population, case rate in those over the age of 60 and the percentage of positive Coronavirus tests. The Control Plan also describes the applicable control measures at each level.

Currently, the whole of Wales is under alert level four. This is the highest level under the Control Plan, which means the risk from Coronavirus is very high.

At alert level four, there is a requirement for people to stay at home unless they have a reasonable excuse, such as obtaining food and medical supplies. People are required to self-isolate after testing positive for Coronavirus or after being in close contact with another person who has tested positive. There's also a requirement to wear a face covering in certain indoor settings.

The current restrictions are underpinned in law by **The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020, as amended** (the "**Coronavirus Regulations**"). Whilst the current restrictions apply nationally, the Coronavirus Regulations allow the flexibility to apply different alert levels on a regional or local basis.

The Coronavirus Regulations provide that 'travelling to vote in an election' is a reasonable excuse for leaving home under alert level 4 restrictions (Schedule

4, paragraph 1(4)(i)). There is no corresponding exemption under alert levels 1-3, however, the 'stay at home' requirement is only applicable to alert level 4. Separately, the Coronavirus Regulations provide that 'travelling to vote in an election' is a reasonable excuse for travelling 'to and from' all alert levels across Wales.

It is not possible to accurately predict the prevalence of Coronavirus in May or foresee which alert level and associated restrictions will be in place.

Running elections during Coronavirus

In October 2020, the **Electoral Commission published** its 'objectives for well-run elections in the current public health context'.

The following objectives were identified for voters, candidates and campaigners, and electoral administrators:

Voters

- There should be reasonable voting options available to all electors that minimise the risk of virus transmission, including for vulnerable people and those whose circumstances change at short notice (e.g. because of lockdown or isolation requirements);
- Voters should be entitled to access the same voting methods and information regardless of where they live;
- Voters with disabilities should still be able to access the level of support they need in order to be able to vote with confidence;
- Voters should have clear and comprehensive information in advance about available voting options to help them plan how to vote safely;
- Applying to vote by post or proxy should be simple and accessible for all electors; and
- Voters should have clear, accessible and comprehensive information to help them understand how to vote using their chosen method.

Candidates and campaigners

- Campaigners should have clarity about how the elections will be run and regulated (including information about regulated campaign periods), sufficiently far in advance to put in place appropriate plans;

- Candidates should have options for completing and submitting nomination papers that minimise virus transmission risk;
- It should be possible for campaigners to put their arguments and give information to voters before polling day in ways that minimise virus transmission risk; and
- All involved parties should have a widespread understanding and acceptance of any changes to the administrative process necessitated by the public health situation.

Electoral administrators

- Returning Officers should have clarity about how the elections should be run sufficiently far in advance of polling day to be able to put in place appropriate plans;
- Election processes for election administrators should be practically manageable, deliverable and appropriately resourced – particularly for any new or changed processes introduced at relatively short notice;
- Any new or changed election processes should not reduce or undermine existing procedures for safeguarding electoral integrity; and
- Appropriate protections should be put in place for electoral administration staff in key public environments (for example, protective equipment and physical distancing measures).

Police and Crime Commissioner elections

Elections to appoint Police and Crime Commissioners for England and Wales (the “PCC Elections”) were scheduled for 7 May 2020.

Under the UK Government’s Coronavirus Act 2020, the PCC Elections were postponed to the same day as the 2021 Senedd Election.

The voting franchise for each election is different. An election’s franchise governs who is eligible to vote in the election. The franchise for Senedd elections was extended by the **Senedd and Elections (Wales) Act 2020**, which lowered the voting age to 16 and enabled foreign nationals to vote. However, the franchise for PCC Elections is narrower. The Bill’s Explanatory Memorandum confirms that:

[...] some voters will be allowed to vote in one poll, but not the other. The PCC boundaries also differ from the constituency and regional boundaries of the Senedd election, which will add to the complexity.

It further states that the UK Government has responsibility for PCC Elections

and that ‘the Welsh Government has consulted with the UK Government on this matter’.

Guidance notes prepared by the Electoral Commission for Returning Officers stated ‘there will be two different electoral systems in use, incorporating two methods of voting, with three ballot papers’.

The Elections Planning Group **concluded** that the differences in the franchise ‘would result in added complexity for administering the elections on the same day and Coronavirus considerations increase this complexity further’.

Bill announcement

On 17 November 2020 , the **First Minister announced** that the Welsh Government was preparing to draft a Bill to make provision for postponing the 2021 Election by up to six months if necessary. The First Minister continued:

This will allow us to bring forward legislation to the Senedd if the situation after Christmas suggests that we will need to do this as a final resort.

The Welsh Elections (Coronavirus) Bill (the “**Bill**”) has now been introduced by the Welsh Government as an emergency bill. A guide to emergency bills and their scrutiny arrangements in the Senedd can be found **here**.

An overview of the Bill’s provisions and an analysis of its key provisions are contained in the following sections.

2. Overview of Bill provisions

The Bill proposes to introduce contingency electoral arrangements, solely for the purposes of the 2021 Election.

The Explanatory Memorandum states that the Bill ‘responds to the potential risks to the 2021 Election arising from the Coronavirus pandemic with the objective of ensuring the election can be administered and proceed safely and that the electorate can participate and vote’.

Overview

- **Section 1 (The 2021 Election)** confirms that a reference to the “2021 election” in the Bill means the Senedd ordinary general election due to be held in 2021. This definition encompasses an election held as scheduled on 6 May 2021, or a postponed election.
- **Section 2 (Application of provisions of Government of Wales Act 2006)**
 - Disapplies provisions under GoWA which determine the usual Senedd dissolution period and the date of the first Senedd meeting after an election. (The Bill makes replacement provisions for the purposes of the 2021 Election under Sections 3 and 4, respectively);
 - Makes the statutory election date in GoWA (6 May 2021) subject to the power under the Bill to delay the election for up to 6 months;
 - Disapplies the statutory time limit for the Senedd’s first meeting if the election date is varied by Royal Proclamation. (The Bill makes replacement provisions under Section 4, solely for the purposes of the 2021 Election); and
 - Makes the provisions on vacant Senedd constituency seats in GoWA subject to Section 7 of the Bill, which empowers the Llywydd to postpone by-elections.
- **Section 3 (Dissolution of the current Senedd)** prescribes that the Senedd will be dissolved on 29 April 2021, seven days before the scheduled 2021 Election. Alternatively, if the election is postponed, the Section provides that dissolution will take place seven days in advance of any subsequent election date.
 - This Section is considered in greater detail in the ‘Key Provisions’ section of this Bill summary.

- **Section 4 (Date of first meeting after the 2021 election)** provides that the Senedd must meet within 21 calendar days after the 2021 Election is held. This applies whether the 2021 Election is held as scheduled or postponed.
 - Under current arrangements, the Senedd **must meet within fourteen days** of the 2021 Election, excluding Saturdays and Sundays. Without the Bill, if the election was held as scheduled on 6 May 2021, the Senedd would have to meet by 26 May 2021.
 - Under Section 4 of the Bill, if the 2021 Election was held as scheduled on 6 May 2021, the Senedd would have to meet by 27 May 2021. Therefore, the Bill provides an additional day before the Senedd must meet under current arrangements.
 - The Bill’s Explanatory Memorandum states that ‘[t]he purpose of the extension is to provide some flexibility to cater for a potential delay in counting ballots’. It further explains that this also protects the time period between the election poll and the Senedd’s first meeting.
- **Section 5 (Power to postpone 2021 election for up to 6 months)**
 - Provides that the First Minister may propose to the Llywydd that the 2021 Election is postponed for a reason relating to Coronavirus if the ‘First Minister considers it necessary or appropriate to do so’.
 - Providing the Senedd has not been dissolved, the Llywydd may postpone the 2021 Election to the earliest date considered to be reasonably practicable. However, this date cannot be later than 5 November 2021, which is 6 months from the scheduled election date.
 - The Llywydd’s power under this Section is conditional on Senedd Cymru approving the proposed rearranged date by a supermajority vote consisting of ‘not less than two thirds of the total number of Senedd seats’.
 - As soon as possible after a new date is fixed, the Llywydd must lay a statement before the Senedd confirming the new date and the reason for exercising the postponement powers.
 - If requested to do so by the Llywydd or the First Minister, the Electoral Commission must provide advice in relation to postponing the poll.
 - The Llywydd’s powers to postpone the election under this Section may be used more than once provided that on each occasion, the re-arranged election date is not after 5 November 2021.
 - This Section is considered in greater detail in the ‘Key Provisions’ section of this Bill summary.

- **Section 6 (Further power to vary date of 2021 election)** provides that the Llywydd may vary the date of an election postponed under Section 5 by one month before or after the newly fixed date, provided it is no later than 5 November 2021. A variation under this Section does not have to relate to Coronavirus.
 - This Section is considered in greater detail in the ‘Key Provisions’ section of this Bill summary.
- **Section 7 (Power to postpone Senedd by-elections)** enables by-elections for Senedd constituency seats that arise after 6 May 2021, to be postponed. The Section confers a power on the Llywydd to postpone such by-elections to the earliest day considered to be reasonably practicable, after consultation with Welsh Ministers. The power can be exercised more than once, but it cannot be used to fix a date after 5 November 2021.
 - This Section is considered in greater detail in the ‘Key Provisions’ section of this Bill summary.
- **Section 8 (Power to postpone local authority by-elections)** contains a regulation making power enabling the Welsh Ministers to postpone local government by-elections that fall between 6 May 2021 and 5 November 2021. The powers expire on 5 November 2021 and will have no effect on the local government elections due to be held in May 2022.
 - A local government by-election is defined as an election to fill a casual vacancy in the office of councillor in a county council, county borough council or community council in Wales.
 - The Explanatory Memorandum states the power is designed to be used where the public health situation would not allow for the safe delivery of local government by-elections.
 - This Section is considered in greater detail in the ‘Key Provisions’ section of this Bill summary.
- **Section 9 (Effect of this Act on existing power to make provision about elections)** preserves the Welsh Ministers’ existing powers to make provisions about the conduct of Senedd elections under Section 13 of GoWA. These powers were used to make the current Conduct Order, set out in the background section of this Bill Summary.
- **Section 10 (Modification of the 2007 Order)** makes a number of consequential amendments to the Conduct Order for the purposes of the 2021 Election. These include amendments to determine when a person becomes a “candidate” in light of the shorter dissolution period proposed by the Bill, and to instil flexibility

for proxy voting and nomination paper arrangements, as recommended by the Elections Planning Group.

- All amendments made by Section 10 of the Bill are explained in the Key Provisions section of this Bill Summary.
- **Section 11 (Interpretation)** sets out five defined terms for the purposes of the Bill, including “Coronavirus” and “the 2021 election”.
- **Section 12 (Power to make consequential and transitional provision etc.)** confers a regulation making power, including a power to amend primary legislation, on the Welsh Ministers to make supplementary, incidental, consequential or transitional provisions considered necessary to giving full effect to the Bill.
 - This Section is considered in greater detail under the Key provisions section of this Bill Summary.
- **Section 13 (Coming into force)** confirms that the Bill would come into force on the day after the day on which it receives Royal Assent.
- **Section 14 (Short title)** provides that the short title of the Act would be the Welsh Elections (Coronavirus) Act 2021.

Legislative Competence

The Wales Act 2017 devolved powers to the Senedd in relation to its electoral arrangements.

The Bill’s Explanatory Memorandum states that Senedd Cymru has the legislative competence to make the provisions in the Bill under Part 4 of GoWA as amended by the Wales Act 2017.

3. Key Provisions in the Bill

Section 3 - Dissolution of the current Senedd

Dissolution is the official term for the end of a parliament.

Section 3 of the Bill provides alternative dissolution arrangements for the purposes of the 2021 Election. If the Bill is passed, the usual dissolution arrangements in GoWA (explained below) will not apply.

In respect of the 2021 Election only, Section 3(1) of the Bill provides that Senedd Cymru will be dissolved on 29 April 2021, unless:

- The Llywydd exercises the power to postpone the election for up to six months under Section 5 of the Bill; or
- The Senedd is dissolved by Royal Proclamation under Section 4(2) of GoWA following the Llywydd proposing to hold the election one month earlier or later than 6 May 2021.

However, if the 2021 Election is postponed under Section 5 of the Bill, Section 3(2) automatically moves the dissolution date to seven days before the postponed election date.

Section 3(3) ensures that dissolution occurs at least 7 days before an election, even if it is postponed multiple times. It provides that if the power to postpone the election under Section 5 is exercised again before the Senedd is dissolved under Section 3(2) (i.e. a second or subsequent postponement), the Senedd would be dissolved 7 calendar days before the newly fixed date. The Explanatory Notes describe this as the dissolution date 'track[ing] the new date fixed for the poll'.

Usual dissolution arrangements

The Senedd's dissolution date before a general election is usually determined by provisions in GoWA and the Conduct Order.

If the poll is to be held on the first Thursday in May (as the 2021 Election is scheduled to be), Section 3(2)(a) of GoWA provides that the Senedd is dissolved at the beginning of the 'minimum period', ending with the day of the poll in the election.

In this context, the 'minimum period' is 21 days before a poll excluding a Saturday,

Sunday or a number of listed public holidays (as established by Article 148 in conjunction with Rule 2 of Schedule 5 of the Conduct Order).

Therefore, under current arrangements, the Senedd would be dissolved on 7 April 2021.

Effect of Dissolution

The Welsh Government and Senedd Cymru are two separate institutions. Whilst the Welsh Government does not resign on dissolution, Members of the Senedd cease to hold office under Section 14 of GoWA. When the Senedd is dissolved, Members of the Senedd cannot be recalled to debate or pass legislation.

The Explanatory Memorandum states that the prevalence of the Coronavirus pandemic in the period before the 2021 Election ‘may mean that there is a spike or surge in infections that would require a legislative response’ and therefore Members would need to be in office to pass any such legislation. It further explains that the purpose of the shortened dissolution period is:

[...] to provide a mechanism to enable the current Senedd to respond, if required to do so, to the unfolding public health issues leading up to the election. It also means that the Senedd is sitting and able resolve to fix a date for the poll for the ordinary general election if there is a need to postpone the election for a reason relating to Coronavirus in the period up to 7 calendar days before the day of the poll

The **Scottish General Election (Coronavirus) Bill 2021** (the “**Scottish Bill**”, discussed further in section 5 of this Bill Summary) provides for a shortened dissolution period of one day before the Scottish Parliamentary election scheduled for 6 May 2021. Its **Explanatory Notes** state ‘it is anticipated that the [Scottish] Parliament will instead go into normal recess period for the campaign 28 days prior to the election’ but not be formally dissolved until one day before.

The Explanatory Notes to the Welsh Elections (Coronavirus) Bill do not confirm the practical arrangements in lieu of dissolution, or confirm whether Senedd Cymru is likely to resolve to go into recess.

The effect of the Bill is that Members of the Senedd will retain office until at least 29 April 2021. This means that if the Senedd was in recess leading up to this date, Members could be recalled to discuss and debate legislation, including Coronavirus regulations or the postponement of the 2021 Election.

Section 5 - Power to postpone 2021 election for up to 6 months

Section 5 of the Bill contains contingency powers to postpone the 2021 Election for up to six months.

This Section does not automatically change the date of the 2021 Election. The election will proceed as scheduled on 6 May 2021 unless the date is varied by the Llywydd using existing powers under Section 4 of GoWA, or it is postponed under Section 5 of the Bill.

Section 5(1) of the Bill provides that the First Minister may propose to the Llywydd, for the 2021 Election only, that the poll for the election is postponed if the First Minister considers it necessary or appropriate to do so. However, such a proposal must be 'for a reason relating to Coronavirus'. The First Minister does not have a power to propose a postponement for a reason other than Coronavirus under this Section. The Bill does not specify the format of the First Minister's request under this Section or the information or data that must be provided to the Llywydd in support of the proposal.

If a postponement proposal is made by the First Minister, the Llywydd may fix an alternative date for holding the 2021 Election subject to Senedd approval. This power is discretionary. The Llywydd is not required to put a proposed alternative date before the Senedd after the First Minister initiates a request. The Explanatory Memorandum states it is important that this discretion lies with the Llywydd 'as the politically impartial office-holder who presides over the Senedd'.

If the Llywydd decides to fix an alternative date, it must be the earliest day considered by the Llywydd to be reasonably practicable (Section 5(3)(a)). The power cannot be used by the Llywydd to fix a date that is later than 5 November 2021 (Section 5(3)(b)). The postponed date must be within 6 months from the scheduled election date.

In a [letter](#) to the First Minister on 12 November 2020 (before this Bill was announced), the Senedd's Legislation, Justice and Constitution Committee stated that, in its view:

[...] any alternative to the exercise of [the Llywydd's] existing power that would change the date of the next Senedd election as a result of the pandemic should be made by the Senedd.

Announcing the Welsh Government was preparing a draft elections Bill on 17 November 2020, the [First Minister stated](#) he realised that providing powers to

the Llywydd to postpone the elections for up to six months would be a ‘major constitutional step’ which may require safeguards. Commenting on the nature of such safeguards, the First Minister **suggested** these may include a requirement for a ‘two-thirds majority vote’ before the power could be exercised and certain consultation requirements.

Whilst the Bill includes a requirement for a confirmatory supermajority Senedd vote, it does not place general consultation requirements on the First Minister or Llywydd.

Under Section 5(2)(a) of the Bill, any alternative date proposed by the Llywydd under Section 5(2) must be approved by a resolution of the Senedd passed by a supermajority of two-thirds of the total number of Senedd seats. This means that to postpone the 2021 Election under Section 5 of the Bill, 40 or more Members of the Senedd must vote in favour of any new date fixed by the Llywydd.

In respect of consultation, whilst the Electoral Commission must provide advice to the Llywydd or First Minister if requested, there is no general requirement in the Bill on either to actively consult or receive advice before exercising their powers under Section 5 of the Bill.

This differs from the Scottish Bill. A postponement of the Scottish Parliament elections under the Scottish Bill is triggered by the Presiding Officer. However, before exercising such postponement powers, they must consult the Scottish Ministers, Electoral Commission, Chief Medical Officer of the Scottish Administration and the convener of the Electoral Management Board for Scotland.

As soon as reasonably practicable after an alternative election date has been fixed, the Llywydd must lay a statement before the Senedd confirming the new date and the reason for exercising the powers under Section 5 of the Bill (**Section 5(4)**).

Both the First Minister’s power to initiate a postponement request under Section 5(1) of the Bill and the Llywydd’s power under Section 5(2) to fix a new election date may be exercised more than once. However, on each occasion, the postponed date cannot be after 5 November 2021.

Finally, Section 5(7) confirms that the Llywydd’s power to postpone an election for up to six months under the Bill does not limit the Llywydd’s power to vary the 2021 Election date using the powers under Section 4 of GoWA. These are the Llywydd’s existing powers which provide discretion to vary the election date by a month, earlier or later, than 6 May 2021.

Welsh Government position

Whilst the Bill proposes contingency measures to enable the 2021 Election to be postponed, the Explanatory Memorandum states that:

[...] the overriding objective of the Welsh Government is that the election will proceed on 6 May 2021 as planned, and the adjustments made by the Bill are prudent contingency measures to ensure that the election can be delivered by Returning Officers in the context of the unfolding pandemic.

Explaining why the Bill proposes a power to delay the 2021 Election for up to 6 months, the Explanatory Memorandum suggests that the Llywydd's existing powers to delay an election for up to one month are insufficient. It states:

[...] in the event of a surge in the pandemic, a postponement of one month may not be enough time to allow for rates to fall again to a level where an election can safely proceed, and therefore the existing power is unsuitable for these purposes.

Section 6 - Further power to vary date of 2021 election

If the date of the 2021 Election is postponed under Section 5 of the Bill, this Section confers a power on the Llywydd to further vary the postponed date by up to a month earlier or later than the fixed date.

For example, if the Senedd approved postponing the election from 6 May 2021 to 6 July 2021 under Section 5 of the Bill, the Llywydd could propose further varying the postponed election date under Section 6 of the Bill to 6 June or 6 August 2021.

Consistent with Section 5 of the Bill, the power cannot be used to fix a date that is later than 5 November 2021.

However, in contrast to Section 5, the Llywydd's exercise of this power does not have to relate to Coronavirus. The Bill does not define the reasons for the Llywydd's exercise of the proposed power, meaning that the Llywydd has full discretion in its exercise. There is no requirement for a confirmatory Senedd vote.

If the Llywydd proposes to vary the date under Section 6, the Senedd may be dissolved under Royal Proclamation.

In effect, the power under Section 6 of the Bill mirrors the Llywydd's existing powers under Section 4 of GoWA (to vary the election day by a month) in the context of a postponed election.

The Explanatory Memorandum explains that the power under Section 6 is required in addition to the Llywydd's existing power as the latter is limited to varying the 2021 Election date by up to one month before or after 6 May 2021. That is, the existing power is linked to the statutory election date and would be unavailable after 6 June 2021.

In practice, this means that without Section 6, there would be no mechanism for postponing the election for a reason other than Coronavirus after 6 June 2021.

Section 7 – Power to postpone Senedd By-Elections

This Section confers a power on the Llywydd to postpone by-elections for Senedd constituency seats (“Senedd By-Election”) that arise between 6 May 2021 and 5 November 2021.

If the seat of Senedd Member is vacant, a Senedd By-Election must be held to fill the vacancy. The Llywydd has existing duties under Section 10 of GoWA to fix a date for such Senedd By-Elections.

Under current arrangements, the date fixed must be within three months of the date of the vacancy (Section 10(5) of GoWA). Alternatively, if the vacancy does not come to the Llywydd's attention within a period of one month of the vacancy arising, the date fixed must be within three months of the date on which the vacancy came to the Llywydd's notice. Section 66 of the Coronavirus Act 2020 permits the Llywydd to fix a date outside of the three month period but this power cannot be exercised to fix a date after 6 May 2021.

The Explanatory Notes to the Bill state that ‘the period for fixing the date for a Senedd By-Election should be adjusted to respond to the unfolding Coronavirus pandemic’.

The Bill confers a power on the Llywydd to fix a date for a Senedd By-Election that falls outside the statutory time limits set by Section 10 of GoWA after consultation with the Welsh Ministers.

Consistent with the powers under Section 5 of the Bill, the new date must be the earliest day the Llywydd considers to be ‘reasonably practicable’. This is not defined in the Bill. The power may also be used more than once, however, on each occasion, it cannot be used to fix a date after 5 November 2021.

Section 8 – Power to postpone local authority by-elections

Section 8 of the Bill confers a power on the Welsh Ministers to postpone local authority by-elections. These are defined in the Bill as elections to fill casual vacancies in the office of councillor in a county council, county borough council or a community council in Wales (“Local Authority By-Election”).

If a Local Authority By-Election in Wales is scheduled to fall between 6 May 2021 and 5 November 2021, Section 8 of the Bill enables the Welsh Ministers to vary the date of such by-election by regulations made by statutory instrument. Section 67 of the Coronavirus Act 2020 makes similar provision for any Local Authority By-Election which is scheduled to fall before 6 May 2021. The Bill’s Explanatory Memorandum states that any regulations made under Section 8 would be subject to the Senedd’s negative procedure. The Bill does not impose any consultation requirements on the Welsh Ministers before making regulations under Section 8.

Whilst this regulation making power may be used more than once in relation to any Local Government By-Election, it cannot be used to fix a date beyond 5 November 2021. The Bill’s Explanatory Memorandum explains that the provision will ‘expire’ on 5 November 2021 as ‘no local government by-elections can take place in Wales [after this date] in line with the Local Government Act 1972’.

It further explains that the power is designed to be used in the event of:

[...] a public health situation whereby the holding of polls is considered to present such significant challenges that the Welsh Ministers do not believe mitigating actions would allow for the safe delivery of local government by-elections and the holding of polls is not within the public interest.

In 2019, Welsh local government elections scheduled for May 2021 were **moved** to May 2022 to **prevent them being held** on the same day as the 2021 Senedd Election. The provisions in Section 8 will have no effect on such local elections.

Section 10 - Modification of the 2007 Order

The National Assembly for Wales (Representation of the People) Order 2007, as amended (“**Conduct Order**”) contains the detailed rules for the conduct of Senedd elections.

It **sets out the way** in which the election and the election campaign are conducted, and includes provisions for legal challenge to an election. It also includes provisions relating to postal and proxy voters and requirements in

connection with absent votes.

The Conduct Order is reviewed, and has **generally been amended**, before each Senedd general election.

Section 10 of the Bill proposes consequential modifications to the Conduct Order. The Explanatory Memorandum states that such changes are required to reflect the amendments to the dissolution period proposed by the Bill and to implement **recommendations** made by the Elections Planning Group for flexibility in certain areas in the conduct of the election.

Timing of when a person becomes a 'Candidate' for 2021 Election

Under **Article 84(2)(b)** of the current Conduct Order, a person becomes a 'candidate' for a Senedd election on the date of the Senedd's dissolution.

As the Bill proposes a shorter dissolution period, Section 10(3) of the Bill severs the link between dissolution and the timing of becoming a candidate, solely for the purposes of the 2021 Election.

Instead, the Bill provides that a person will become a candidate 21 days before 6 May (excluding weekends and certain public holidays).

The effect of this is that a person will become a candidate for the 2021 Election at the same time as they would have done, had the Bill not proposed a shorter dissolution period. The Explanatory Notes confirm that a person would remain as a candidate after the 21 day period commenced (barring their resignation or deselection) even if the election was postponed under the Bill.

Separately, this provision is also relevant in the context of political campaign expenditure. Under the **Political Parties, Elections and Referendums Act 2000**, the "regulated period" for campaign expenditure is linked to the date of the 2021 Election and begins four months before 6 May 2021. However, the Bill's Explanatory Note confirms that the regulated period will remain linked to 6 May 2021, irrespective of any postponement to the 2021 Election under Section 5 of the Bill.

Flexibility for Proxy Voting

If a voter is unable to vote in person, they may arrange for a person to vote on their behalf in certain circumstances. This is called a 'proxy' vote, or voting 'by proxy'.

The **Elections Planning Group supported** '[s]ome degree of greater flexibilities in respect of postal and proxy votes' for the 2021 Election.

The Group's report outlined four 'examples of areas for further detailed discussion':

- Explore whether there can be an increase in certain circumstances in how many people one individual can be a proxy voter for, for example if a household with multiple voters is required to self-isolate;
- Amend the requirement for emergency proxy votes, so that medical attestation is not required in relation to Coronavirus;
- Ensure the process for emergency proxy votes has the capacity to deal with higher demand (if for example, a significant number of individuals or households are required to self-isolate very close to the polling day); and
- Arrangements for the collection of postal votes should be made available and communicated, but with the responsibility remaining with the voter.

The Bill does not include provision in relation to postal voting. This is in contrast to the Scottish Bill, discussed further in section 5 of this Bill Summary. However, the Explanatory Memorandum states:

As many voters may be unable or unwilling to attend polling stations, there will be promotional activities to encourage voters to make use of absent voting options, such as postal voting and proxy voting. These measures are being put in place through non-legislative methods and would be no [sic] changes made to electoral rules through legislative changes.

In respect of proxy voting in the 2021 Election, the Bill proposes some flexibility to current arrangements.

Section 10(4) of the Bill amends the Conduct Order to provide flexibility for people applying to vote by proxy (or applying to appoint a proxy) for reasons relating to Coronavirus.

Under the proposed amendment, a person may apply to vote by proxy or appoint a proxy up to 5pm on the day of the 2021 Election on the grounds that the person could not reasonably be expected to vote in person as a result of the need to comply with Coronavirus legislation, or follow Welsh Government guidance relating to Coronavirus (for example, the need to self-isolate). A medical attestation will not be required in these circumstances.

The Bill does not make provision for increasing the amount of people an individual can be a proxy for. This was one of the Elections Planning Group's

recommendations for further discussion, however, the Explanatory Memorandum states:

[...] after further exploration and reflection the Welsh Government believes that such arrangements could be open to abuse and would potentially put vulnerable voters at risk of being disenfranchised.

Delivery of nomination papers

The **Elections Planning Group recommended** greater flexibility in respect of nomination papers for the 2021 Election.

Under the Conduct Rules, each candidate for a Senedd election must be nominated by completing a nomination paper. Thereafter, the nomination paper must be delivered to the applicable Returning Officer and the candidate must consent to their nomination.

The Bill adjusts current arrangements in respect of nomination papers in the following ways:

- Allowing nomination papers to be delivered to the applicable returning officer on a candidate's behalf. This can be by a person nominated by the candidate, but only after they have informed the returning officer in writing or electronically (*Sections 10(5)(b) and (c)*);
- Providing an additional two hours each day to deliver such nomination papers (achieved in practice by amending the permitted time for deliveries from 10am-4pm currently, to 9am-5pm) (*Section 10(5)(a)*);
- Enabling candidates to consent to their nomination either in writing at the applicable place for delivery or electronically (*Section 10(5)(d)(ii)*); and
- Removing the requirement for a witness to attest a candidate's consent to nomination (*Section 10(5)(d)(i)*)

Section 12 – Power to make consequential and transitional provisions

The Bill's Explanatory Memorandum states that:

[...] not all of the potential impacts on the conduct of the ordinary general election for membership of the Senedd may have been foreseen and catered for in the provisions of the Bill. Similarly, there may be a need to deal with the practical consequences of cancelling or postponing the election [...] by way of secondary legislation.

Section 12(1) of the Bill proposes to confer a regulation making power on the Welsh Ministers to make incidental, supplementary, consequential, transitional, transitory or saving provisions that they consider appropriate for the purposes of, or in connection with, giving full effect to the Bill.

Regulations made under this power may modify, repeal or revoke any enactment, including a provision in the Bill itself (this is known as a **Henry VIII power**). They may also be used to ‘make different provision for different purposes or areas’.

Section 12(2)(a) of the Bill also provides that regulations made by the Welsh Ministers under Section 12(1) may make retrospective provision in respect of Local Authority By-Elections. The Explanatory Notes to the Bill state that this approach is consistent with **Section 68 of the UK Parliament’s Coronavirus Act 2020**. This provision enabled the Welsh Ministers to make retrospective provision in relation to the postponement of local government by-elections held before 6 May 2021.

Any regulations made by the Welsh Ministers under Section 12 would be subject to annulment using the Senedd’s negative resolution procedure. The Explanatory Memorandum suggests that this ‘balance[es] scrutiny against the need for any regulations to be made on an urgent basis to respond to the ever changing Coronavirus climate’.

4. Regulatory Impact Assessment

Regulatory Impact Assessment

The Regulatory Impact Assessment (“RIA”) contained within the Bill’s Explanatory Memorandum explains that the Bill’s policy objective is:

[...] to respond to the potential risk to the 2021 Senedd election arising from the pandemic with the objective of ensuring the election can be administered and proceed safely and that the electorate can participate and vote.

Against this policy objective, the RIA sets out the merits and provisional costs of two options:

Option 1: Business as usual allowing the 2021 Election to proceed as normal without any changes to electoral legislation; and

Option 2: Introduce legislative changes providing increased flexibility in electoral law, including the ability to postpone the date of the election.

Option 1 – Business as usual

The RIA acknowledges that it is difficult to predict how the pandemic will have progressed by the scheduled 2021 Election date. It notes that higher levels of infection bring with them additional risks to the election, stating:

Voters may be unwilling or unable to participate in the poll due to illness, or a requirement to self-isolate or simply a reluctance to attend a polling station where they may come into contact with the virus.

The RIA also states that ‘high levels of sickness could also reduce the number of staff available to administer the poll’ which could put ‘the election itself at a significant risk of failure’.

The RIA confirms that certain non-legislative measures are being introduced to mitigate risks. Such measures include social distancing and hygiene measures at polling stations and at the count, as well as the encouragement of the electorate to use postal and proxy voting.

Whilst the RIA notes that such non-legislative measures serve to meet the Bill’s policy objectives, it concludes that they “provide insufficient flexibility and no contingency in the worst case scenario”.

Option 2 – Introduce legislative changes

The RIA identifies that under current arrangements:

[...] the lack of flexibility available for making changes to electoral rules is not appropriate for responding to the pandemic, which has so far required pace and pragmatism in responding quickly to a rapidly changing situation.

It continues by outlining the ways ‘the Bill provides a contingency for dealing with a ‘worst case scenario’, including by:

- Shortening the dissolution period, which will allow the Senedd to sit for longer and offer greater scrutiny of Coronavirus related legislation;
- Protecting the time period between the election poll and the Senedd’s first meeting, in light of potential delays in counting votes;
- Allowing greater flexibility in proxy voting rules and the submission of nominations; and
- Extending the Llywydd’s ability to move the date as a contingency.

Whilst reiterating that the Welsh Government is ‘committed to proceeding with the election’ as scheduled, the RIA states that ‘the Bill provides an extra level of risk mitigation that the business as usual scenario cannot provide’. As such, the RIA concludes that “option 2 better meets [its] policy objective’.

Costs and benefits

Option 1 – Business as usual

The costs associated with option 1 are the estimated costs of administering the 2021 Senedd election. These costs will be incurred regardless of whether the Bill is passed or not.

The base costs are derived from the costs of administering the 2016 Senedd election and have been adjusted to account for inflation.

Table A: Costs of the 2016 election and the estimated cost of the 2021 election

		2016 cost	2021 estimate
Local authority	Polling stations	1,429,000	1,554,000
	Postal votes	515,000	560,000
	Poll cards	749,000	814,000
	Count	440,000	479,000
	Staff	197,000	214,000
	Returning Officer fees	201,000	219,000
	Total	3,531,000	3,840,000
	Coronavirus measures		4,000,000
Welsh Government	Royal Mail contract	4,000,000	4,000,000
Final total		7,531,000	11,840,000

*Figures are rounded to the nearest thousand

Source: RIA, Table A

The total estimated cost of administering the 2021 election is £11,840,000. This figure is inclusive of additional expenditure required in connection with Coronavirus mitigation measures, estimated at £4,000,000 in the RIA.

As Table A identifies, the majority of the election costs will fall to local authorities. Such costs will subsequently be charged back to the Welsh Consolidated Fund via the Welsh Government.

Option 2 – Introduce legislative changes

The RIA confirms that the main costs associated with the Bill would only be incurred if the election was postponed, as it is primarily an ‘enabling Bill’.

Table B, below, sets out the costs associated with the Bill in the event that the 2021 Election is postponed. The RIA confirms that the figures are based on the assumption that many of the costs set out in option 1 had been committed to and would necessarily be re-incurred for the new election date. The RIA describes this assumption as a ‘worst-case scenario’ but suggests that it may be possible for Returning Officers to ‘negotiate a saving of additional costs in advance of postponement’.

Table B: Estimated cost of the 2021 election and additional costs in the event of the election being postponed.

		2021 estimate	Additional costs caused by the delay
Local authority	Polling stations	1,554,000	1,554,000
	Postal votes	560,000	560,000
	Poll cards	814,000	814,000
	Count	479,000	479,000
	Staff	214,000	214,000
	Returning Officer fees	219,000	219,000
	Coronavirus measures	4,000,000	
	Communicating the change of date		350,000
	To cover UK Government contribution		1,766,000
	Total	7,840,000	5,938,000
Welsh Government	Royal Mail contract	4,000,000	4,000,000
Final total		11,840,000	9,938,000

*Figures are rounded to the nearest thousand

Source: RIA, Table B

The total estimated cost for the 2021 Election in the event of a postponement is £21,778,000. This figure is inclusive of the costs associated with both the original election and the additional costs for the postponed poll.

It follows that the Bill would incur estimated additional costs on local authorities of £5,938,000 for a postponement. As with the costs for the original election, such additional costs will subsequently be charged back to the Welsh Consolidated Fund via the Welsh Government.

The RIA also states that there are “potential additional costs to the Senedd Commission for communication and engagement activities” in the event of a postponement. However, these costs are not quantified in the RIA.

Costs associated with a shorter dissolution period

The Scottish General Election (Coronavirus) Bill 2021 reduces the dissolution period in advance of the Scottish Parliament elections to one day. The **Financial Memorandum** accompanying the Scottish Bill set out the costs associated with this measure, which were primarily the salary costs of Members of the Scottish Parliament (“MSP”) and their staff.

MSPs cease to hold office on the dissolution of the Scottish Parliament. Current MSPs who are standing down also cease to be paid on dissolution. However, candidates standing for re-election continue to be paid, notwithstanding dissolution.

The Financial Memorandum stated that “modifying the dissolution period will mean continued payroll costs for those MSPs not standing for re-election, and their staff”.

The analysis above is equally applicable in relation to Members of the Senedd and their staff. Currently, candidates standing for re-election to the Senedd continue to be paid after dissolution but Members who are standing down do not. The RIA for the Welsh Government’s Bill does not quantify the additional salary costs associated with a shortened dissolution period.

5. Scottish General Election (Coronavirus) Bill 2021

General overview

The next Scottish Parliament general election is **scheduled for** 6 May 2021. On 16 November 2020 the Scottish Government introduced the **Scottish General Election (Coronavirus) Bill** (the “**Scottish Bill**”). It was passed by the Scottish Parliament on 23 December and is expected to receive Royal Assent soon.

The primary contingency measures introduced by the Scottish Bill are to:

- Bring forward the deadline for postal vote applications and give the Scottish Ministers power to make regulations to provide for an all-postal vote election;
- Make the dissolution period ahead of the Scottish Parliament elections one day;
- Allow the Scottish Ministers to make regulations to hold polling over multiple days;
- Make arrangements for the first meeting of the new parliament and election of a new Presiding Officer; and
- Give powers to the Presiding Officer to postpone the election by up to 6 months.

Comparison with the Welsh Elections (Coronavirus) Bill

Comparable provisions in the Scottish Bill and Welsh Bill

Dissolution period

Both the Welsh Bill and Scottish Bill provide for a shorter dissolution ahead of the elections.

The Welsh Bill provides for a seven day dissolution period, starting on 29 April 2021. The Scottish Bill provides for a one day dissolution, starting on 5 May 2021. If either election is postponed, both provide that those shorter dissolution periods automatically apply in advance of the postponed polls.

Both the Scottish Bill and Welsh Bill sever the connection between dissolution and the timing of a person becoming a candidate in the election. The Welsh

Bill provides that a person becomes a candidate 21 days before 6 May 2021. The Scottish Bill provides for 27 days before 6 May 2021.

The Scottish Bill's Explanatory Notes highlight that this will result in "many individuals [having] dual status as both serving MSPs and election candidates" and explains the effects of this in practice. This analysis is not included in the Welsh Government's Explanatory Memorandum.

The **policy memorandum** which accompanied the Scottish Bill stated:

It is anticipated that the Parliament will vote to go into recess on or around 25 March 2021 (the date previously set for dissolution) and remain in recess unless and until there is a need to meet in emergency session (e.g. to postpone the election). This will allow the pre-election campaign period to begin as normal.

The Explanatory Memorandum accompanying the Welsh Government's Bill does not confirm whether the Senedd is likely to go into recess when dissolution is scheduled under current arrangements.

First meeting after the election

Under the Welsh Government's proposed Bill, the Senedd must first meet within 21 calendar days of the election poll. This provides one additional day from current arrangements.

The Scottish Bill provides that the Scottish Parliament's Presiding Officer must fix the date of the first meeting "as soon as reasonably practicable after the poll", after consulting with the Electoral Commission and the Electoral Management Board for Scotland.

Powers to postpone the election

Both the Welsh Government's Bill and Scottish Bill make provision for the 2021 elections to be postponed for up to six months. However, the mechanisms for doing so differ.

In the Welsh Government's Bill, a request to postpone the election is triggered by the First Minister.

In the Scottish Bill the proposal to postpone the election is triggered by the Scottish Parliament's Presiding Officer who "must be satisfied that the Scottish Parliament could not safely meet for the purpose of passing a Bill" to change the

polling day.

The Welsh Government's Explanatory Memorandum states "it would not be appropriate to require the Llywydd to initiate the request given the more limited powers and resources available to them".

Under the Welsh Government's Bill, the Llywydd is required to set out the reason for exercising this power and may request advice from the Electoral Commission. The Scottish Bill provides that the Presiding Officer must consult with the Scottish Ministers, Electoral Commission, Electoral Management Board for Scotland and the Chief Medical Officer for Scotland before using the postponement power.

Section 5(7) of the Welsh Government's Bill expressly provides that the Llywydd retains the existing power to vary the election date by one month under Section 4 of GoWA.

The Scottish Parliament's Presiding Officer currently has a similar power under the Scotland Act 1998, however, the Scottish Bill disapplies it for the purposes of the 2021 election. The Explanatory Notes state this is because it is "not considered that the maximum delay of a month [...] provides sufficient scope to move polling day".

Regulation making powers

Section 12 of the Welsh Government's Bill confers regulation making powers on the Welsh Ministers to make consequential and transitional provisions to give full effect to the Bill. The Scottish Bill makes similar provision.

Additional provisions in the Scottish Bill which are not in the Welsh Bill

Postal voting

The Scottish Bill brings forward the deadline for postal vote applications to 21 days prior to the poll. The Explanatory Notes say this is to "allow for more time to process what is expected will be a much higher number of applications than usual".

The Scottish Bill requires the Scottish Ministers to lay a report on the 'uptake of postal voting' as soon as practicable after 7 April 2021. The report must set out the number of people who are registered to vote in the 2021 election, the number of people granted a postal vote and the number of applications that have been received but not determined.

The Scottish Bill gives the Scottish Ministers powers to make regulations that

provide for an all-postal vote election. Before making such regulations, the Scottish Ministers must consult the Presiding Officer, the Electoral Commission, the Electoral Management Board for Scotland and the Chief Medical Officer for Scotland.

The **policy memorandum** which accompanied the Bill as introduced stated “this power is not intended to be used if the election proceeds on 6 May” and that “an all postal election would necessitate a delay of at least six months to polling day”.

Additional polling days

The Scottish Bill confers powers on the Scottish Ministers to make regulations providing for the poll to take place on more than one day if necessary due to Coronavirus. The Scottish Ministers’ powers under this provision are triggered when the Electoral Management Board for Scotland recommends that the election should be held on one or more days. The power is conditional on consultation with a number of offices and officials.

The Explanatory Notes state the purpose of this provision is to allow for the “possibility that in-person voting will take longer than normal due to the potential imposition of physical distancing measures”.

Announcing the proposal for a Welsh Government Bill in the Senedd, the First Minister stated the Welsh Government was ‘considering the establishment of early voting centres’, which would ‘allow people to vote in the days prior to election’. Whilst the Bill does not contain provision for early voting, the Explanatory Memorandum states:

[...] the Welsh Government has continued to engage with the Electoral Commission, the Association of Electoral Administrators, the Wales Electoral Co-ordination Board and other stakeholders to explore the feasibility of early voting ahead of the poll and to discuss with the UK Government applying this to the PCC elections which take place on the same day as the Senedd election.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Welsh Elections (Coronavirus) Bill**

DATE **27 January 2021**

BY **Julie James MS, Minister for Housing and Local Government**

The Welsh Government's policy is that the Senedd election should take place on 6 May as scheduled, and everybody involved in the election must prepare on that basis. We are grateful to all those who are working so hard to ensure that the election can be held safely.

However, given the uncertain trajectory of the pandemic, we also need to prepare for a scenario in which postponement of the election may be necessary.

I am today introducing the Welsh Elections (Coronavirus) Bill into the Senedd. The Senedd agreed, following yesterday's plenary debate, that the Bill will be treated as a government Emergency Bill. I have also laid an Explanatory Memorandum to the Bill.

The Welsh Elections (Coronavirus) Bill makes provisions to respond to the potential risks to the ordinary general election for membership of the Senedd arising from the coronavirus pandemic with the objective of ensuring the election can be administered and proceed safely and that the electorate can participate and vote, or, in extremis, that the election can be postponed if necessary. The overriding objective of the Welsh Government is that the election will proceed on 6 May 2021 as planned, and the adjustments made by the Bill are prudent contingency measures to ensure that the election can be delivered by Returning Officers in the context of the unfolding pandemic. The Bill will apply only for the ordinary general election due to be held on 6 May 2021 and will not apply to any subsequent elections.

The Bill contains provisions that: -

- a. provide for a shorter dissolution period for the Senedd ahead of the day of the poll;
- b. protect the time within which the first meeting of the newly returned Senedd after the 2021 election must be held;
- c. provide a power for the Llywydd, following a proposal from the First Minister, to postpone the election from 6 May 2021 for a reason relating to the coronavirus pandemic to a date not later than 5th November 2021, and to fix a day for the poll if the Senedd agrees by a resolution passed by not less than two-thirds of the total number of Senedd seats – the Bill proposes a role for the Electoral Commission to provide advice on the matter of postponement if the Llywydd or the First Minister requests;
- d. ensure the Llywydd's existing power to vary the date of the 2021 election continues to apply to the ordinary general election if the date of the poll for the election is postponed;
- e. enable a by-election to fill a constituency vacancy that arises after 6 May 2021 to be held on a date fixed by the Llywydd following consultation with the Welsh Ministers;
- f. enable a by-election to fill a vacancy for membership of a county council, county borough council or community council to be postponed to a date not later than 5 November 2021;
- g. make consequential modifications to the National Assembly for Wales (Representation of the People) Order 2007 (as amended); and
- h. confer a regulation-making power on the Welsh Ministers to make any incidental, supplementary, consequential, transitional, transitory or saving provisions that they consider appropriate for the purposes of, or in connection with, giving full effect to the Act.

We also continue to keep early voting in the Senedd election actively under review if the prevalence of the pandemic means it is simply not safe to hold the election in May as planned. In such exceptional circumstances, we must consider all options to enable voters to participate in the election.

So far, the pandemic has been difficult to predict and there is difficulty in knowing what the status of the pandemic will be when the election is due to take place. Under normal circumstances, and quite rightly, elections arrangements are hard to change, especially at short notice. But so far the pandemic has required pace and pragmatism in responding to a rapidly changing situation. In these circumstances, it would be irresponsible for us to fail to prepare. The Bill is therefore a prudent measure to ensure that contingency arrangements are in place in the event that the pandemic presents a serious threat to public health and the conduct of the forthcoming Senedd election.

Agenda Item 3.1

SL(5)729 – The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021

Background and Purpose

These Regulations make amendments to:

- the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”);
- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Public Health Information Regulations”); and
- the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (“the Pre-Departure Testing Regulations”).

Specifically, these Regulations:

- amend the International Travel Regulations to:
 - reduce the amount of passenger information that people travelling to Wales are required to provide in order to comply with the requirement in regulation 4 of the International Travel Regulations; and
 - add an exemption from the requirement to possess notification of a negative coronavirus test result for air crew who perform duties onboard aircraft in the interests of the safety of the aircraft;
- amend the Public Health Information Regulations so that the information that must be provided to passengers includes information about:
 - the requirement to possess a notification of a negative coronavirus test; and
 - the availability of the test to release scheme for people isolating in England;
- make consequential amendments to the Pre-Departure Testing Regulations to ensure that relevant passengers possess a notification of a negative coronavirus test; and
- amend the Pre-Departure Testing Regulations so that operators are not required to ensure that a notification of a negative coronavirus test is from a “qualifying test”.

These Regulations are made on a four nations basis in order to support the further safeguards that have been introduced in the effort to prevent danger to public health.



Procedure

Negative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul these Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

Merits Scrutiny

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 22 January 2021.

In particular, we note the following in the letter:

“Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity. This was necessary in view of the need to act swiftly and on a four nations basis in order to support the further safeguards that have been introduced in the effort to prevent danger to public health from persons travelling to Wales from outside the common travel area.”

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

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the Public Health Information Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human 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.”



These Regulations amend the Pre-Departure Testing Regulations as well as the International Travel Regulations and the Public Health Information Regulations. There is no express reference to the Pre-Departure Testing Regulations within this paragraph of the Explanatory Memorandum. We acknowledge that, as with the International Travel Regulations and the Public Health Information Regulations, these Regulations may be unlikely to change the engagement of human rights issues under the Pre-Departure Testing Regulations. It would assist the Committee if the position in relation to the Pre-Departure Testing Regulations could be clarified.

3. 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 Senedd.

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

“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 Regulations.”

It is noted that these Regulations amend the requirements to provide information to passengers arriving into Wales. In the absence of consultation prior to making these Regulations, the Government is asked to explain what, if any, action was taken to make operators aware of these changes ahead of them coming into force to ensure that operators could comply with the law, as amended.

Welsh Government response

A Welsh Government response is required in relation to points 2 and 3.

Legal Advisers

Legislation, Justice and Constitution Committee

28 January 2021



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

2021 No. 72 (W. 18)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel,
Operator Liability and Public
Health Information to Travellers)
(Wales) (Amendment) Regulations
2021**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595 (W. 136)) (“the Passenger Information Regulations”) impose requirements on operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales (“operators”), to provide passengers with specified public health information. These Regulations amend the Passenger Information Regulations so that that specified information includes information about the requirement under regulation 6A of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (“the International Travel Regulations”), to possess notification of a negative coronavirus test result.

These Regulations also amend the International Travel Regulations to;

- (a) reduce the amount of passenger information that people travelling to Wales are required to provide in order to comply with the requirement in regulation 4 of the International Travel Regulations; and
- (b) add an exemption from the requirement to possess notification of a negative coronavirus test result for air crew who perform duties onboard aircraft in the interests of the safety of the aircraft, such as loadmasters.

These Regulations also amend the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (S.I. 2021/48 (W. 11)) so that operators are not required to ensure that a notification of a negative coronavirus test result is in the form of a “qualifying test”, i.e., a test which meets the standards specified in paragraph 1 of Schedule 1A to the International Travel Regulations. Operators are required to check that passengers possess a notification of a coronavirus test which includes specified information, while liability for ensuring the result was from a qualifying test falls on the passenger.

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.

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

2021 No. 72 (W. 18)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel,
Operator Liability and Public
Health Information to Travellers)
(Wales) (Amendment) Regulations
2021**

Made at 3.08 p.m. on 22 January 2021

Laid before *Senedd*
Cymru at 5.30 p.m. on 22 January 2021

Coming into
force at 4.00 a.m. on 23 January 2021

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

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 23 January 2021.

(3) In these Regulations—

“the International Travel Regulations” (“y Rheoliadau Teithio Rhyngwladol”) means the

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1);

“the Public Health Information Regulations” (“*y Rheoliadau Gwybodaeth Iechyd y Cyhoedd*”) means the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020(2).

Amendment of the Public Health Information Regulations

2.—(1) The Public Health Information Regulations are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in the appropriate place, insert ““the International Travel Regulations” (“*y Rheoliadau Teithio Rhyngwladol*”) means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020;”;
- (b) in the definition of “requirement to isolate” (“*gofyniad i ynysu*”), for “Part 3 of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020” substitute “regulation 7 of the International Travel Regulations”;
- (c) in the definition of “requirement to provide information” (“*gofyniad i ddarparu gwybodaeth*”), for “Part 2 of the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020” substitute “regulation 4 of the International Travel Regulations”.

(3) In regulation 3 (provision of information before booking and at check-in)—

(a) for paragraph (2)(a) substitute—

“(a) in the case of a facility provided for booking travel online—

-
- (1) S.I. 2020/574 (W. 132) amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11) and S.I. 2021/50 (W. 12).
 - (2) S.I. 2020/595 (W. 136) amended by S.I. 2020/714 (W.160), S.I. 2020/1118 (W.253) and S.I. 2020/1521 (W. 325).

- (i) the information set out in Part 1 of the Schedule which must be embedded in a prominent place so that it is visible prior to a booking being made,
 - (ii) a link to www.gov.uk/uk-border-control (referred to in Part 1 of the Schedule),
 - (iii) a link to <https://gov.wales/coronavirus-covid-19-testing-people-travelling-wales> (referred to in Part 1 of the Schedule),
 - (iv) a link to www.gov.uk/guidance/coronavirus-covid-19-test-to-release-for-international-travel (referred to in Part 1 of the Schedule),
 - (v) a link to www.gov.uk/provide-journey-contact-details-before-travel-uk, and
 - (vi) a link to <https://gov.wales/exemptions-self-isolation-coronavirus-covid-19-html>”;
- (b) for paragraph (2)(b) substitute —
- “(b) in the case of a facility provided for checking in online—
- (i) the information set out in Part 1 of the Schedule which must be embedded in a prominent place so that it is visible prior to check-in being completed,
 - (ii) a link to www.gov.uk/uk-border-control (referred to in Part 1 of the Schedule),
 - (iii) a link to <https://gov.wales/coronavirus-covid-19-testing-people-travelling-wales> (referred to in Part 1 of the Schedule),
 - (iv) a link to www.gov.uk/guidance/coronavirus-covid-19-test-to-release-for-international-travel (referred to in Part 1 of the Schedule),
 - (v) a link to www.gov.uk/provide-journey-contact-details-before-travel-uk, and
 - (vi) a link to <https://gov.wales/exemptions-self-isolation-coronavirus-covid-19-html>”;
- (c) for paragraph 2(c)(ii) substitute—
- “(ii) where information is provided in writing, written notice which sets out—
- (aa) the requirement to provide information,
 - (bb) the requirement to possess notification of a negative test result in accordance with regulation 6A of the International Travel Regulations, and

- (cc) the requirement to isolate;”;
 - (d) in paragraph (2)(d), for “request” substitute “written request”.
- (4) In regulation 3A (provision of information prior to departure)—
- (a) in paragraph (4)(a), after sub-paragraph (iv) insert—
 - “(v) informs P of the requirement to possess notification of a negative test result in accordance with regulation 6A of the International Travel Regulations;”;
 - (b) for paragraph (4)(b) substitute—
 - “(b) where the information is provided by email—
 - (i) the information set out in Part 1 of the Schedule,
 - (ii) a link to www.gov.uk/uk-border-control (referred to in Part 1 of the Schedule),
 - (iii) a link to <https://gov.wales/coronavirus-covid-19-testing-people-travelling-wales> (referred to in Part 1 of the Schedule),
 - (iv) a link to www.gov.uk/guidance/coronavirus-covid-19-test-to-release-for-international-travel (referred to in Part 1 of the Schedule),
 - (v) a link to www.gov.uk/provide-journey-contact-details-before-travel-uk, and
 - (vi) a link to <https://gov.wales/exemptions-self-isolation-coronavirus-covid-19-html>;”.
- (5) For Part 1 of the Schedule (information to be provided for the purposes of regulations 3(2)(a)(i), 3(2)(b)(i), 3(2)(c)(i), 3A(4)(b)(i) and 3A(4)(c)), substitute—

“PART 1

The information to be provided for the purposes of regulations 3(2)(a)(i), 3(2)(b)(i), 3(2)(c)(i), 3A(4)(b)(i) and 3A(4)(c) is—

“ESSENTIAL INFORMATION TO ENTER THE UK

The United Kingdom is taking steps to help stop the spread of COVID-19.

1) All persons (including UK nationals and residents) arriving in the UK from outside the common travel area must provide proof of a negative COVID-19 test taken within 3 days of departure to the UK. For further information

please visit: <https://gov.wales/coronavirus-covid-19-testing-people-travelling-wales>

2) To protect your health and others', everyone must complete an online passenger locator form before arrival in the United Kingdom.

3) All arrivals must self-isolate for 10 days unless exempt. Check the list of exempt countries immediately before travel and the list of work-related exemptions if travelling for work.

4) It is a legal requirement that you wear a face covering on public transport in the UK.

5) If you self-isolate in England, you may opt in to Test to Release. For further information please visit www.gov.uk/guidance/coronavirus-covid-19-test-to-release-for-international-travel.

Failure to comply with these measures is a criminal offence and you could be fined. Please visit www.gov.uk/uk-border-control for detailed public health advice and requirements for entering the UK.””.

Amendment of the International Travel Regulations

3.—(1) The International Travel Regulations are amended as follows.

(2) In Schedule 1 (passenger information), omit paragraphs 2(g), 3 and 5.

(3) In paragraph 3(1)(e) of Schedule 1A (testing before arrival in Wales), after “resume their work” insert—

“,

- (f) a member of aircraft crew carried on a flight for the purpose of performing duties to be assigned by the operator or the pilot in command of the aircraft, in the interests of the safety of the aircraft, where they have travelled to the United Kingdom in the course of their work.”

Amendment of the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021

4.—(1) Part 3 of the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and

Operator Liability) (Wales) (Amendment) Regulations 2021(1) is amended as follows.

(2) In regulation 4 (interpretation)—

- (a) omit the definition of “qualifying test”;
- (b) in the definition of “relevant passenger”, for “required notification” substitute “valid notification of a negative result from a qualifying test”;
- (c) for the definition of “required notification”, substitute—

““required notification” (“hysbysiad gofynnol”) means notification of the result of a test for the detection of coronavirus which includes, in English, French or Spanish, the following information—

- (a) the name of the person from whom the test sample was taken,
- (b) that person’s date of birth or age,
- (c) the negative result of that test,
- (d) the date the test sample was collected or received by the test provider,
- (e) the name of the test provider and information sufficient to contact that provider,
- (f) the name of the device that was used for the test;”.

Vaughan Gething

Minister for Health and Social Services, one of the Welsh Ministers

At 3.08 p.m. on 22 January 2021

(1) S.I. 2021/48 (W. 11).

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru 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, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021.

Vaughan Gething
Minister for Health and Social Services

22 January 2021

1. Description

These Regulations make amendments to;

- the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”);
- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (“the Public Health Information Regulations”); and
- the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (“the Pre-Departure Testing Regulations”).

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

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been laid. This was necessary in view of the need to act swiftly and on a four nations basis in order to support the further safeguards that have been introduced in the effort to prevent danger to public health from persons travelling to Wales from outside the common travel area.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the Public Health Information Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales. The Regulations are made in reliance on the powers in sections 45B, 45F(2) and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel Regulations and the Public Health Information Regulations both provide further information on these powers.

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to amend:

- the International Travel Regulations, which were made on 5 June 2020 and came into force on 8 June 2020;

- the Public Health Information Regulations which were made on 15 June 2020 and came into force on 17 June 2020; and
- the Pre-Departure Testing Regulations which were made on the 15 January 2021 and came into force on 18 January 2021.

All three sets of Regulations were made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus, and all are kept under regular review. As part of the ongoing effort to prevent danger to public health in connection with the spread of coronavirus in the context of international travel it has now necessary to make amendments to all three sets as below.

International Travel Regulations

The International Travel Regulations require all passengers arriving from Wales from outside the common travel area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information, and to isolate for a period of 10 days. As of 18 January 2021, in order to further protect public health, the International Travel Regulations were amended to place an additional requirement on travellers arriving into Wales from outside the common travel area. All such travellers are also now required to possess a notification of a negative coronavirus test, subject to specified exemptions.

These Regulations amend the International Travel Regulations to:

- reduce the amount of passenger information that people travelling to Wales are required to provide in order to comply with the requirement in regulation 4 of the International Travel Regulations; and
- add an exemption from the requirement to possess notification of a negative coronavirus test result for air crew who perform duties onboard aircraft in the interests of the safety of the aircraft, such as loadmasters.

Public Health Information Regulations

The Public Health Information Regulations require operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales to provide passengers using those services with prescribed public health information, relating to measures being taken in the United Kingdom in response to the incidence and spread of coronavirus, including the measures required by the International Travel Regulations.

These Regulations amend the Public Health Information Regulations so that the information that must be provided to passengers includes:

- information about the requirement under regulation 6A of the International Travel Regulations to possess a notification of a negative coronavirus test result; and
- information about the availability of the test to release scheme for people who are isolating in England after arriving in Wales from outside the common travel area.

They also make consequential amendments to the Public Health Information Regulations required as a result of duties imposed on operators by the Pre-Departure Testing Regulations to ensure that relevant passengers possess a notification of a negative coronavirus test.

Pre-Departure Testing Regulations

The Pre-Departure Testing Regulations amended the International Travel Regulations so as to introduce further measures to protect public health, in the form of a pre-departure testing scheme (referred to above). The Pre-Departure Testing Regulations also introduced a new requirement on operators of international passenger services arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative coronavirus test result, which it will be a criminal offence to breach.

These Regulations amend the Pre-Departure Testing Regulations so that operators are not required to ensure that a notification of a negative coronavirus test result is from a “qualifying test”, i.e. a test which meets the standards specified in paragraph 1 of Schedule 1A to the International Travel Regulations. This ensures that operators are only required to check that passengers possess a notification of a coronavirus test which includes specified information. The liability for ensuring the result was from a qualifying test falls on the passenger

Coming into force

The changes made by these Regulations will come into force at 4.00am on 23 January 2021.

None of the amendments made by the latest amending Regulations will affect the requirements under the Regulations being amended, for persons arriving into the Common Travel Area before the coming into force of those amendments.

The Welsh Ministers consider that these amendments are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

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 Regulations.

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.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/0288/21

Elin Jones, MS
Llywydd
Senedd Cymru

22 January 2021

Dear Llywydd,

The Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

The Regulations made today amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020; and the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity. This was necessary in view of the need to act swiftly and on a four nations basis in order to support the further safeguards that have been introduced in the effort to prevent danger to public health from persons travelling to Wales from outside the common travel area.

Due to the immediacy of the Regulations they have not been subject to consultation.

I am copying this letter to Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

Rebecca Evans AS/MS
Minister for Finance and Trefnydd

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.

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.



WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE Amendments to Regulations dealing with international travel, information for passengers and pre-departure testing
DATE 22 January 2021
BY Vaughan Gething, Minister for Health and Social Services

Regulations on International Travel

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

Since then these Regulations have been kept under regular review and a number of changes have been made. On 18 January 2021, in order to further protect public health, the Regulations were amended to place an additional requirement on travellers arriving into Wales from outside the common travel area. All such travellers are also now required to possess a notification of a negative coronavirus test, subject to specified exemptions.

Today, I have laid in the Senedd the Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2021). These Regulations further amend the International Travel Regulations by:

- reducing the amount of passenger information that people travelling to Wales are required to provide on the Passenger Locator Form, and adding an exemption from the requirement to possess notification of a negative coronavirus test result for air crew who perform duties onboard aircraft in the interests of the safety of the aircraft, such as loadmasters.

Regulations for Public Health Information

The Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 require operators of international passenger services coming from outside the common travel area to an airport, heliport or seaport in Wales to provide passengers using those services with prescribed public health information. This information relates to measures being taken in the United Kingdom in response to the incidence and spread of coronavirus, including the measures required by the International Travel Regulations.

The Regulations laid today, add to the specified information that operators must provide to travellers so that travellers are put on notice of the requirement to possess a notification of a negative coronavirus test result obtained within 72 hours ahead of travelling.

Regulations on Pre-Departure Testing

The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021, which came into force on 18 January 2021, placed an obligation on operators of international passenger services arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative coronavirus test result.

The Regulations laid today make changes to that requirement so that operators are only required to check that passengers possess a notification of a coronavirus test which includes specified information. The liability for ensuring the result was from a qualifying test falls on the passenger.

These amendments being made by the Regulations being laid today will come into force at 4.00am on the 23 January 2021.

Agenda Item 3.2

SL(5)728 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2021

Background and Purpose

The Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the International Travel Regulations) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the Restrictions Regulations).

Advice received from the Joint Biosecurity Centre (JBC) indicates that the current restrictions in place in response to the new strain of coronavirus first identified in South Africa in December 2020 should remain in place. The JBC advise that as a precautionary approach the measures should be extended to the Democratic Republic of Congo and Tanzania, as both of these have borders with Zambia which is subject to the enhanced restrictions regime and has seen an increase in the number of cases and fatalities in recent weeks.

Part 2 of these Regulations amends Schedule 3A to the International Travel Regulations. Regulation 2 adds the Democratic Republic of Congo and Tanzania to the list of countries and territories in Schedule 3A that are subject to additional measures by virtue of regulations 12E and 12F of those Regulations.

Part 3 of the Regulations amends the Restrictions Regulations to impose more stringent isolation requirements on people who have been to the Democratic Republic of Congo or Tanzania within the period of 10 days before the Regulations come into force, and on people within the same household.

Part 4 of the Regulations amends regulation 12F of the International Travel Regulations to add three exceptions to the ban on arrivals of aircraft or vessels in Wales from countries or territories listed in Schedule 3A. The new exceptions include landing the aircraft or vessel for refuelling or maintenance; where the aircraft is an air ambulance landing for the purpose of transporting a person for medical treatment; and vessels required to moor following a safety direction issued following an accident.

These Regulations came into force at 4.00 am on 22 January 2021.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.



The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

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

Merits Scrutiny

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

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

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

"The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human 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."

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

We note there has been no formal consultation on the Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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 Regulations."

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

22 January 2021



Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru 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.

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

2021 No. 66 (W. 15)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Restrictions) (Amendment)
(No. 3) (Wales) Regulations 2021**

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, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609) (W. 335)) (the “Restrictions Regulations”).

The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);

- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/962) (W. 216);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020 (S.I. 2020/981) (W. 220);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020 (S.I. 2020/1015) (W. 226);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 (S.I. 2020/1042) (W. 231);

- the Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020 (S.I. 2020/942);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020 (S.I. 2020/1098) (W. 249);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2020 (S.I. 2020/1133) (W. 258);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2020 (S.I. 2020/1165) (W. 263);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 17) Regulations 2020 (S.I. 2020/1191) (W. 269);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 (S.I. 2020/1223) (W. 277);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020 (S.I. 2020/1232) (W. 278);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020 (S.I. 2020/1237) (W. 279);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020 (S.I. 2020/1288) (W. 286);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020 (S.I. 2020/1329) (W. 295);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) Regulations 2020 (S.I. 2020/1362) (W. 301);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 (S.I. 2020/1477) (W. 316);

- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1521) (W. 325);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 22) Regulations 2020 (S.I. 2020/1602) (W. 332);
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021 (S.I. 2021/20) (W. 7);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021 (S.I. 2021/24) (W. 8);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021 (S.I. 2021/46) (W. 10);
- the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (S.I. 2021/48) (W. 11); and
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/50) (W. 12).

The Restrictions Regulations have been previously amended by:

- the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020 (S.I. 2020/1610) (W. 336);
- the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1623) (W. 340);
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021 (S.I. 2021/20) (W. 7);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021 (S.I. 2021/46) (W. 10); and

- the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021 (S.I. 2021/57) (W. 13).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Schedule 3A to the International Travel Regulations list those countries and territories subject to additional measures by virtue of regulations 12E and 12F of those Regulations. Regulation 12E provides that when a person has been in a specified country or territory listed in Schedule 3A, that person and members of their household are required to isolate. Further, the categories of exempt persons as detailed at Schedule 2 to the International Travel Regulations do not apply, and there are more limited circumstances in which a person may leave isolation. Regulation 12F imposes restrictions on the arrival of aircraft and vessels arriving directly from a country listed in Schedule 3A to the International Travel Regulations.

Part 2 of these Regulations amends Schedule 3A to the International Travel Regulations. Regulation 2 adds the Democratic Republic of the Congo and the United Republic of Tanzania to the list of countries and territories in Schedule 3A. Regulation 3 makes transitional provision in relation to the addition of those countries to the list of countries and territories in Schedule 3A. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulation 2 of these Regulations.

Part 3 of these Regulations amends the Restrictions Regulations to impose more stringent isolation requirements on people who have been in the Democratic Republic of the Congo or the United Republic of Tanzania within the period of 10 days prior to 4.00 a.m. on 22 January 2021 and on anyone in the same household as such people. These are countries where there is evidence of community spread of a new variant of coronavirus.

Part 4 of these Regulations amends regulation 12F of the International Travel Regulations to add three exceptions to the ban on direct arrivals of aircrafts or vessels in Wales from countries or territories listed in Schedule 3A.

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 Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru 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.

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

2021 No. 66 (W. 15)

PUBLIC HEALTH, WALES

**The Health Protection
(Coronavirus, International Travel
and Restrictions) (Amendment)
(No. 3) (Wales) Regulations 2021**

Made at 2.24 p.m. on 21 January 2021

Laid before Senedd
Cymru at 5.45 p.m. on 21 January 2021

Coming into
force at 4.00 a.m. on 22 January 2021

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

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.

(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 22 January 2021.

(3) In these Regulations—

- (a) the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020⁽¹⁾;
- (b) the “Restrictions Regulations” means the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020⁽²⁾.

⁽¹⁾ S.I. 2020/574 (W. 132), as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10), S.I. 2021/48 (W. 11) and S.I. 2021/50 (W. 12).

⁽²⁾ S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/46 (W. 10) and S.I. 2021/57 (W. 13).

PART 2

Amendments to Schedule 3A to the International Travel Regulations

Addition of countries to the list of countries and territories subject to additional measures in Schedule 3A

2. In Schedule 3A to the International Travel Regulations (countries and territories subject to additional measures), at the appropriate place insert—

“Democratic Republic of the Congo”

“United Republic of Tanzania”.

Transitional provision in connection with regulation 2

3. Regulation 12F of the International Travel Regulations does not apply in respect of any flight or voyage that commenced before these Regulations came into force.

PART 3

Amendments to the Restrictions Regulations

Amendments to the Restrictions Regulations

4.—(1) The Restrictions Regulations are amended as follows.

(2) In regulation 11A—

(a) for the heading substitute—

“Requirement to isolate: specific provision for people who are in Wales on 22 January 2021 and who have been in the Democratic Republic of the Congo or the United Republic of Tanzania in the previous 10 days”;

(b) in paragraph (1)—

(i) in sub-paragraph (a), for “9 January” substitute “22 January”;

(ii) in sub-paragraph (b), for “9 January” substitute “22 January”;

(iii) in sub-paragraph (c), for “a listed country” substitute “the Democratic Republic of the Congo or the United Republic of Tanzania”;

(c) in paragraph (2), for “a listed country” substitute “the Democratic Republic of the Congo or the United Republic of Tanzania”;

(d) omit paragraph (4).

PART 4

Amendments to Part 3C of the International Travel Regulations (travel from a country or territory listed in Schedule 3A)

Amendments to regulation 12F of the International Travel Regulations (prohibition on the arrival of aircraft and vessels travelling directly from a country or territory listed in Schedule 3A)

5. For paragraph (1) of regulation 12F of the International Travel Regulations substitute—

“(1) The person with management or control of an aircraft or vessel whose last point of departure was a country or territory listed in Schedule 3A must not cause or permit it to arrive in Wales unless—

- (a) it is reasonably necessary for it to do so to secure the safety of the aircraft or vessel or the health and safety of any person aboard it;
- (b) the arrival in Wales is only for the purpose of refuelling, or maintenance of the aircraft or vessel, and no passengers are permitted to board, or disembark from, the aircraft or vessel;
- (c) the aircraft is an air ambulance and landing for the purpose of transporting a person for medical treatment; or
- (d) otherwise required pursuant to a direction issued under Schedule 3A to the Merchant Shipping Act 1995(1).”

Vaughan Gething

Minister for Health and Social Services, one of the Welsh Ministers

At 2.24 p.m. on 21 January 2021

(1) 1995 c. 21.

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No.3) (Wales) Regulations 2021

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru 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, International Travel and Restrictions) (Amendment) (No.3) (Wales) Regulations 2021.

Vaughan Gething
Minister for Health and Social Services

21 January 2021

1. Description

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the “Restrictions Regulations”).

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

Coming into force

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 Senedd. 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 Welsh Ministers are of the opinion that the restrictions and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

These Regulations will come into force at 4.00 a.m. on 22 January 2021.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Convention on Human 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.

3. Legislative background

The Public Health (Control of Disease) Act 1984 (“the 1984 Act”), and regulations made under it, provide a legislative framework for health protection in England and Wales. The Regulations are made in reliance on the powers in sections 45B, 45C (1) and (3) 45F(2) and 45P(2) of the 1984 Act.

The Explanatory Memoranda to the International Travel Regulations and the Restriction Regulations provide further information on these powers.

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 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).

The International Travel Regulations are kept under review. Following advice received from the Joint Biosecurity Centre regarding the emergence of a new strain of coronavirus first identified in South Africa, in December 2020 the Welsh Government decided to impose additional measures on travellers who returned to Wales from that country and members of their household. The enhanced isolation requirements were also applied to travellers from South Africa already in Wales that had recently returned. The Welsh Government subsequently extended those additional measures to a number of other Southern African countries following advice subsequently received from the Joint Biosecurity Centre regarding risks associated with this new variant.

Further advice which has now been received from the Joint Biosecurity Centre indicates that the current restrictions in place in response to the spread of the new variant should remain in place and that, as a precautionary approach, these measures should be extended to the Democratic Republic of the Congo and Tanzania. These countries have borders with Zambia (which has seen an increase in the number of cases, test positivity and fatalities in recent weeks), which is already subject to the enhanced restrictions regime.

The International Travel Regulations are therefore being amended so that any person arriving into Wales from the Democratic Republic of the Congo or Tanzania will be required to isolate in accordance with the enhanced restrictions regime and that isolation requirement will also apply to all members of the household of any person entering Wales from those countries as of 4.00 a.m. on Friday 22 January 2021.

The International Travel Regulations disapply all sectoral exemptions in Schedule 2 of the International Travel Regulations to travellers from countries that are subject to additional measures. Therefore, no person arriving into Wales who has been in these countries in the previous 10 days can be exempted from the requirements to provide passenger information or isolate. A more limited list than is usual of reasons for temporarily leaving isolation will also apply, as part of the response to the threat to public health.

These changes are necessary because of emerging health risks being reported from these countries that a new strain of coronavirus with high levels of transmissibility has been identified.

To effectively respond to the emerging situation, amendments have also been made to the No. 5 Regulations, which will require a person who entered Wales before 4.00 a.m. on 22 January having been in these countries in the previous 10 days to isolate for 10 days from the date they were last in those countries, and a more limited list than is usual of reasons for temporarily leaving isolation will also apply. This requirement will also extend to any members of that person's household.

To effectively support the implementation of these new requirements, Public Health Wales is now urgently contacting all residents in Wales who have been in these countries in the past 10 days to explain the new isolation requirements.

In addition, amendments are made to the ban on direct aircraft and vessels (one of the measures that may be imposed on countries subject to additional measures in the International Travel Regulations). The travel ban will no longer apply to aircrafts which are landing for the purpose of refuelling or maintenance where no passengers board or disembark; aircrafts which are an air ambulance and landing for the purpose of transporting a person for medical treatment; and vessels required to moor pursuant to a safety direction issued as the result of an accident.

These additional amendments will also come into force at 4.00 a.m. on 22 January 2021.

The Welsh Ministers consider that these amendments are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

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 Regulations.

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.



Ein cyf/Our ref MA/VG/0303/21

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
CF99 1SN

21 January 2021

Dear Elin,

**The Health Protection (Coronavirus, International Travel and Restrictions)
(Amendment) (No. 3) (Wales) Regulations 2021**

I have today made these Regulations under sections 45B, 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force in at 4.00am on 22 January 2021. I attach a copy of the statutory instrument and I intend to lay this 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 Senedd by 24 February 2021 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 intend to schedule these Regulations for debate in Plenary on 2 February 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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

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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.



WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020
DATE 21 January 2021
BY Vaughan Gething, Minister for Health and Social Services

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 10 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

On 10 July, the Welsh Government amended these Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these Regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made, most recently to remove all countries and territories from this list on 18 January 2021.

Members will also be aware that enhanced isolation requirements have been introduced in relation to persons arriving into Wales from countries where public health concerns have identified in relation to the transmission of variant strains of coronavirus

Today I reviewed the latest JBC assessments and I have decided that the enhanced isolation requirements applying to South Africa, Namibia, Zimbabwe, Botswana, Eswatini, Zambia, Malawi, Lesotho, Mozambique, Angola, Mauritius and Seychelles should be maintained and reviewed in a further three weeks. In addition, due to the absence of data from the Democratic Republic of the Congo and the United Republic of Tanzania and the fact that they both share borders with Zambia, I have decided that a precautionary approach should be taken and that these countries will be added to the list of countries subject to enhanced isolation requirements.

All travellers arriving into Wales who have been in the Democratic Republic of the Congo and the United Republic of Tanzania in the previous 10 days will be required to isolate for 10 days and will only be able to leave isolation in very limited circumstances. The same isolation requirements will also apply to all members of their household.

These enhanced isolation requirements will also apply to persons already in Wales who have been in these countries in the last 10 days and members of their households.

New exceptions have also been introduced to the ban on the arrival in Wales of aircrafts and vessels travelling directly from a country or territory subject to enhanced isolation measures, so that their arrival is permitted in the following circumstances:

- (1) aircraft which are landing for the purpose of refuelling or maintenance where no passengers board or disembark,
- (2) aircraft which are an air ambulance and landing for the purpose of transporting a person for medical treatment, and
- (3) vessels are required to moor pursuant to a safety direction issued as the result of an accident (under Schedule 3A to the Merchant Shipping Act 1995).

The necessary regulations will be made today and the additional measures applying to the Democratic Republic of the Congo and the United Republic of Tanzania will come into force at 04:00 on Friday 22 January 2021.

Agenda Item 4.1

SL(5)703 – The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

Background and Purpose

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

The Regulations make technical amendments and corrections to domestic secondary EU Exit legislation relating to seeds, plants for planting and reproductive material as a consequence of EU Exit. The explanatory memorandum to the Regulations confirms that the Regulations do not make any policy changes.

The Regulations came into force on 30 December 2020 (regulations 1, 3 and 5) and immediately before IP completion day (regulations 2 and 4).

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

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

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

Regulation 4(3)(j)(iv) of the subject regulations substitutes regulation 4(13)(f) of the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019, which amends paragraph 10 of Schedule 4 to the Seed Marketing (Wales) Regulations 2012 (the “2012 Regulations”).

Paragraph 10 of Schedule 4 to the 2012 Regulations concerns the marketing of unlisted varieties of vegetable seed and, as amended, provides at sub-paragraph (1) that for the purpose of gaining knowledge and practical experience of a variety during cultivation, the



Welsh Ministers may authorise the marketing of vegetable seed not listed on the GB Variety List, provided an application has been made for entry into the GB Variety List or the NI Variety List.

Sub-paragraph (4) of that paragraph, as amended, provides that authorisation may only be requested by the person who has submitted an application for entry of the varieties concerned on to the GB Variety List, NI Variety List or an equivalent list of a country granted equivalence.

It is not immediately clear why a person who submits an application for entry onto an equivalent list is permitted to request authorisation from the Welsh Ministers in these circumstances, given that a condition for that authorisation is that an application has been made for entry into the GB Variety List or the NI Variety List (and not an equivalent list).

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 25 January 2021 and reports to the Senedd in line with the reporting point above.



Government Response: The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

Technical Scrutiny

The point is well made and pertinent to legislation that applies beyond Wales, identical provision having been made to legislation that applies to England. As the provisions are connected to a variety listing regime that applies to Great Britain, we have opened a dialogue with the UK Government to investigate their improved interaction with that regime. The Committee's concern is being addressed. We will return to the Committee as soon as the way forward is settled.

Ymateb y Llywodraeth: Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion (Diwygio) (Cymru) (Ymadael â'r UE) 2020

Craffu Technegol

Mae'r pwynt wedi ei wneud yn dda, ac yn berthnasol i ddeddfwriaeth sy'n gymwys y tu hwnt i Gymru, gydag union yr un ddarpariaeth wedi ei wneud â'r ddeddfwriaeth sy'n gymwys i Loegr. Gan fod y darpariaethau yn gysylltiedig â chyfundrefn restru amrywogaethau sy'n gymwys i Brydain Fawr, rydym wedi dechrau trafodaeth gyda Llywodraeth y DU i ymchwilio i'r gwelliant o ran rhyngweithio Llywodraeth y DU â'r gyfundrefn honno. Rydym yn mynd i'r afael â phryderon y Pwyllgor. Byddwn yn dychwelyd i'r pwyllgor unwaith y cytunir ar y ffordd ymlaen.

SL(5)707 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020

Background and Purpose

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (the Principal Regulations). The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the United Kingdom (UK) for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations are made in consequence of the UK's withdrawal from the European Union (EU). These Regulations will correct references to EU law that will be inoperable after the UK leaves the EU and make provision on the chargeable status of EU/EEA State and Swiss visitors using NHS services in Wales in the event of a No Deal at implementation period completion day. The amendments will ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for particular NHS care.

Procedure

Negative.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul these Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following two points are 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 fails to fulfil statutory requirements.

Regulation 4 contains an incorrect cross-reference. The reference to regulation 4A of the Principal Regulations in both the English and Welsh versions of these Regulations should be to regulation 4A(1). A Government response is requested.

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



Regulation 8 amends Schedule 2 to the Principal Regulations, by inserting and omitting various countries and territories. Schedule 2 to the Principal Regulations lists the countries and territories in respect of which the UK Government has entered into reciprocal agreements. The position in England is contained in Schedule 2 to the National Health Service (Charges to Overseas Visitors) Regulations 2015 (England's Charging Regulations). The Explanatory Memorandum does not contain much additional explanation for the amendments made by regulation 8.

Specifically, regulation 8(2)(d) of these Regulations inserts Liechtenstein into Schedule 2 to the Principal Regulations and regulation 8(3)(b) of these Regulations omits Iceland from Schedule 2 to the Principal Regulations. Liechtenstein and Iceland are both members of the European Free Trade Association (EFTA).

Further, it is noted that Sweden remains listed within Schedule 2 to the Principal Regulations despite being a member of the EU.

It is not clear why Liechtenstein is inserted into Schedule 2 to the Principal Regulations when Iceland is omitted. It is also not clear why Sweden remains listed in Schedule 2 to the Principal Regulations when no other EU Member States are listed.

The position in relation to citizens of Liechtenstein and Iceland, as well as Norway, are governed by the EEA EFTA separation agreement. Similarly, the position in relation to citizens of Sweden, as well as the other EU Member States, are governed by the withdrawal agreement between the EU and UK.

Rights under both agreements are provided for under regulation 4B of the Principal Regulations, which is inserted by virtue of regulation 5 of these Regulations. There does not, therefore, appear to be a need to include the signatories to the EEA EFTA separation agreement, nor the EU withdrawal agreement, within Schedule 2 to the Principal Regulations.

Further, it is noted that the Explanatory Memorandum states that:

"Amendments to the Principal Regulations are required to ensure that the law remains operable, existing exemptions still operate effectively and there is consistency of approach with England following EU Exit implementation period completion date in the event of a No Deal exit."

Liechtenstein, Iceland and Sweden are not included in England's Charging Regulations and so the position as set out in Schedule 2 to the Principal Regulations is not consistent with that under England's Charging Regulations.

Welsh Government is asked to explain:

- (a) why Liechtenstein is inserted into, and Iceland is omitted from, Schedule 2 to the Principal Regulations; and
- (b) whether Sweden should be omitted from Schedule 2 to the Principal Regulations.



Merits Scrutiny

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

3. 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 Senedd.

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 21 December 2020.

In particular, we note what the letter says regarding why these Regulations (referred to as “the 2020 Regulations” in the letter) breach the 21 day rule:

“The 2020 Regulations were made and laid as soon as practicable after the final draft SI for amending England’s Charging Regulations was shared by DHSC in early December. The 2020 Regulations were contingent on these and their lateness has meant that Wales’ Regulations have come into force less than 21 days after they were made in order to come into effect by IP completion day at the absolute latest.

“Not adhering to the 21 day convention allows the Regulations to come into force on 31 December, IP completion day in order to ensure the continued effective operation of the Principal Regulations following the UK leaving the EU with No Deal. Not adhering to the 21 day rule is therefore necessary and justifiable in this case.”

4. 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 Senedd.

Regulation 2(2)(h) inserts a new definition of “relevant services”, which refers to provisions in the National Health Service (Wales) Act 2006. One of the services is to “primary ophthalmic services provided under Part 6” of the 2006 Act, although the 2006 Act uses the definition of “general ophthalmic services”. A Government response is requested.

Welsh Government response

A Welsh Government response is required in respect of Technical Points 1 and 2 and Merits Point 4.

Committee Consideration

The Committee considered the instrument at its meeting on 25 January 2021 and reports to the Senedd in line with the reporting points above.



Government Response:

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020

Technical Scrutiny point 1:**Response:**

The Welsh Government notes the technical scrutiny point.

Technical Scrutiny point 2:**Response:**

The Welsh Government notes the technical scrutiny point raised and will correct this at the earliest possible opportunity.

Merits point 4:**Response:**

The Welsh Government notes the point and will correct this at the earliest possible opportunity.

Ymateb y Llywodraeth:

Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd Ymwelwyr Tramor) (Diwygio) (Cymru) (Ymadael â'r UE) 2020

Pwynt Craffu Technegol 1:**Ymateb:**

Mae Llywodraeth Cymru yn nodi'r pwynt craffu technegol.

Pwynt Craffu Technegol 2:**Ymateb:**

Mae Llywodraeth Cymru yn nodi'r pwynt craffu technegol a godwyd a bydd yn cywiro hyn ar y cyfle cyntaf posibl.

Pwynt Craffu ar Rinweddau 4:**Ymateb:**

Mae Llywodraeth Cymru yn nodi'r pwynt a bydd yn cywiro hyn ar y cyfle cyntaf posibl.

Agenda Item 4.3

SL(5)723 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021

Background and Purpose

The Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the International Travel Regulations) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the Restrictions Regulations).

Advice received from the Joint Biosecurity Centre (JBC) indicates that the risk to public health posed by the incidence and community spread of a new variant of coronavirus in Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, French Guiana, Guyana, Paraguay, Peru, Portugal, Republic of Cabo Verde, Republic of Panama, Suriname, Uruguay, and Venezuela has increased.

In respect of these countries and territories, the Regulations:

- amend Schedule 3A to the International Travel Regulations, which list those countries and territories subject to additional measures by virtue of regulations 12E and 12F of the International Travel Regulations;
- amend the Restrictions Regulations to impose more stringent isolation requirements on people who have been in one of those countries and territories within the period of 10 days prior to 4.00 a.m. on 15 January 2021 and on anyone in the same household as such people.; and
- correct the Welsh language text of paragraph 48 of Schedule 4 to the Restrictions Regulations to clarify that show homes are permitted to stay open in Alert Level 4 areas – a point which was raised in a previous report of the Committee.

Advice has also been received from the JBC that the risk to public health posed by the incidence and spread of coronavirus in Aruba, the Azores, Bonaire, Sint Eustatius and Saba, Madeira and Qatar has increased.

In respect of these countries and territories, the Regulations:

- omit them from the list of exempt countries and territories contained under the International Travel Regulations; and
- make transitional provision in connection with their change of status.

Procedure

Made Affirmative



The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

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

Merits Scrutiny

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

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

The Regulations came into force before they were laid before the Senedd. We note the notification provided by Vaughan Gething MS, Minister for Health and Social Services, in a letter to the Llywydd dated 14 January 2021, which states:

"I have today made these Regulations under sections 45B, 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force in part at 4.00am on 15 January 2021, with the remaining provisions coming into force at 4.00am on 16 January 2021. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

"In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force in part before they are laid before the Senedd. This is considered a necessary response to the news that a new variant of Covid-19 has been detected firstly in Brazil, which increases the risk posed by travellers into Wales, and also ensures that a four nations approach on international travel can be maintained."

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

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

"The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of 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."



The Regulations amend the Restrictions Regulations as well as the International Travel Regulations. Although there is no express reference to the Restrictions Regulations within this paragraph, we acknowledge that, as with the International Travel Regulations, the Regulations may be unlikely to change the engagement of human rights issues under the Restrictions Regulations. It would assist the Committee if the position in relation to the Restrictions Regulations could be clarified.

Further, section 5(4) of the European Union (Withdrawal) Act 2018 states that the European Charter of Fundamental Rights is not part of domestic law on or after IP completion day (23:00 on 31 December 2020). As such, providing an explanation for the reference to the Charter in the Explanatory Memorandum would assist the Committee.

3. 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 Senedd.

We note there has been no formal consultation on the Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

“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 Regulations.”

Welsh Government response

A Welsh Government response is required in relation to the second merits point.

Committee Consideration

The Committee considered the instrument at its meeting on 25 January 2021 and reports to the Senedd in line with the reporting points above.



Government Response: *The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021*

Merit Scrutiny point 2:

Response:

Although there is no express reference to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the Restrictions Regulations) within the paragraph of the Explanatory Memorandum referred to by the Committee, we confirm that, as with the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, these amending Regulations do not to change the engagement of human rights issues under the Restrictions Regulations.

The reference in the Explanatory Memorandum to the European Charter of Fundamental Rights is incorrect, and was intended to refer to the European Convention on Human Rights. The Government will ensure that any references to the European Convention on Human Rights are correct in the explanatory memoranda to any further amendment regulations.

Ymateb y Llywodraeth: *Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol a Chyfyngiadau) (Diwygio) (Rhif 2) (Cymru) 2021*

Pwynt Craffu ar Rinweddau 2:

Ymateb:

Er nad oes cyfeiriad penodol at Reoliadau Diogelu Iechyd (Cyfyngiadau Coronafeirws) (Rhif 5) (Cymru) 2020 (y Rheoliadau Cyfyngiadau) yn y paragraff o'r Memorandwm Esboniadol y cyfeiriwyd ato gan y Pwyllgor, rydym yn cadarnhau, fel yn achos Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) 2020, nad yw'r Rheoliadau diwygio hyn yn newid y ffordd y mae'r Rheoliadau Cyfyngiadau yn ymwneud â materion hawliau dynol.

Mae'r cyfeiriad yn y Memorandwm Esboniadol at Siarter Hawliau Sylfaenol Ewrop yn anghywir, a bwriadwyd iddo gyfeirio at y Confensiwn Ewropeaidd ar Hawliau Dynol. Bydd y Llywodraeth yn sicrhau bod unrhyw gyfeiriadau at y Confensiwn Ewropeaidd ar Hawliau Dynol yn gywir yn y memoranda esboniadol i unrhyw reoliadau diwygio pellach.

Agenda Item 4.4

SL(5)725 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021

Background and Purpose

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the International Travel Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Until now, persons entering Wales after being in one or more of the countries and territories listed in Parts 1 and 2 of Schedule 3 to the International Travel Regulations (“exempt countries and territories”) have not been required to isolate. Part 2 of these Regulations removes all the exempt countries and territories listed in Schedule 3.

These Regulations also:

- Amend Schedule 2 to the International Travel Regulations by removing certain categories of worker that are currently exempt from having to provide passenger information and isolate;
- Amend regulation 10 of the International Travel Regulations by removing certain exceptions to the requirement to isolate.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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



Merits Scrutiny

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 of public policy likely to be of interest to the Senedd

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Vaughan Gething MS, Minister for Health and Social Services, in a [letter](#) to the Llywydd dated 16 January 2021.

In particular, we note the following in the letter:

“Not adhering to the 21 day convention, and bringing them into force before they are laid, allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.”

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

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

“The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of 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.”

Section 5(4) of the European Union (Withdrawal) Act 2018 states that the European Charter of Fundamental Rights (“the Charter”) is not part of domestic law on or after IP completion day (23:00 on 31 December 2020). Can the Welsh Government provide an explanation as to why reference to the Charter is made in the Explanatory Memorandum?

3. 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 Senedd

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:



"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 Regulations."

Welsh Government response

A Welsh Government response is required in relation to the second merits point.

Committee Consideration

The Committee considered the instrument at its meeting on 25 January 2021 and reports to the Senedd in line with the reporting points above.



Government Response: *The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021*

Merit Scrutiny point 2:

Response:

The reference in the Explanatory Memorandum to the European Charter of Fundamental Rights is incorrect, and was intended to refer to the European Convention on Human Rights. The Government will ensure that any references to the European Convention on Human Rights are correct in the explanatory memoranda to any further amendment regulations.

Ymateb y Llywodraeth: *Rheoliadau Diogelu Iechyd (Coronafeirws, Teithio Rhyngwladol) (Cymru) (Diwygio) (Rhif 2) 2021*

Pwynt Craffu ar Rinweddau 2:

Ymateb:

Mae'r cyfeiriad yn y Memorandwm Esboniadol at Siarter Hawliau Sylfaenol Ewrop yn anghywir, a bwriadwyd iddo gyfeirio at y Confensiwn Ewropeaidd ar Hawliau Dynol. Bydd y Llywodraeth yn sicrhau bod unrhyw gyfeiriadau at y Confensiwn Ewropeaidd ar Hawliau Dynol yn gywir yn y memoranda esboniadol i unrhyw reoliadau diwygio pellach.

Agenda Item 4.5

SL(5)726 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the Restrictions Regulations”) to –

- require all persons who are subject to the obligation in regulation 16 to take measures to minimise the risk of exposure to coronavirus on their premises to undertake a specific assessment of the risk of exposure to coronavirus on those premises and to consult on that;
- make specific provision about the measures that must be taken to minimise the risk of exposure to coronavirus on retail premises;
- make provision imposing duties on the proprietors of schools and further education institutions preventing pupils or students from attending to their premises, subject to some limited exceptions;
- make consequential and other minor changes to ensure consistency with the new provisions.

These Regulations also amend the Health Protection (Coronavirus, Functions of Local Authorities etc.) (Wales) Regulations 2020 to require a local authority, when deciding whether to give an event direction under the those Regulations, to have regard to whether the event may result in people gathering in contravention of the relevant Schedule to the Restrictions Regulations.

These Regulations also revoke spent enactments relating to the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

The following 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(b) inserts a new paragraph (4) into regulation 16 of the Restrictions Regulations. The new paragraph 4(a) provides:

*"regulation 3 of the 1999 Regulations is to be read as if the words 'by or under the relevant statutory provisions and by Part II of the Fire Precautions (Workplace) Regulations 1997', **in both places it occurs...**" [emphasis added]*

However, regulation 3 of the Management of Health and Safety at Work Regulations 1999 ("the 1999 Regulations") only contains the specified wording in *one* place (at paragraph (1)). The other occurrence of "*by or under the relevant statutory provisions*" (at paragraph (2)) does not include the reference to Part II of the Fire Precautions (Workplace) Regulations 1997.

As currently drafted, the new paragraph (4)(a) does not achieve (what we assume to be) its intended effect, because only the wording in regulation 3(1) of the 1999 Regulations (i.e. the "first" occurrence) is read as if it referred to the relevant provisions in the Restrictions Regulations.

Regulation 3(2) of the 1999 Regulations (i.e. what is erroneously considered the "second" occurrence) is not caught by the provision in paragraph (4)(a) as it does not contain the specified wording in its entirety. As such, it is not read as if it referred to the relevant provisions in the Restrictions Regulations.

Merits Scrutiny

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 of public policy likely to be of interest to the Senedd

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

"Whilst the principal Regulations, as amended by these 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.

Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by the principal Regulations. These Regulations also engage Article 2 of the First Protocol (right to education). Despite the closure of the premises of schools to some learners,



maintained schools remain under their usual duties, but the duty to deliver the curriculum has been modified to a duty to use reasonable endeavours to deliver the curriculum (using a notice under Schedule 17 to the Coronavirus Act 2020).

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The implementation of the restrictions and requirements under the principal Regulations is a proportionate response to the increasing spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence."

Section 5(4) of the European Union (Withdrawal) Act 2018 states that the European Charter of Fundamental Rights ("the Charter") is not part of domestic law on or after IP completion day (23:00 on 31 December 2020). Can the Welsh Government provide an explanation as to why reference to the Charter is made in the Explanatory Memorandum?

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

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"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 Regulations.

The Welsh Government have engaged with stakeholders within the Health and Safety Forum to seek their views on this proposal for a specific Covid Assessment. This has included the following trade unions; Wales TUC, USDAW, UNITE, the GBM and Unite. The following business organisations: CBI, the Federation of Small Businesses and Chambers Wales. It has also included seeking the views of the Welsh Local Government Association and the Health and Safety Executive.

The Minister for Environment, Energy and Rural Affairs has met with representatives of retailers, including supermarkets and other 'mixed' retailers, to discuss their role during the pandemic. They broadly welcomed the current good practice by a number of premises and adherence to the guidance being 'formalised' by being included within the principal Regulations.

In determining the need for, and details of the restrictions and requirements, relating to the closure of school and FEI premises, Welsh Government officials undertook a series of



urgent discussions with key sectors and stakeholders, including local government and schools. The Minister for Education provided a written statement on this matter on 4 January 2021."

3. 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 Senedd

We note that, although a regulatory impact assessment has not been carried out in relation to these Regulations, a Children's Rights Impact Assessment and Equality Impact Assessments have been completed. The Explanatory Memorandum provides:

"While it is inevitable there will be impacts on children's rights and, in particular, on groups with protected characteristics, there will be some scope to mitigate the most significant impacts especially for the most vulnerable learners by allowing them access to school or college premises, but it will not be possible to address all of the disproportionate and negative impacts. These negative impacts continue to be tolerated on the basis of the risk to public health. Copies of these assessments will be published on the GOV.wales website:

[https://gov.wales/impact-assessments-coronavirus.](https://gov.wales/impact-assessments-coronavirus)"

Welsh Government response

A Welsh Government response is required in relation to the technical reporting point and the first merits reporting point.

Committee Consideration

The Committee considered the instrument at its meeting on 25 January 2021 and reports to the Senedd in line with the reporting points above.



GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (NO. 5) (WALES) (AMENDMENT) REGULATIONS 2021

Technical scrutiny point 1: *defective drafting of new regulation 16(4)(a) of principal Regulations*

The Government is grateful for the notice of the issue. The words “and by Part II of the Fire Precautions (Workplace) Regulations 1997” should be omitted from the text of regulation 16(4)(a) of the principal Regulations. The error will be addressed at the earliest opportunity.

Merits scrutiny point 1: *incorrect reference to the European Charter of Fundamental Rights in the Explanatory Memorandum*

The reference in the Explanatory Memorandum to the European Charter of Fundamental Rights is incorrect, and was intended to refer to the European Convention on Human Rights. The Government will ensure that any references to the European Convention on Human Rights are correct in the explanatory memoranda to any further amendment regulations.

SL(5)727 – The Candidate Election Expenses (Senedd Elections) Code of Practice 2021

Background and Purpose

This Code has been prepared by the Electoral Commission to give guidance as to what does or does not fall within Part 1 or Part 2 of Schedule 7 of the National Assembly for Wales (Representation of the People) Order 2007 ('the 2007 Order').

Those Parts are relevant to the definition of 'election expenses' and therefore, in particular, to what expenses a candidate is required to report. Part 1 of Schedule 7 lists the matters in respect of which any expenses for the purposes of the candidate's election count as 'election expenses'. Part 2 lists the exclusions.

The Code also gives guidance as to the cases or circumstances in which expenses are, or are not, to be regarded as incurred 'for the purposes of a candidate's election' as referred to in Article 63 of the 2007 Order.

Procedure

Draft negative. Unless the Senedd resolves not to approve the draft within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of its being laid, the Code of Practice will be brought into force by an appointed day order made by the Welsh Ministers, and published by the Electoral Commission.

Scrutiny under Standing Order 21.7

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

1. Paragraphs 1.18 to 1.20 of the Code sets out how notional spending is calculated for the purpose of election expenses. Paragraph 1.20 concludes by stating that "The rules on donations also apply to the associated gift". No reference is made as to what the rules on donations are or where they can be found. The Committee notes that rules on donations fall outside the scope of the Code but in order to assist those using the Code to comply with all of their obligations, reference should be made to where the rules on donations can be found.
2. The Code sets out the requirements relating to declaring expenses. Paragraph 1.23 states that, under Article 54(3) of the 2007 Order, a candidate on a regional list would be guilty of a corrupt practice if they knowingly make a false declaration. However, the Code makes no reference to Article 53(5) of the 2007 Order which similarly provides that a constituency candidate or their agent would be guilty of a corrupt practice if they knowingly make a false declaration. The Committee notes that consistency of approach and the provision of full information is crucial in the context



of Codes with statutory force such as this Code and would therefore welcome an explanation from the Welsh Government as to why no reference is made to Article 53(5).

Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

27 January 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

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Candidate Election Expenses (Senedd Elections) Code of Practice 2021

This Code:

- **is to be known as the Candidate Election Expenses (Senedd Elections) Code of Practice 2021**
- **comes into force on []**

Introduction

Background

1.1 This Code of Practice on candidate election expenses for Senedd elections was prepared by the Electoral Commission following consultation with interested persons and bodies, including the Welsh Government and the Senedd Commission.

The power to issue this Code

1.2 This Code of Practice has been approved by the Senedd and is issued by Welsh Ministers under Schedule 7, paragraph 14¹ of the National Assembly for Wales (Representation of the People) Order 2007 ('the 2007 Order').

Purpose of this Code

1.3 This Code gives guidance as to:

- What does or does not fall within Part 1 or Part 2 of Schedule 7 of the 2007 Order. Those Parts are relevant to the definition of 'election expenses' and therefore, in particular, to what expenses a candidate is required to report.
- Part 1 of Schedule 7 lists the matters in respect of which any expenses for the purposes of the candidate's election count as 'election expenses'. Part 2 lists the exclusions.
- The cases or circumstances in which expenses are, or are not, to be regarded as incurred 'for the purposes of a candidate's election'. This Code supplements the definition of that phrase in article 63 of the 2007 Order.

What elections does this Code cover?

1.4 This Code applies to elections to the Senedd.

This Code and other guidance published by the Commission

1.5 This Code is statutory guidance. This Code differs from other guidance that the Commission publishes because it has been approved by the Senedd.

1.6 The Commission also publishes non-statutory guidance on the rules for elections.

¹ Inserted by Article 55 of the Senedd Cymru (Representation of the People) (Amendment) Order 2020

1.7 The law on candidate spending is set out in the 2007 Order. An overview of the legal framework for candidate spending is set out below by way of context for this Code.

1.8 You should refer to our guidance for specific information on the rules for each election. Updated guidance about what elections are being held and which rules apply is always available on our website in the lead-up to an election.

What are the consequences of breaching this Code?

1.9 Where a candidate or agent does not follow this Code they are likely to be in breach of the statutory requirements relating to election expenses. This could result in a prosecution for a corrupt and/or illegal practice under articles 120 and/or 121 of the 2007 Order i.e. a fine and, in respect of a corrupt practice, potential imprisonment.

1.10 Where a candidate or agent is found personally guilty of a corrupt practice, they are disqualified from holding elective office for a period of five years. For an illegal practice, they are disqualified for three years. The candidate's election may be void.

The legal framework in the 2007 Order for candidate spending

Election expenses: Article 63

1.11 Article 63 defines election expenses as follows:

- (1) *In this Part “election expenses”, in relation to a constituency or individual candidate, means (subject to paragraph (3) and article 64) any expenses incurred at any time in respect of any matter specified in Part 1 of Schedule 7 which is used for the purposes of the candidate's election after the date when he becomes a candidate at the election.*
- (2) *No election expenses are to be regarded as incurred by virtue of paragraph (1) or article 64 in respect of any matter specified in Part 2 of Schedule 7.*
- (3) *In this article and in article 64, “for the purposes of the candidate's election” means with a view to, or otherwise in connection with, promoting or procuring the candidate's election at the election.*
- (4) *For the purposes of this Part, election expenses are incurred by or on behalf of a candidate at an Assembly election if they are incurred—*
 - (a) *by the candidate or his election agent; or*
 - (b) *by any person authorised by the candidate or his election agent to incur the expenses.*

- (5) *In this Part, any reference to election expenses incurred by or on behalf of a candidate at an Assembly election includes expenses—*
- (a) which are incurred as mentioned in paragraph (1) before the date when he becomes a candidate at the election but*
- (b) which by virtue of that paragraph fall to be regarded as election expenses.*
- (6) *In this Part and in Part 4, any reference (in whatever terms) to promoting or procuring a candidate's election at an election includes doing so by prejudicing the electoral prospects of another candidate or registered political party at the election.*
- (7) *Schedule 7 has effect.*

Disability and translation related expenses

1.12 Part 2 of Schedule 7 to the 2007 Order sets out a list of matters which are 'excluded' from being 'election expenses' within the meaning of article 63.

1.13 Schedule 7, paragraph 13A² excludes any expenses incurred in respect of any matter that is reasonably attributable to the candidate's disability.

1.14 Schedule 7, paragraph 13B³ excludes expenses incurred in respect of, or in consequence of, the translation of anything from Welsh into English or from English into Welsh.

Spending limits and campaign periods

1.15 The amount that can be spent on candidate election expenses is limited by the 2007 Order. A spending limit applies in relation to a particular period, often referred to as a 'regulated period'.

Regulated period

1.16 For elections to the Senedd, the regulated period is not specifically defined but rather is derived from article 63(1) of the 2007 Order. It starts on the day after a person officially becomes a candidate and ends on polling day (the close of poll) – around four weeks.

^{2 & 3} Inserted by Article 3 of the Representation of the People (Election Expenses Exclusion) (Wales) (Amendment) Order 2020

Agents

1.17 Candidates must either appoint an agent to oversee their spending or act as their own agent. The agent has responsibilities for incurring and paying for candidate election expenses – see articles 46 and 43 of the 2007 Order respectively.

Notional spending

1.18 ‘Notional spending’ on election expenses counts towards a candidate’s spending limit. While not specifically defined in the 2007 Order, notional spending arises under article 64 when property, goods, services or facilities:

- are transferred or provided free of charge or at a discount of more than 10 per cent for the use or benefit of the candidate,
- are made use of by or on behalf of the candidate, and
- if expenses had been incurred by or on behalf of the candidate in respect of that use, they would have been election expenses – i.e. within the categories listed in Part 1 and not excluded by Part 2 of Schedule 7.

1.19 Where all three of the above are satisfied, an ‘appropriate amount’ is treated as election expenses incurred by the candidate if it is more than £50. The appropriate amount is the proportion that is reasonably attributable to the use of the item, of either:

- its market value (where it is transferred free of charge), or
- the value of the discount (where some of the item’s cost is actually incurred by or on behalf of the candidate).

1.20 If the property, goods, services or facilities concerned have been made use of by or on behalf of the candidate the notional spending falls to be declared as election expenses in the candidate’s return even if the items provided have not been authorised by the candidate, the candidate’s agent or someone authorised by either or both of them: *R v Mackinlay and others* [2018] UKSC 42. The rules on donations also apply to the associated gift.

Reporting

1.21 Article 52 requires an agent of a constituency candidate or individual regional candidate to submit a return of election expenses. Article 53 requires both the agent and the candidate to make a declaration as to the accuracy of the return.

1.22 Article 54 requires each candidate on a registered party’s regional list to make a declaration as to election expenses.

1.23 Under article 54(3), a person is guilty of a corrupt practice if they knowingly make a false declaration.

Definitions

2.1 In this Code the following definitions apply:

‘the 2006 Act’ means the Government of Wales Act 2006.

‘the 2007 Order’ means the National Assembly for Wales (Representation of the People) Order 2007.

‘Appropriate amount’ means an amount of election expenses determined in accordance with article 64 of the 2007 Order.

‘Candidate’ means a candidate at a Senedd constituency election (including independent dual candidates with respect to the Senedd constituency election and independent constituency candidates) and an independent regional candidate.

‘Constituency candidate’ means a candidate at a Senedd constituency election.

‘Cost’ has its ordinary meaning of the expense of, or associated with, an item. It includes the *‘appropriate amount’* to be treated as incurred by the candidate under the rules on notional spending.

‘Dual candidate’ means a candidate standing for election in both a Senedd constituency election and a Senedd regional election.

‘Election agent’ means the person named on behalf of a candidate pursuant to article 37 of the 2007 Order.

‘Election expenses’ has the meaning set out in article 63 of the 2007 Order.

‘Electoral region’ means an area specified in accordance with section 2(3) of the 2006 Act. There are five electoral regions in Wales.

‘Independent dual candidate’ means an individual candidate standing for election in both a Senedd constituency election and at a Senedd regional election.

‘Independent regional candidate’ means an individual candidate at a Senedd regional election other than on a party list.

‘Independent constituency candidate’ means an individual candidate at a Senedd constituency election other than a party candidate.

‘Item’ means something that could be the subject of spending. It includes services and activities as well as physical things.

‘Notional spending’, while not specifically defined in the 2007 Order, means election expenses treated as incurred where property, goods, services or facilities are provided free of charge or at a discount and made use of by or on behalf of the candidate under article 64 of the 2007 Order.

'Party list' means a list of not more than twelve party candidates (but it may be a list of only one candidate) for a Senedd electoral region.

'Party list candidate' means a candidate at a Senedd regional election included on a party list.

'Personal expenses' of the candidate are partially defined in article 84 of the 2007 Order. Personal expenses of a candidate must be reported in the candidate's spending return but do not count towards the spending limit. This Code does not offer guidance as to what are or are not personal expenses.

'Political party' means a party registered under Part II Political Parties, Elections and Referendums Act 2000.

'Regulated period' means the period when the spending rules apply to candidates at a Senedd election.

'Return' or **'spending return'** means a return as to election expenses for a candidate as required by article 52 of the 2007 Order.

'RPA' means the Representation of the People Act 1983.

'Spending limit' refers to the maximum amount of money that can be incurred by a candidate under article 47 of the 2007 Order.

'Used at an election' means used for the purposes of the candidate's election as defined in article 63 of the 2007 Order and as supplemented by this Code.

When will expenses be regarded as incurred for the purposes of a candidate's election?

3.1 The list of matters in Schedule 7, Part 1 of the 2007 Order, as clarified in this Code, will be regarded as used 'for the purposes of a candidate's election' – and therefore associated expenses incurred will be 'election expenses' – whenever it is used with a view to, or otherwise in connection with promoting or procuring the candidate's election.

3.2 Promoting or securing the election of a candidate includes doing so by prejudicing the electoral prospects of another candidate or candidates standing in the specific constituency and/or electoral region.

3.3 'Election expenses' count towards the candidate's spending limit. The cost of all items used in the regulated period must be reported in the return for the candidate as appropriate.

3.4 The examples set out below relate both to spending authorised by the candidate or agent and to notional spending.

Attribution to candidates

3.5 Elections to the Senedd are conducted using the Additional Member System. Voters receive two ballot papers and can cast two votes, one to elect their constituency candidate, and one to vote for a political party in an electoral region.

3.6 Due to the nature of these elections, some items not only encourage voters to vote for a constituency candidate, but they also encourage voters to vote for a political party in the regional elections using their second vote.

3.7 There are cases and circumstances at a Senedd election where something will be regarded as used wholly for the purposes of the candidate's election in a constituency.

3.8 For example, whenever the item:

- identifies the candidate standing in the constituency, or the candidate can be identified from the item and it does not promote party list candidates
- specifically identifies the constituency where the candidate is standing and does not promote the electoral region where the constituency sits

and, in either case, the item is aimed at voters solely in the constituency in which the candidate is standing to promote or secure the election of that candidate.

Examples where the full cost of the item is wholly attributable to the candidate:

- An independent candidate distributes a leaflet to all households in the constituency in which they are standing. The total costs of producing and distributing the leaflet must be included in the candidate spending return.
- A candidate standing on behalf of a political party distributes a leaflet to all households in the constituency in which they are standing. The leaflet includes a biography of the candidate and local issues that the candidate is concerned about. The political party's logo is featured but there is no mention of the regional election or the party's national policies. The total costs of producing and distributing the leaflet must be included in the candidate spending return.

By way of contrast:

- A political party produces a letter that sets out the party's policies and encourages voters to vote for the party. Although the letter is addressed to a household in the constituency, the letter itself does not identify the candidate or the constituency. This is not to be regarded as used for the purposes of the candidate's election. Therefore no spending needs to appear in the candidate return.

3.9 There are cases and circumstances at a Senedd election where something will be regarded as used partially for the purposes of the candidate's election in a constituency.

3.10 For example, whenever the item:

- identifies the candidate standing in the constituency, or the candidate can be identified from the item, and the material also promotes party list candidates
- identifies the candidate standing in the constituency, or the candidate can be identified from the item, and the material promotes the party's policies
- identifies the constituency where the candidate is standing, and it also promotes the party in the electoral region where the constituency sits
- encourages a voter to use both their votes - one for the candidate standing in the constituency and the other for the party on the regional list - **or** where the voter is reminded to vote in both constituency and regional elections

Examples where the cost of the item is partially attributable to the candidate:

- A leaflet is circulated in a constituency. Side A promotes the constituency candidate (identifies the candidate and/or the constituency). Side B

promotes the party list candidates. The cost of the item must be split between the candidate and party.

- A leaflet is circulated in a constituency. Side A promotes the constituency candidate (identifies the candidate and/or the constituency). Side B talks about the party's national policies. The cost of the item must be split between the candidate and party.
- A letter is circulated in a constituency. The letter is from a prominent party member. It talks about the party and its policies and why you should vote for that party. At the end of the letter, it asks the voter to vote for a candidate in a specific constituency. The constituency candidate and/ or the constituency is identified. The cost of the item must be split between the candidate and party.
- A leaflet is circulated across an entire electoral region. Side A promotes the party list candidates. Side B of the same leaflet identifies the relevant party list candidate that is also standing in that particular constituency (dual candidate). Side B of the leaflet will change depending on the constituency where the leaflets are distributed, and it will identify the relevant dual candidate in that constituency. The cost of the item must be split between the candidate and party.
- A calling card is circulated in a constituency, asking people to “use both votes for party X” on polling day. The cost of the item must be split between the candidate and party.
- A party prepares a digital campaign for use in an electoral region in Wales featuring a popular party member. The party member is standing as a constituency candidate within that electoral region. The material is targeted at voters in the electoral region and will appear in their social media feeds. The proportion of the campaign targeted in the party member's constituency is to be regarded as published for the purposes of their election as a candidate.

In all of the examples above, if the item is paid for by the party and is made use of by or on behalf of the candidate, then the costs must be split between the candidate and the party. The relevant proportion of the cost of the item must appear in the candidate return as notional spending.

By way of contrast:

- A party prepares a digital campaign for use across Wales featuring a popular party member. The party member is standing as a constituency candidate. The material is not targeted but will appear if a particular set of words is typed into a search engine. It is not possible to ascertain how often or when this appeared to voters in the party member's constituency. This is not to be regarded as used for the purposes of their election as a candidate. Therefore no spending needs to appear in the candidate return.

Re-using items paid for and used at a previous election

3.11 Items paid for and used at an election by a candidate must not be apportioned or discounted because they may or will be re-used at a subsequent election or elections. The full cost of an item that meets the usual criteria must be reported in the return at the election at which the item is first used.

3.12 The full cost of items that may or will be re-used counts towards the spending limit at the first election at which they are used.

3.13 The purchase cost of items that were:

- paid for in full (owned not hired)
- used at a previous election
- reported in full in the spending return for the candidate at a previous election, and
- have not been altered in any way

do not need to be reported in the spending return for the same candidate at a subsequent election, nor do they count towards the spending limit at such subsequent elections. However, if an item is re-used by a different candidate at a subsequent election this would be treated as notional spending.

3.14 However, all costs incurred in facilitating the re-use of an item at a subsequent election, including:

- cleaning
- alteration and/or addition
- maintenance
- redevelopment

must be reported in the return for the subsequent election where the items are used again.

3.15 The costs incurred in facilitating the re-use count towards the spending limit at the subsequent election at which they are re-used.

Items not used at all

3.16 Items paid for but not used at an election are not regarded as election expenses because they are not used with a view to, or in connection with, promoting the candidate or procuring a candidate's election. They therefore do not need to be reported in the return.

Expenses incurred prior to the commencement of the regulated period

3.17 Expenses incurred prior to the start of the regulated period, on items used during the regulated period, must be reported in the return. Therefore, the cost of

items used during the regulated period but purchased prior to the start of the regulated period counts towards the candidate's spending limit.

VAT

3.18 Expenses must be reported inclusive of VAT where applicable, even where VAT can be recovered.

3.19 Where VAT is charged on an item, the VAT amount counts towards the spending limit.

Schedule 7 of the 2007 Order

General notes

This Code is not exhaustive

4.1 The lists below are matters which are relevant for the purposes of each category in Part 1 of Schedule 7. They are therefore to be reported in a spending return if the expenses are incurred, and they are used for, the purposes of the candidate's election. The lists are inclusive and not exhaustive.

Notional spending

4.2 This Code applies to notional spending on behalf of a candidate in the same way as it applies to spending that is incurred by a candidate, unless otherwise specified.

Costs that are excluded

4.3 This section of the Code clarifies Part 1 of Schedule 7 of the 2007 Order. Nothing in it should be taken as qualifying the list of exclusions set out in Part 2 of Schedule 7 of the 2007 Order, which is reproduced below.

7. *The payment of any deposit required by rule 10 of Schedule 5.*
8. *The publication of any matter, other than an advertisement, relating to the election in -*
 - (a) a newspaper or periodical;*
 - (b) a broadcast made by the British Broadcasting Corporation or by Sianel Pedwar Cymru;*

or

 - (c) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996.*
9. *The provision of any facilities provided in pursuance of any right conferred on candidates at an election by this Order other than facilities in respect of which expenses fall to be defrayed by virtue of article 69(4).*
10. *The provision by an individual of his own services which he provides voluntarily in his own time and free of charge.*
11. — *(1) Accommodation which is the candidate's sole or main residence.*

(2) The provision by any other individual of accommodation which is his sole or main residence if the provision is made free of charge.

12. — *(1) Transport by a means of transport which was acquired by the candidate principally for his own personal use.*

(2) Transport provided free of charge by any other individual if the means of transport was acquired by him principally for his own personal use.

13. — *(1) Computing or printing equipment which was acquired by the candidate principally for his own personal use.*

(2) The provision by any other individual of computing or printing equipment which was acquired by the individual principally for his own personal use if the provision is made free of charge.

13A. — *(1) Any matter that is reasonably attributable to the candidate's disability, to the extent that the expenses in respect of the matter are reasonably incurred.*

(2) In this paragraph "disability", has the same meaning as in section 6 of the Equality Act 2010(1).

13B. *Expenses incurred in respect of, or in consequence of, the translation of anything from Welsh into English or from English into Welsh.*

Schedule 7, Part 1, paragraph 1

Advertising of any nature (whatever the medium used).

Expenses in respect of such advertising include agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.

This paragraph includes:

Services, premises, facilities or equipment, provided by others

5.1 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

that is used to:

- prepare, produce or facilitate the production of advertising material
- disseminate advertising material by distribution or otherwise

5.2 For example, the hire of a photographer and premises to produce images for use in advertising material.

Specific costs in connection with producing or disseminating digital or electronic advertising material

5.3 It includes the cost of any software, of any kind, for use on any device to:

- design and produce advertising material in-house
- disseminate or facilitate dissemination of advertising material

whether that material is distributed digitally, electronically or via other means.

5.4 For example, a licensing fee for a software application for use on a device.

5.5 It includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

used to

- prepare, produce or facilitate the production of digital or electronic advertising material
- distribute or facilitate the dissemination of that advertising material via any means

including any cost attributable to increasing the visibility of content by any means.

5.6 For example, the purchase of a more prominent position on a page within a search engine.

5.7 It includes the cost of preparing, producing or facilitating the production of advertising material for:

- downloading and use by others
- posting on and promoting the candidate via any kind of social media channel or platform

5.8 For example, the costs of producing advertising material promoting the candidate that is posted to a page on a social media channel encouraging followers to share it.

5.9 It includes the cost of accessing, purchasing, developing and maintaining any digital or other network which:

- facilitates distribution or dissemination of advertising material by any means
- promotes or increases the visibility of advertising material by any means

5.10 For example, the purchase of digital identities used to make material appear as if it has been seen and approved by a high number of users on a social media platform.

5.11 It includes the costs of:

- hosting and maintaining a website or other electronic/digital material that promotes the candidate
- designing and building the website
- a portion of any website or material that is set up to obtain funds for the candidate but also promotes the candidate during the regulated period

Other costs included in Schedule 7, Part 1, paragraph 1

5.12 It includes the cost of any rights or licensing fee for any image used in producing advertising material.

5.13 It includes the cost of:

- paper or any other medium on which advertising material is printed
- physically displaying advertising in any location, for example cable ties or glue for putting up posters

5.14 It includes the cost of purchase, hire or use of:

- photocopying equipment
- printing equipment

for use in the candidate's election campaign, except where:

- the equipment was acquired by the candidate principally for the candidate's own personal use
- it is provided by another individual, the equipment was acquired by that individual for their own personal use and the candidate is not charged for the use of it

5.15 Where paper, photocopying equipment or a printer is purchased or hired principally for use in the campaign, the full cost must be reported.

5.16 'Personal use' in paragraph 5.14 means ongoing personal use by the candidate or the individual, not use for commercial purposes or use for other purposes such as by a political party prior to or after the election.

5.17 It includes the cost of purchase and use of any other equipment in connection with:

- preparation, production or facilitating the production of the advertising material
- dissemination by distribution or otherwise of the advertising material

5.18 It includes the cost of food and/or accommodation for any individual who provides services in connection with advertising material for the candidate that is paid for or reimbursed by the candidate, the candidate's party or another third party.

Schedule 7, Part 1, paragraph 2

Unsolicited material addressed to electors (whether addressed to them by name or intended for delivery to households within any particular area).

Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing such material (including the cost of postage).

This paragraph includes:

Costs associated with obtaining information and targeting or identifying voters, including database costs

6.1 This includes the cost of accessing, obtaining, purchasing, developing or maintaining:

- IT software or contact databases
- any information, by whatever means

that is used to facilitate the sending of unsolicited material to voters.

6.2 For example, the purchase of email addresses.

6.3 It includes the cost of accessing, obtaining or developing data sets, including data analytics to target voters by whatever means, including the cost of agencies, organisations or others that identify groups of voters, by whatever means.

6.4 For example, the cost of any agency paid to analyse social media content to facilitate targeting of voters in a specific electoral area and the cost of modelling by an agency based on that analysis.

6.5 It includes the cost of any services to identify voters that are purchased, developed or provided before the regulated period, but are used to target voters during the regulated period.

6.6 Where information or access to information is obtained from a third party, including a political party, the commercial cost of obtaining that information from the third party is included.

Costs associated with preparing, producing or distributing unsolicited material to voters, including via digital means

6.7 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

that is used to:

- prepare, produce or facilitate the production of the unsolicited material
- disseminate the unsolicited material by distribution or other means, including any cost attributable to increasing the visibility of material via any means

6.8 It includes the cost of delivering material by any means including electronic means or the physical distribution of the material, for example the cost of envelopes and stamps or the purchase of a system for sending emails.

6.9 It includes the cost of accessing, developing and maintaining any digital or other network which promotes or increases the visibility of unsolicited material on any platform. For example, if a candidate pays a developer to create an app that facilitates targeting of their material on a social media channel.

6.10 It includes the cost of oversight and maintenance of all social media, digital or other forms of distribution of unsolicited material. This includes the maintenance of all social media accounts, including if they are maintained by another entity/individual.

Other costs included in Schedule 7, Part 1, paragraph 2

6.11 It includes the cost of any rights or licensing fee for any image used in producing unsolicited material.

6.12 It includes the cost of paper or any other medium on which unsolicited material is printed.

6.13 It includes the cost of purchase, hire or use of:

- photocopying equipment
- printing equipment

for use in the candidate's election campaign, except where:

- the equipment was acquired by the candidate principally for the candidate's own personal use
- it is provided by another individual, the equipment was acquired by that individual for their own personal use and the candidate is not charged for the use of it

6.14 'Personal use' in paragraph 6.13 means ongoing personal use by the candidate or the individual, not use for commercial purposes, or other purposes such as by a political party prior to or after the election.

6.15 Where paper, photocopying equipment or a printer is purchased or hired principally for use in the campaign, the full cost must be reported.

6.16 It includes the cost of purchase and use of any other equipment in connection with:

- preparation, production or facilitating the production of the unsolicited material
- dissemination of the unsolicited material by distribution or other means

6.17 It includes the cost of food and/or accommodation for any individual who provides service in connection with unsolicited material for the candidate that is paid for or reimbursed by the candidate, the candidate's party or another third party.

Costs that are excluded from Schedule 7, Part 1, paragraph 2

6.18 It does not include the cost of postage of the free electoral address as outlined in article 65 of the 2007 Order.

6.19 It does not include any cost associated with the obtaining of data as permitted under any statute or regulation.

6.20 For example, candidates are entitled to a copy of the electoral register via regulation 102 of the Representation of the People (England and Wales) Regulations 2001.

Schedule 7, Part 1, paragraph 3

Transport (by any means) of persons to any place.

Expenses in respect of the transport of such persons include the costs of hiring a means of transport for a particular period.

This paragraph includes:

7.1 It includes the cost of transport for the agent where they are reimbursed by the candidate, the candidate's party or another third party.

Transport of volunteers and campaigners

7.2 It includes the cost of transporting:

- volunteers
- party members, including staff members
- other campaigners

around the electoral area, or to and from the electoral area, including the cost of:

- tickets for any transport, including any booking fee
- hiring of any transport
- fuel purchased for any transport
- parking for any transport

where they are undertaking campaigning on behalf of the candidate.

7.3 It includes the cost of transport paid for by any individual, political party or other third party that is paid for or reimbursed either by the candidate, the political party or a third party, where the individuals being transported were campaigning or undertaking activities associated with the campaign for the candidate.

Transport to an event

7.4 It includes the cost of transporting attendees to an event promoting the candidate where that cost is reimbursed or paid for by the candidate, the candidate's party or another third party.

Transport that is promoting the candidate

7.5 This includes the cost of use, or hire, of any vehicle or form of transport that displays material promoting the candidate, including any cost associated with:

- design and application of the design to the vehicle or form of transport
- driving or moving a vehicle around a specific electoral area
- parking fees where a vehicle is used to display material

Costs that are excluded from Schedule 7, Part 1, paragraph 3

7.6 The following costs are excluded from paragraph 3:

- where the cost is paid for by the individual who used the transport, where that payment is not reimbursed, or
- where transport is provided free of charge by any other individual if the means of transport was acquired by that person principally for their own personal use

7.7 Where a transport cost is a personal expense within the meaning of the 2007 Order for the candidate, and is paid by the candidate, this must be recorded as a personal expense in the spending return. '*Personal expenses*' includes the reasonable travelling expenses of the candidate, for the purposes of and in relation to the election.

Schedule 7, Part 1, paragraph 4

Public meetings (of any kind).

Expenses in respect of such meetings include costs incurred in connection with the attendance of persons at such meetings, the hire of premises for the purposes of such meetings or the provision of goods, services or facilities at them.

This paragraph includes:

Services, premises, facilities or equipment provided by others

8.1 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

used in:

- promoting a public meeting
- holding or conducting a public meeting to promote the candidate
- live streaming or broadcasting a public meeting by any means

Other costs included in Schedule 7, Part 1, paragraph 4

8.2 It includes the cost of promoting or advertising the event, via any means.

8.3 It includes the cost of an event that is being held via a link of any kind or is being live streamed or broadcast, where that event is open to be viewed by users of a channel or platform or by other means.

8.4 It includes the cost of the provision of any goods, services or facilities at the event, for example the cost of hiring seating.

8.5 It includes the cost of purchase of any equipment in connection with:

- holding or conducting a public meeting to promote the candidate
- live streaming or broadcasting a public meeting by any means

8.6 It includes the cost of accommodation and other expenses for any attendee where that cost is reimbursed or paid for by the candidate, the candidate's party or another third party.

Schedule 7, Part 1, paragraph 5

The services of an election agent or any other person whose services are engaged in connection with the candidate's election.

This paragraph includes:

Agent costs

9.1 This includes any remuneration, including allowances, paid to the agent.

Staff who are employed by a political party

9.2 It includes the cost of any staff member of a political party who provides services to the candidate that are for the purposes of the candidate's election during the regulated period, or provides services to the candidate that are for the purposes of the candidate's election prior to that time which are then used during the regulated period.

Some examples of costs associated with political party staff:

- A staff member of a political party spends their paid working hours coordinating volunteers campaigning for a candidate in a specific constituency. Their work time is to be regarded as for the purposes of the candidate's election. If it is made use of by or on behalf of the candidate, then the costs of paying that staff member must appear in the candidate return as notional spending.
- A staff member of a political party spends their paid working hours on a number of different campaigning activities, including both promoting the party generally and promoting a specific candidate. The proportion of their work time that is spent promoting the candidate is to be regarded as for the purposes of that candidate's election. If it is made use of by or on behalf of the candidate, then that proportion of the costs of paying that staff member must appear in the candidate return as notional spending.

By way of contrast:

- A number of candidates attend a briefing on the party's manifesto pledges given by paid party staff. Because the focus is on national party manifesto pledges, the briefing is not to be regarded as given for the purposes of their election as candidates. Therefore no spending needs to appear in the candidate returns.

Staff monitoring social media and other press activities

9.3 It includes the cost of staff engaged in the management and monitoring of social media channels or platforms and the obtaining of data to allow targeted campaigning. This includes hiring staff to analyse and sort the data and the cost of staff to monitor and post or respond to any kind of social media or other account.

9.4 It includes the cost of staff engaged in the management of press activities of any kind, including staff who are liaising with, managing or monitoring any kind of media activity by any means in connection with the candidate's election.

Any other person whose services are engaged

9.5 It includes the cost of any other person whose services are engaged in connection with the candidate's election.

Costs which are excluded from Schedule 7, Part 1, paragraph 5

9.6 It does not include the cost for services of an agent or any other person who is a volunteer.

Schedule 7, Part 1, paragraph 6

Accommodation and administrative costs.

This paragraph includes:

Office space and equipment

10.1 This includes the rental cost of office space, including business rates, for the candidate's campaign, whether newly rented or under an existing rental agreement, and so notional spending will be incurred where such office space is provided free of charge or at a discount by a political party or a third party.

10.2 It includes the cost of office space where that office space is being shared. An apportionment must be made and an amount that reasonably reflects the use by the candidate in campaigning must be included in the return for the candidate. This amount will count towards the spending limit of the candidate.

10.3 It includes the cost of purchase, use or hire of any general office equipment for the candidate's campaign, and so notional spending will be incurred where such equipment is provided free of charge or at a discount by a political party or a third party.

10.4 For example, desks, chairs and computers provided by a party for use in the candidate's campaign.

10.5 It includes the cost of purchase, hire or use of:

- mobile phones or other hand-held devices
- the associated contracts

for use in the campaign by the candidate, agent and any other staff or volunteer, where that equipment and/or associated costs are paid for by the candidate, the candidate's party or another third party except where:

- the equipment was acquired by the candidate principally for the candidate's own personal use and the costs are not more than would usually be incurred outside of an election period.
- it is provided by another individual, the equipment was acquired by that individual for their own personal use, the costs are not more than would usually be incurred outside of an election period and the candidate is not charged for the use of it.

Some examples of costs associated with mobile phones:

- If a SIM card with a data and calls allowance is bought for a candidate to use in their campaign, this would count as candidate spending.
- If a volunteer's mobile phone is used to co-ordinate other volunteers, and a portion of the phone contract charges are reimbursed by the candidate to the volunteer, this would count as candidate spending.
- If the candidate uses their own phone which they acquired for their own personal use, and no further costs are incurred beyond the usual monthly charge for calls, data etc, this does not count as candidate spending.

10.6 'Personal use' in paragraph 10.5 means ongoing personal use by the candidate or the individual, not use for commercial purposes, or other purposes such as by a political party prior to or after the election.

Overheads

10.7 It includes the cost of:

- electricity
- phone lines and internet access

for use in the candidate's campaign.

10.8 It includes the subscription cost for media monitoring services, press wire and press release services.

Costs associated with agents, volunteers and employees

10.9 It includes the cost of accommodation for the agent where it is reimbursed by the candidate, the candidate's party or another third party.

10.10 It includes the cost of volunteers, employees and party employees campaigning for the candidate in a specific electoral area, including their accommodation costs if they are reimbursed by the candidate, the candidate's party or another third party.

Costs which are excluded from Schedule 7, Part 1, paragraph 6

10.11 It does not include the cost of childcare for a candidate or their agent or a volunteer.

10.12 It does not include the cost of water, gas or council tax.

10.13 It does not include the provision by any other individual of accommodation which is the sole or main residence of the individual if the provision is made free of charge.

Explanatory Memorandum to the Candidate Election Expenses (Senedd Elections) Code of Practice 2021

This Explanatory Memorandum has been prepared by the Office of the First Minister and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.14

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Candidate Election Expenses (Senedd Elections) Code of Practice 2021

Julie James MS,
Minister for Housing and Local Government
20 January 2021

PART 1

Description

1. This Code gives guidance as to what does or does not fall within Part 1 or Part 2 of Schedule 7 of the National Assembly for Wales (Representation of the People) Order 2007 ('the 2007 Order')¹.
2. Those Parts are relevant to the definition of 'election expenses' and therefore, in particular, to what expenses a candidate is required to report.
3. Part 1 of Schedule 7 lists the matters in respect of which any expenses for the purposes of the candidate's election count as 'election expenses'. Part 2 lists the exclusions.
4. This Code also gives guidance as to the cases or circumstances in which expenses are, or are not, to be regarded as incurred 'for the purposes of a candidate's election'. This Code supplements the definition of that phrase in article 63 of the 2007 Order.

Matters of special interest to the Legislation, Justice and Constitution Committee

5. The amount that can be spent on candidate election expenses is limited by the 2007 Order. A spending limit applies in relation to a particular period, often referred to as a 'regulated period'.
6. For elections to the Senedd, the regulated period is not specifically defined but rather is derived from article 63(1) of the 2007 Order. It starts on the day after a person officially becomes a candidate and ends on polling day (the close of poll).
7. The Electoral Commission will issue guidance prior to the Code of Practice being in force to ensure information is available.

Legislative background

8. The Electoral Commission has power under Schedule 7, paragraph 14 of the National Assembly for Wales (Representation of the People) Order 2007 to prepare a Code of Practice giving guidance as to Candidate Election Expenses.
9. The Candidate Election Expenses (Senedd Elections) Code of Practice 2021 was prepared by the Electoral Commission and submitted to the Welsh Ministers for approval.
10. This Code of Practice will be laid by the Minister for Housing and Local

¹ <https://www.legislation.gov.uk/uksi/2007/236/schedule/7/made>

Government under Schedule 7, paragraph 14 of the 2007 Order.

11. This Code of Practice will follow the draft negative procedure. Unless the Senedd resolves not to approve the draft within 40 days of its being laid, the Code of Practice will be brought into force by an appointed day order made by the Welsh Ministers, and published by the Electoral Commission.
12. Paragraph 14 of Schedule 7 to the National Assembly for Wales (Representation of the People) Order 2007 was inserted by Article 55 of the Senedd Cymru (Representation of the People) (Amendment) Order 2020².

Purpose and intended effect of the legislation

13. This Code gives guidance as to what does or does not fall within Part 1 or Part 2 of Schedule 7 of the 2007 Order.
14. Those Parts are relevant to the definition of 'election expenses' and therefore, in particular, to what expenses a candidate is required to record as an election expense.
15. Part 1 of Schedule 7 lists the matters in respect of which any expenses for the purposes of the candidate's election count as 'election expenses'. Part 2 lists the exclusions.
16. This Code also gives guidance as to the cases or circumstances in which expenses are, or are not, to be regarded as incurred 'for the purposes of a candidate's election'. This Code supplements the definition of that phrase in article 63 of the 2007 Order.
17. Candidates must either appoint an agent to oversee their spending or act as their own agent. The agent has responsibilities for incurring and paying for candidate election expenses – see articles 46 and 43 of the 2007 Order respectively.
18. Article 52 requires an agent of a constituency candidate or individual regional candidate to submit a return of election expenses. Article 53 requires both the agent and the candidate to make a declaration as to the accuracy of the return.
19. Article 54 requires each candidate on a registered party's regional list to make a declaration as to election expenses.
20. Under article 54(3), a person is guilty of a corrupt practice if they knowingly make a false declaration.
21. Where a candidate or agent does not follow this Code they are likely to be in breach of the statutory requirements relating to election expenses. This could result in a prosecution for a corrupt and/or illegal practice under

² <https://www.legislation.gov.uk/wsi/2020/1558/article/55/made>

articles 120 and/or 121 of the 2007 Order i.e. a fine and, in respect of a corrupt practice, potential imprisonment.

22. Where a candidate or agent is found personally guilty of a corrupt practice, they are disbarred from holding elective office for a period of five years. For an illegal practice, they are disbarred for three years. The candidate's election may be void.

Consultation

23. This Code of Practice on candidate election expenses for Senedd elections was prepared by the Electoral Commission following consultation with interested persons and bodies, including representatives of political parties, as well as the Welsh Government and the Senedd Commission.

24. The Electoral Commission amended the Code following feedback from the consultation in Wales, and also took into account feedback received from political parties and other stakeholders following the consultations in both Scotland and England in order to make all the Codes consistent where possible.

25. A link to the Electoral Commission's consultation report is available at the following link:

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-consultations/response-consultation-feedback-codes-practice-spending-candidates-and-political-parties-senedd>

Regulatory Impact Assessment (RIA)

26. Relevant Welsh Subordinate Legislation for which a Regulatory Impact Assessment must be carried out is defined in Section 76(2)(b) of the Government of Wales Act 2006 as subordinate legislation that is made by the Welsh Ministers, the First Minister or the Counsel General and is required to be laid before the Senedd. This Code has been prepared by the Electoral Commission under Schedule 7, paragraph 14 of the National Assembly for Wales (Representation of the People) Order 2007. As such, the Code does not satisfy the section 76 criteria and a Regulatory Impact Assessment is therefore not required.

Agenda Item 6.1

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A.2 prescribes that a Statutory Instrument Consent Memorandum must be laid in relation to any relevant statutory instrument laid before the UK Parliament by UK Ministers. A “relevant statutory instrument” means a statutory instrument or draft statutory instrument laid before the UK Parliament by UK Ministers which makes provision in relation to Wales amending primary legislation within the legislative competence of Senedd Cymru (the Senedd).
2. Under S.O 30A.10, any member may table a Statutory Instrument Consent Motion before the Senedd seeking the Senedd’s agreement to the inclusion of a relevant provision in a relevant statutory instrument.
3. The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 were laid before Parliament on 18th January 2021 [and is now being laid before the Senedd]. A copy of the Regulations has been laid with this memorandum and can also be found at:

<http://www.legislation.gov.uk/id/ukdsi/2021/9780348219210>

Summary of the Statutory Instrument and its objective

4. The objective of the SI is to correct deficiencies in legislation arising from the UK leaving the European Union. This SI amends Schedule 11B to the Education Act 2002 and provisions in the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 to disapply the “country of origin” principle, and makes other consequential amendments to reflect the fact that the UK is no longer a member of the EU.
5. These corrections are required to ensure that the statute book will continue to operate effectively after exit.

Relevant provision to be made by the SI

6. The primary legislation being amended by these Regulations is the Education Act 2002 (c. 32) (“the 2002 Act”). The amendments provide for the disapplication of the “country of origin” principle in respect of certain provision in Schedule 11B to the 2002 Act.
7. Schedule 11B deals with offences for a breach of reporting restrictions under section 141G of the 2002 Act, namely reporting alleged offences by teachers. The effect of the amendments is to disapply the country of origin principle in respect of information society services which have potentially breached the reporting restrictions under section 141F.

8. It is Welsh Government's view that the provisions described in paragraphs 5 to 6 above fall within the legislative competence of the Senedd in so far as they relate to education.

Why it is appropriate for the SI to make this provision

9. In these exceptional circumstances, we consider it appropriate that the UK Government legislates on our behalf in this instance, for reasons of efficiency and expediency. There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Consenting to an England and Wales wide SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this unprecedented period of change.

Julie Morgan MS

Deputy Minister for Health and Social Services

19 January 2021

Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2021 No. 0000

CHILDREN AND YOUNG PERSONS

EDUCATION, ENGLAND AND WALES

ELECTRONIC COMMUNICATIONS

The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021

Made - - - - - ***

Coming into force - - - - - ***

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

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 and come into force on the day after the day on which they are made.

(2) Any amendment, repeal or revocation made by these Regulations has the same extent as the provision amended, repealed, or revoked.

Amendment of the Education Act 2002

2.—(1) The Education Act 2002(b) is amended as follows.

(2) In Schedule 11B (offence under section 141G: supplementary provisions)(c)—

(a) in paragraph 1(2)—

(i) for “The purpose of this Schedule is to comply with” substitute “In this Schedule “the E-Commerce Directive” means”;

(ii) omit “(“the E-Commerce Directive”)”;

(a) 2018 c. 16.

(b) 2002 c. 32.

(c) Schedule 11B was inserted by Schedule 4 to the Education Act 2011 (c. 21) and amended by S.I. 2012/1809.

- (b) omit paragraphs 2 and 3;
- (c) omit paragraph 7(2).

Amendment of the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005

3.—(1) The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005(a) are amended as follows.

- (2) In regulation 1—
 - (a) for the heading substitute “Citation and commencement”;
 - (b) omit paragraph (2).
- (3) In regulation 2 (interpretation)—
 - (a) in paragraph (1), omit the definitions of the following—
 - (i) “the Commission”;
 - (ii) “co-ordinated field”;
 - (iii) “country of origin”;
 - (iv) “EEA State”;
 - (v) “incoming electronic commerce activity”;
 - (vi) “incoming provider”;
 - (vii) “prohibited measure”;
 - (viii) “relevant EEA authority”;
 - (b) in paragraph (2), omit sub-paragraphs (a), (b) and (c).
- (4) Omit regulations 3 to 8.

Date

Name
Parliamentary Under Secretary of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (c) and (d) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations amend the Education Act 2002 (c. 32) (“the 2002 Act”) and the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (S.I. 2005/3222) (“the 2005 Regulations”). Together, the amendments provide for the disapplication of the “country of origin” principle in relation to information society services (defined in Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market) in respect of certain matters under the 2002 Act and the 2005 Regulations respectively.

(a) S.I. 2005/3222, amended by S.I. 2011/1043, 2012/1809; there are other amending instruments but none is relevant.

The amendments to the 2002 Act relate to provision in Schedule 11B to that Act (which supplements section 141G of that Act in relation to publishing a matter in breach of restrictions on reporting alleged offences by teachers in section 141F(3); those provisions extend to England and Wales only). The effect of the amendments is to disapply the country of origin principle in respect of information society services which have potentially breached the reporting restrictions under section 141F of the 2002 Act.

The amendments to the 2005 Regulations provide for the disapplication of the country of origin principle in relation to information society services in the application of sections 92 and 93 of the Adoption and Children Act 2002 (c. 38) (restriction on arranging adoptions) and sections 123 and 124 of that Act (restriction on advertising adoptions).

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

EXPLANATORY MEMORANDUM TO
THE ELECTRONIC COMMERCE DIRECTIVE (EDUCATION, ADOPTION AND CHILDREN) (AMENDMENT ETC.) REGULATIONS 2021

2021 No. 0000

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education 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 These Regulations are being made under the European Union (Withdrawal) Act 2018 to address deficiencies that arise from the United Kingdom’s withdrawal from the European Union (“EU”).
- 2.2 These Regulations amend two pieces of legislation, which stem from Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, commonly referred to as the Electronic Commerce Directive (“eCD”). The pieces of legislation amended by these Regulations are Schedule 11B to the Education Act 2002 (“2002 Act”), and the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (“the 2005 Regulations”).

Explanations

What did any relevant EU law do before exit day?

- 2.3 The eCD (which has been incorporated into the European Economic Area (EEA) Agreement) seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services (ISS) between EEA states and approximating EEA states’ laws concerning the regulation and provision of information society services. The EEA Agreement brings EU member states plus Iceland, Liechtenstein and Norway together in the single market. ISS refers to any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing and storage of data, at the individual request of a recipient of the service e.g. an internet service provider,
- 2.4 Article 3 of the Directive sets out the country of origin (“CoO”) principle in relation to the regulation of ISS. Generally, this principle provides that, within the “coordinated field”, ISS must be regulated by the law of the EEA state in which the provider of the services is established, rather than the law of the EEA state in which the services are received. This meant that, whilst the UK was a member of the EAA, where the UK regulated information society services within the co-ordinated field, such regulation must extend to information society services provided by persons established in the UK, even where such services are provided elsewhere in the EEA (Article 3(1)). In addition, for services falling within the “coordinated field”, the UK must not restrict the freedom of a person established in another EEA state to provide those services in the UK (Article 3(2)).

- 2.5 Schedule 11B to the 2002 Act and the 2005 Regulations gave effect to the CoO principle in two particular contexts. Specifically, they made provision relating to the prosecution of certain criminal offences (“relevant offences”) created by the 2002 Act and, further to modifications made by the 2005 Regulations, the Adoption and Children Act 2002 (“ACA 2002”).
- 2.6 The relevant provision in the 2002 Act relates to the offence at section 141G, which is committed where a person breaches a reporting restriction set out at section 141F in respect of a teacher who has been accused of an offence involving a pupil at their school.
- 2.7 The relevant provisions in the 2005 Regulations make provision in respect of a breach of section 92 of the ACA 2002, which imposes certain restrictions on arranging adoptions (section 93 creates the offence of breaching that prohibition). The 2005 Regulations also make provision in relation to a breach of section 123 of ACA 2002, which relates to the publishing or distributing of adoption-related advertisements (section 124 of the ACA 2002 creates the offence of breaching that prohibition).

Why is it being changed?

- 2.8 These Regulations amend the 2002 Act and the 2005 Regulations to remove provisions that are inappropriate following the UK’s withdrawal from the EU, ensuring the law continues to function effectively. The provisions in question engage the CoO principle, a reciprocal arrangement between EU Member States, which do not apply to the United Kingdom following its exit from the EU. The removal of these provisions is necessary, therefore, to reflect the loss of this reciprocity, and as a consequence to ensure that domestic legislation continues to operate effectively post-exit.

What will it now do?

- 2.9 The CoO principle is a reciprocal arrangement between EEA states, from which the UK no longer benefits as it has left the EU. These Regulations disapply that principle as it relates to the subject matter of Schedule 11B to the 2002 Act (which applies to England and Wales) and the 2005 Regulations (which apply across the whole of the UK).
- 2.10 The amendments will mean that a domestic ISS (i.e. an ISS based in England and Wales for the purposes of Schedule 11B to the 2002 Act, and the UK for the purposes of the 2002 Regulations) will no longer be automatically treated as having committed a relevant publishing offence in England and Wales, or as the case may be the UK if they publish prohibited information in an EEA state. They will instead be subject to the laws of the EEA state in which they are operating. Equally, it will mean that any EEA ISS will not automatically be exempt from prosecution in England and Wales or as the case may be the UK.
- 2.11 The changes will ensure equal treatment in England and Wales, or as the case may be, the UK for all ISS worldwide, should they commit a relevant offence. It will also mitigate the risk of any breach of World Trade Organisation obligations as treating ISS in other countries and domestic ISS less favourably than those from EEA ISS would likely breach World Trade Organisation Most Favoured Nation obligations.
- 2.12 These Regulations therefore disapply the CoO principle as it relates to the relevant provisions in the 2002 Act and the provisions in the ACA 2002 as modified by the

2005 Regulations. This means that post EU exit, domestic ISS will not be automatically treated as having committed a relevant offence domestically if they publish restricted information in an EEA state. It will also mean that EEA ISS will not automatically be exempt from prosecution for the relevant offences in the UK.

- 2.13 These Regulations do not revoke any criminal offences either in the UK or across the EEA but as explained in paragraph 2.10 they will affect where ISS are liable for prosecution if they commit a relevant offence. However, it will be the case that proceedings may be commenced or continued, after these Regulations come into force, in respect of a relevant offence committed before the coming into force of these Regulations.
- 2.14 The changes will ensure equal treatment in England and Wales or as the case may be the UK for all ISS worldwide should they commit a relevant offence.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was sent to the sifting committees on 25 June 2019. The sifting committees recommended that the instrument be upgraded to the affirmative procedure highlighting the removal of the country of origin (CoO) principle as being of policy interest. The amendments reflect the fact that CoO arrangements are necessarily reciprocal, and that such reciprocity no longer applies following the UK's exit from the European Union.
- 3.2 Proceeding under the affirmative procedure was approved by the then Parliamentary Under-Secretary of State for Children and Families, Kemi Badenoch.

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

- 3.3 This instrument is subject to Parliamentary procedure and will be scheduled for debate, and for the purpose of Standing Order No. 83P, does not apply in its entirety to England and Wales only.
- 3.4 The territorial application of this instrument varies between provisions.

4. Extent and Territorial Application

- 4.1 These Regulations extend to the United Kingdom.
- 4.2 These Regulations make amendments to Schedule 11B to the 2002 Act, which extend to England and Wales.
- 4.3 These Regulations also amend provision in the 2005 Regulations, which extend to the United Kingdom.
- 4.4 The territorial application of the Regulations is the same as their extent except to the extent that the Regulations amend the 2005 Regulations in relation to sections 92 and 93 of ACA 2002, in which case they apply to England and Wales only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under-Secretary of State for Children and Families, Vicky Ford has made the following statement regarding Human Rights:

“In my view the provisions of The Electronic Commerce Directive (Adoption and Children) Amendment Etc.) Regulations are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Government intends to remove provisions in all UK legislation which give effect to the CoO principle in the 2002 Act and 2005 Regulations
- 6.2 The changes are being made under powers in the European Union (Withdrawal) Act 2018.
- 6.3 These Regulations amend Schedule 11B to the 2002 Act. Section 141F of the 2002 Act prohibits information being published that identifies a teacher accused of committing a criminal offence by, and against, a pupil in a school in England and Wales. This restriction is predominately intended to ensure anonymity of a teacher who is the subject of the allegation pending prosecution for the offence, or the Secretary of State announcing a disciplinary investigation or a decision on the matter. Section 141G of the 2002 Act creates an offence of breaching the reporting restrictions in section 141F. Paragraphs 2 and 3 of Schedule 11B to the 2002 Act give effect to the CoO principle by providing (i) that a domestic ISS who publishes information in an EEA state other than England and Wales in breach of section 141F may be treated as having committed the offence in England and Wales, and may be tried for the offence in England and Wales, and (ii) that an ISS established in an EEA state other than England and Wales may not be prosecuted for an offence under section 141G.
- 6.4 These Regulations also amend the 2005 Regulations, which were made under section 2(2) of the European Communities Act 1972. The 2005 Regulations modified provision in ACA 2002 in relation to the place where prosecutions for certain criminal offences under ACA 2002 would be dealt with. The effect of the modifications made by the 2005 Regulations in respect of ACA 2002 is to provide that ISS established in the UK that publishes or distributes adoption related material in another EEA state in breach of section 92 or 123 of the Act (an offence under sections 93 and 124 respectively), may be treated as having committed an offence in the UK and may be tried for the offence domestically. Likewise, subject to certain exceptions, non-UK EEA ISS operating in the UK would not be liable to be prosecuted for an offence under section 93 or 124 of ACA 2002.
- 6.5 However, it will be the case that proceedings may be commenced or continued, after these Regulations come into force, in respect of a relevant offence committed before the coming into force of these Regulations. There is no specific provision to this effect in the Regulations, but that is the effect of section 16 of the Interpretation Act 1978 (general savings).

7. Policy background

What is being done and why?

- 7.1 The CoO principle is a reciprocal arrangement between EEA states. It no longer applies to the UK now the UK has left the EU. These Regulations will remove provisions giving effect to the CoO principle in the eCD. These changes are necessary so that it is clear where prosecutions for criminal offences created by the 2002 Act and ACA 2002 can be brought. The amendments will mean that domestic ISS will no longer be automatically treated as having committed a relevant publishing offence in

England and Wales or as the case may be the UK if they publish prohibited information in an EEA state. They will instead be subject to the laws of the EEA state in which they are operating. Equally, it will mean that EEA ISS will not automatically be exempt from prosecution in England and Wales or as the case may be the UK.

- 7.2 The changes will ensure equal treatment in the UK and, as the case may be, England and Wales for all ISS worldwide, should they commit a relevant publishing offence. It will also mitigate the risk of any breach of World Trade Organisation obligations as treating ISS in other countries and domestic ISS less favourably than those from EEA ISS would likely breach World Trade Organisation Most Favoured Nation obligations.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 Since these Regulations do no more than disapply the country of origin principle as it relates to the subject matter of Schedule 11B to the 2002 Act and the 2005 Regulations, there are no plans to undertake a consolidation exercise.

10. Consultation outcome

- 10.1 The Department has not undertaken a formal public consultation. DCMS (the department responsible for the eCD parent legislation) has consulted a wide range of stakeholders on the eCD more broadly.

11. Guidance

- 11.1 There is no guidance associated with the eCD and the legislation being amended, and no future guidance is planned. However, DCMS has published general guidance in relation to the eCD at <https://www.gov.uk/government/publications/ecommerce-eu-exit-guidance>.

12. Impact

- 12.1 There is no significant impact on the public sector.
- 12.2 There is no significant impact on the private sector.
- 12.3 A Regulatory Triage Assessment (RTA) has been completed. The RTA assesses low cost and having an equivalent annual net direct cost to business which is below the £5m (de-minimis limit) cost to business, therefore a Full Impact Assessment has not been completed.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses but does apply to non-profit making voluntary adoption agencies who charge local

authorities a fee to recruit, assess and approve families for children for whom adoption is the plan

- 13.2 The amendments will have little effect on voluntary adoption agencies. They will ensure the future operability of the legislation when the UK leaves the EU and ensure all ISS worldwide are treated equally in the UK if they commit a relevant publishing offence.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Debra Gilder at the Department for Education, email: debra.gilder@education.gov.uk can be contacted with any queries regarding the instrument in so far as it amends The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005.
- 15.2 Lisa Binks at the Department for Education, email: lisa.binks@education.gov.uk can be contacted with any queries regarding the instrument in so far as it amends Schedule 11B to the Education Act 2002.
- 15.3 John Myers, Deputy Director for the Adoption, Care Leavers, Children's Rights and Family Justice Division and Sue Whitehouse, Deputy Director for Independent Education Division at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Vicky Ford MP, Parliamentary Under-Secretary of State for Children and Families at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Appropriateness statement

- 1.1 The Parliamentary Under-Secretary of State for Children and Families, Vicky Ford has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the amending statutory instrument - *The Electronic Commerce Directive (Education, Adoption and Children) (Amendment Etc.) Regulations 2021* - does no more than is appropriate.”

- 1.2 This instrument corrects deficiencies in both the 2002 Act and 2005 Regulations by disapplying the country of origin (CoO) principle in relation to the relevant offences. The changes are minimal but necessary to ensure similar treatment of all ISS now the UK has left the EU and are in line with the intention that underpins the EU (Withdrawal) Act which is to maximise certainty for individuals and businesses.
- 1.3 The changes are consistent with the approach taken by the Department for Digital, Culture, Media and Sport who is responsible for Government policy in relation to the eCD.

2. Good reasons

- 2.1 The Parliamentary Under-Secretary of State for Children and Families, Vicky Ford 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 making this instrument. The CoO principle is a reciprocal arrangement between the UK and other member States, which no longer applies to the UK now that the UK has left the EU. The instrument reflects the loss of this reciprocity and ensures that domestic legislation continues to operate effectively post-exit. It will ensure equal treatment in the UK/England and Wales for all ISS worldwide, should they commit a relevant publishing offence.”

3. Equalities

- 3.1 The Parliamentary Under-Secretary of State for Children and Families, Vicky Ford 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.

5. Criminal offences

- 5.1 Both the 2002 Act and the 2005 Regulations make provision for where prosecutions for the relevant offences can be brought.
- 5.2 The amending SI will mean that domestic ISS will no longer be automatically treated as having committed the offence in the UK or, as the case may be, England and Wales if they publish prohibited information in European Economic Area (EEA) states, and any ISS established in EEA states will not automatically be exempt from prosecution in the UK / England and Wales. However, it will be the case that proceedings may be commenced or continued, after these Regulations come into force, in respect of a relevant offence committed before the coming into force of these Regulations. There is no specific provision to this effect in the Regulations, but that is the effect of section 16 of the Interpretation Act 1978 (general savings).

Julie Morgan AS/MS
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol
Deputy Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Our ref MA-P JM/0048/21

Mick Antoniw AS/MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

SeneddLJC@senedd.wales

19 January 2021

Dear Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the Senedd in respect of the Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021, as required by Standing Order 30A (SO30A).

I am also writing to inform you that I am not minded to table a motion for a debate under SO30A.10 about this SI. I have reached this decision on the basis that this SI is restricted to making corrections to the deficiencies in law that arise as a result of the UK having left the EU. The provisions of the SI are technical in nature, introduce no new policy, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Yours sincerely

Julie Morgan AS/MS
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol
Deputy Minister for Health and Social Services

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Gohebiaeth.Julie.Morgan@llyw.cymru
Correspondence.Julie.Morgan@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.

Pack Page 146
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

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021
DATE	19 January 2021
BY	Rebecca Evans MS, Minister for Finance and Trefnydd

The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021

The Law which is being amended:

The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (“the Regulations”) amend the following pieces of legislation:

- The Education Act 2002 (2002 Act)
- The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (2005 Regulations)

The Regulations contain provisions which are considered to fall within devolved competence.

The purpose of the amendments

The Regulations make technical amendments to the 2002 Act and the 2005 Regulations to correct provisions which are deficient following the UK’s withdrawal from the EU, ensuring the law continues to function effectively. The provisions in question engage the country of origin principle, a reciprocal arrangement between EU Member States, which no longer applies to the United Kingdom following its exit from the EU. The amendment of these provisions is necessary, therefore, to reflect the ending of this reciprocity, and to ensure that domestic legislation continues to operate effectively post-exit.

The Electronic Commerce Directive (eCD) regulates certain legal aspects of “information society services” across the European Economic Area (EEA) that aim to remove obstacles to cross-border online services in the European Union (EU) and to provide legal certainty to business and citizens in cross-border online transactions. In effect, it creates a mutual recognition scheme.

The eCD makes specific provision referred to as the 'Country of Origin' (CoO) principle. In the field of electronic commerce, this is a reciprocal arrangement which means that where an online information society service provider (ISSP) operates from an establishment in an EEA state, the law of that particular state will apply to the ISSP's activities, rather than the law of the EEA state in which the services are received.

This reciprocal arrangement no longer applies to UK based ISSPs as the UK has left the EEA and the transition period is over. This means that UK based ISSPs are required to comply with the rules that govern online activities in each EEA state in which they operate, and EEA based ISSPs will be required to comply with the law of the UK when providing services in the UK. ISSPs from EEA states operating in the UK will therefore be liable to prosecution in the UK for offences established by the Adoption and Children Act 2002 (sections 92 and 123) and Schedule 11B to the 2002 Act, and ISSPs based in the UK that commit such offences in an EEA state will be liable to prosecution in that EEA State.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here:

<http://www.legislation.gov.uk/id/ukdsi/2021/9780348219210>

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 to retain operability of the legislation following EU exit. The amendments have been considered fully; and there is no divergence in policy. These technical 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.

UK MINISTERS ACTING IN DEVOLVED AREAS

215 - Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021

Laid in the UK Parliament: 18 January 2021

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
SICM under SO 30A (because amends primary legislation)	SICM(5)39

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	Not known

Background

The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (“the Regulations”) are proposed to be made by the United Kingdom (“UK”) Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018.

Summary

The Regulations”) amend the following pieces of legislation:

- The Education Act 2002 (“2002 Act”)
- The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (“2005 Regulations”)

The Regulations contain provisions which are considered to fall within devolved competence in respect of the legislative competence of the Senedd in so far as it relates to education.

The Regulations make technical amendments to the 2002 Act and the 2005 Regulations to correct provisions which are deficient following the UK's withdrawal from the European Union ("EU"), ensuring the law continues to function effectively.

The provisions in question engage the 'Country of Origin' ("CoO") principle, a reciprocal arrangement between EU Member States, which no longer applies to the UK following its exit from the EU. These Regulations disapply that principle as it relates to the subject matter of Schedule 11B to the 2002 Act (which applies to England and Wales) and the 2005 Regulations (which apply across the whole of the UK). The amendment of these provisions is necessary, therefore, to reflect the ending of this reciprocity, and to ensure that domestic legislation continues to operate effectively post-exit.

Schedule 11B to the 2002 Act and the 2005 Regulations gave effect to the CoO principle in two particular contexts. Specifically, they made provision relating to the prosecution of certain criminal offences created by the 2002 Act and, further to modifications made by the 2005 Regulations to the Adoption and Children Act 2002 ("ACA 2002").

The relevant provision in the 2002 Act relates to the offence at section 141G, which is committed where a person breaches a reporting restriction set out at section 141F in respect of a teacher who has been accused of an offence involving a pupil at their school. The relevant provisions in the 2005 Regulations make provision in respect of a breach of section 92 of the ACA 2002, which imposes certain restrictions on arranging adoptions (section 93 creates the offence of breaching that prohibition). The 2005 Regulations also make provision in relation to a breach of section 123 of the ACA 2002, which relates to the publishing or distributing of adoption-related advertisements (section 124 of the ACA 2002 creates the offence of breaching that prohibition).

The Electronic Commerce Directive ("eCD") regulates certain legal aspects of "information society services" across the European Economic Area ("EEA") that aim to remove obstacles to cross-border online services in the EU and to provide legal certainty to business and citizens in cross-border online transactions. In effect, it creates a mutual recognition scheme.

The eCD makes specific provision as to the CoO principle. In the field of electronic commerce, this is a reciprocal arrangement which means that where an online information society service provider (ISSP) operates from an establishment in an EEA state, the law of that particular state will apply to the ISSP's activities, rather than the law of the EEA state in which the services are received.

This reciprocal arrangement no longer applies to UK based ISSPs as the UK has left the EEA and the transition period is over. This means that UK based ISSPs are required to comply with the rules that govern online activities in each EEA state in which they operate, and EEA based ISSPs will be required to comply with the law of the UK when providing services in the UK. ISSPs from EEA states operating in the UK will therefore be liable to prosecution in the UK for offences established by the ACA 2002 and the 2002 Act, and ISSPs based in the UK that commit such offences in an EEA state will be liable to prosecution in that EEA State.

Statement by Welsh Government

Legal Advisers make the following comment in relation to the Welsh Government's statement dated 19 January 2021 regarding the effect of these Regulations.

Whilst the statement asserts, "The Regulations contain provisions which are considered to fall within devolved competence", it does not particularise which area of devolved competence is engaged. It is noted that the relevant Statutory Instrument Consent Memorandum (laid on 19 January 2021) provides further detail on this regard: "It is the Welsh Government's view that the provisions described in paragraphs 5 to 6 above fall within the legislative competence of the Senedd in so far as they relate to education", (N.B. the internal references are incorrect, and should read paragraphs 6 to 7). The relevant paragraphs refer to Schedule 11B, and sections 141F and 141G, of the 2002 Act in so far as they relate to education.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum in respect of these Regulations on 19 January 2021, because the Regulations amend primary legislation within the legislative competence of the Senedd (in this case, Schedule 11B of the 2002 Act in so far as it relate to education).

However, the Welsh Government is not proposing to table a motion to debate the SICM in Plenary.

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

Agenda Item 7.1


Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee

Mick.Antoniw@assembly.wales

25 January 2021

Dear Mick

The Official Controls (Temporary Measure) (Covid-19) (Amendments) Regulations 2021

The above titled SI is required to continue and reintroduce temporary easements in relation to certain official controls which were introduced in 2020 by the European Commission, in response to the Covid-19 crisis.

The easements will allow for the performance of official controls in compliance with wider social distancing guidelines, and also help deal with staff shortages, which may have occurred as a result of Covid-19.

In relation to Wales, the amendment provides competent authorities with the ability to introduce temporary measures. The SI will be subject to the negative procedure and it is proposed by the Department for Environment, Food and Rural Affairs that it is laid before Parliament on 21 January with a commencement date of 31 January.

I am writing to let you know as these amendments are temporary emergency easements, I give my consent, pursuant to Article 3(2B)(b)(i) of the retained Regulation (EU) 2017/625, to the Secretary of State to make this statutory instrument in relation to Wales.

I am copying this letter to the Counsel General and Minister for European Transition and Minister for Mental Health, Wellbeing and Welsh Language.

Regards



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

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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.

Agenda Item 7.2

Ministry
of Justice

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

MoJ Ref: 84430

28 January 2021

Dear Mick,

INVITATION TO GIVE EVIDENCE TO THE INQUIRY INTO MAKING JUSTICE WORK IN WALES

Thank you for your letter dated 22 December.

I would be delighted to give evidence to the Senedd's Legislation, Justice and Constitution Committee, in respect of its inquiry into Making Justice Work in Wales. My officials will be in touch with yours to make the arrangements for the virtual evidence session.

As you are aware, I care very much about justice and the legal sector in Wales and look forward to discussing this with you and your Committee colleagues.

Yours ever



RT HON ROBERT BUCKLAND QC MP

The Rt Hon Robert Buckland QC MP
Lord Chancellor and Secretary of State for Justice

22 December 2020

Dear Lord Chancellor

Making Justice work in Wales: Invitation to give evidence

I wrote to you on 19 June 2020 in relation to our Committee inquiry into **Making Justice work in Wales**. At the time, I noted that this work follows on from the publication of the report of the **Commission on Justice in Wales**.

As indicated in my previous letter, and as part of our inquiry, I would like to invite you to a virtual meeting of the Committee in February 2021. The Committee is mindful of your obligations as Lord Chancellor and Secretary of State for Justice. We have therefore identified two dates on which we could accommodate such a session - the morning of the 1st and 8th of February 2021.

I would be grateful if you could confirm at your earliest convenience whether you would be available to attend on either of these dates, so that our officials can take forward the necessary preparations.

I look forward to hearing from you.

Yours sincerely



Mick Antoniw AM
Chair

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



Agenda Item 10

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

Document is Restricted



Mick Antoniw MS
Chair of the Legislation,
Justice and Constitution Committee

26 January 2021

Dear Mick

Thank you for your letter of 23 December regarding the Supplementary Legislative Consent Memorandum laid before the Senedd on 4 December 2020. Please accept my apologies for the delayed response.

I have responded to the Committee's questions below:

1. **We note that you consider new clause 107 and new Schedule 16 to be within the legislative competence of the Senedd. Given this view, please can you say if you have:**
 - a. requested that the UK Government table an amendment to the Bill to give the Welsh Ministers the same powers as the Secretary of State in relation to Wales?
 - b. pursued with the UK Government any amendments to the Bill to ensure the Welsh Ministers' involvement in the making of regulations that relate to Wales under Schedule 16?

We do not intend to pursue any amendments to this provision.

2. **Please can you elaborate on why you consider that new clause 107 and new Schedule 16 relate to matters within devolved competence when DEFRA say that it relates to the reservation in section C1, paragraph 65 of Schedule 7A to the *Government of Wales Act 2006* (the creation, operation, regulation and dissolution of types of business association)?**

My officials' analysis of clause 107 is it relates to the protection of forestry environments and tackling climate change and thus makes provisions within areas of devolved competence. The UK Government's interpretation suggests the provisions are caught by the paragraph 65 reservation under Schedule 7A for "the creation, operation, regulation and dissolution of types of business associations", because they regulate certain activities of business associations. This interpretation has the possibility of having wide-ranging effects on the devolved settlement and could effectively bring any business-facing regulation within scope of the reservation. I do not agree this is the correct interpretation of the reservation.

3. Are there ongoing discussions between the Welsh and UK Government to try resolve the dispute as regards new clause 107 and new Schedule 16? If so, please can you provide the detail of such discussions?

I wrote to the lead Minister for the Bill, Minister Pow, on 4 December to inform her of my intention to lay a Supplementary Legislative Consent Memorandum in respect of clause 107.

4. Please can you provide us with all copies of correspondence between the Welsh and UK Governments about section 107 and Schedule 16 of the Bill (including any responses to your letters of 8 September and 4 December 2020)?

I have not yet responded to Minister Pow's most recent correspondence; I will seek to provide the committee with the requested copies as soon as possible and in line with relevant GDPR rules.

5. If an agreement on the dispute as regards new clause 107 and new Schedule 16 cannot be reached, what further action do you intend to take?

I do not intend to take any further action beyond laying the Supplementary Legislative Consent Memorandum which states my view the UK Government, in this regard, is legislating in an area of Welsh devolved competence.

6. In relation to the concurrent plus functions in the Bill, we note that the Environment Bill is not covered by the Government of Wales Act 2006 (Amendment) Order 2021 that was laid before Senedd Cymru on 10 December 2020. Can you provide an update on how the Welsh Government intends to address the issues around the concurrent plus functions in the Bill?

You are correct to note the Order did not cover the UK Environment Bill. Due to the suspension of the Bill proceedings at the onset of the Covid-19 pandemic, the Bill fell outside the scope of the Order. Officials have since secured confirmation an amendment will be brought forward to ensure the concurrent functions within the UK Bill are not caught by the restrictions of Schedule 7B to the Government of Wales Act 2006 relating to Minister of the Crown functions. I have received correspondence from Minister Pow reiterating this commitment.

7. Please could you explain in respect of your response to the first bullet of recommendation 20:

- The precise nature of the agreement between officials i.e. what has been agreed and the status of the agreement?
- Whether the agreement between officials, and its content, has been signed of by Ministers of both the Welsh and UK Governments?
- Why it was considered appropriate to not discuss a concurrent plus power with UK Ministers?

Clause 83 (previously Clause 81) does not establish any new policy, instead it provides powers needed to replace those under section 2(2) European Communities Act 1972 in this policy area. As such, there is no specific agreement required as to policy approach.

These powers are required to address legislative gaps so as to enable the revision and updating of the list of priority substances for surface water, groundwater and environmental quality standards. As previously stated in my response, subsection 4 of the provision provides the Secretary of State may only exercise such functions in respect of Wales' cross-border river basins, available to Welsh Ministers under Clause 84 (previously Clause 82), with the consent of Welsh Ministers.

Concurrent plus powers were covered in the official level inter-Governmental discussions concerning the legislative carve out, and these clauses did not require specific Ministerial inter-governmental discussion in particular.

With reference to your second point, I am not sighted on what UK Government Ministers may have signed off. I was briefed and agreed the concurrent approach in February 2020.

The issue surrounding the appropriate carve out of Schedule 7B of GOWA was present in all concurrent plus functions across the UK Bill; therefore we had no need to conduct specific discussions on each specific policy area. The reason these water provisions appear at face value differently, with separate clauses for the UK Administrations, is due to the various complexities of the area by reference to cross-border river basins and differing legislative regimes for the separate jurisdictions.

Regards

A handwritten signature in cursive script, reading "Lesley Griffiths". The signature is written in black ink and is positioned centrally on the page.

Lesley Griffiths AS/MS

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

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs

23 December 2020

Dear Lesley

UK Environment Bill

Thank you again for your **letter dated 28 August 2020**, in which you responded to the recommendations we put to you in our **report on the Legislative Consent Memorandum for the UK Environment Bill** (first report).

At our meeting on 14 December 2020, we considered the **Supplementary Legislative Consent Memorandum (Memorandum No.2)** which you laid before the Senedd on 4 December 2020.


You will be aware that the Business Committee has **set us a reporting deadline** of 4 February 2021 for the Memorandum No.2. Given the relatively short time available for committee consideration, it would be helpful if you could respond to the questions set out below.

1. We note that you consider new clause 107 and new Schedule 16 to be within the legislative competence of the Senedd. Given this view, please can you say if you have:
 - a. requested that the UK Government table an amendment to the Bill to give the Welsh Ministers the same powers as the Secretary of State in relation to Wales?
 - b. pursued with the UK Government any amendments to the Bill to ensure the Welsh Ministers' involvement in the making of regulations that relate to Wales under Schedule 16?



2. Please can you elaborate on why you consider that new clause 107 and new Schedule 16 relate to matters within devolved competence when DEFRA say that it relates to the reservation in section C1, paragraph 65 of Schedule 7A to the *Government of Wales Act 2006* (the creation, operation, regulation and dissolution of types of business association)?



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3. Are there ongoing discussions between the Welsh and UK Government to try resolve the dispute as regards new clause 107 and new Schedule 16? If so, please can you provide the detail of such discussions.
4. Please can you provide us with all copies of correspondence between the Welsh and UK Governments about section 107 and Schedule 16 of the Bill (including any responses to your letters of 8 September and 4 December 2020)?
5. If an agreement on the dispute as regards new clause 107 and new Schedule 16 cannot be reached, what further action do you intend to take?
6. In relation to the concurrent plus functions in the Bill, we note that the Environment Bill is not covered by the Government of Wales Act 2006 (Amendment) Order 2021 that was laid before Senedd Cymru on 10 December 2020. Can you provide an update on how the Welsh Government intends to address the issues around the concurrent plus functions in the Bill?

We intend to address concerns that arise with your response of 28 August 2020 in our report on the Supplementary LCM. However, we would like to raise one issue with you regarding the response you gave to our recommendation 20, which in part asked for an explanation as to why you had not discussed clause 81 with UK Ministers. Your response stated that “Engagement at Official level has been sufficient to secure agreement on” clauses 81 and 82.

7. Please could you explain in respect of your response to the first bullet of recommendation 20:
 - the precise nature of the agreement between officials i.e. what has been agreed and the status of the agreement?
 - whether the agreement between officials, and its content, has been signed of by Ministers of both the Welsh and UK Governments?
 - why it was considered appropriate to not discuss a concurrent plus power with UK Ministers?

We would be grateful to receive a response by no later than 13 January 2021.

Yours sincerely,



Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

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



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



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair of Legislation, Justice and Constitution Committee

28 August 2020

Dear Mick

Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill

Thank you for providing a copy of the Legislation, Justice and Constitution Committee's report and recommendations on the Legislative Consent Memorandum for the UK Environment Bill.

Please find the Welsh Government's response to the report's recommendations at Annex A.

I would like to take this opportunity to update the Committee on the current situation with the UK Parliament and Senedd Cymru's consideration of the Bill. The Bill was being considered by a public bill committee in the House of Commons but sittings of the Committee were suspended on 18 March until further notice. The Committee is now scheduled to report by Tuesday 29 September. There has been no update on when the parliamentary scrutiny of the Bill will likely recommence.

Given the uncertainty in the UK Bill timetable, no legislative consent motion debate has been scheduled for the Senedd at present. I now expect this to take place after summer recess.

Regards

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

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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.

Annex A

Welsh Government Responses to Recommendations from the Legislation, Justice and Constitution Committee on the Legislative Consent Memorandum for the UK Environment Bill

Recommendation	Welsh Government Response
<p>Recommendation 1.</p> <p>The Minister should respond to all recommendations contained in this report as a matter of urgency and in good time ahead of the Welsh Government tabling the relevant legislative consent motion.</p>	<p>Accept</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 2.</p> <p>The Minister should:</p> <ul style="list-style-type: none"> ▪ state clearly which clauses of the UK Bill are in policy areas with identified common frameworks; ▪ explain how those clauses relate to the relevant planned common frameworks, in full or in part; ▪ state when a common framework in those policy areas will come forward and identify the mechanisms by which it will be achieved. 	<p>Accept</p> <p>The Bill includes provisions for chemicals and waste regulation. These are two policy areas where frameworks are being developed, namely the Chemicals Regulation (including Pesticides) Framework and the Waste and Resources Framework.</p> <p>The Bill does not provide a legislative basis to establish these frameworks. The frameworks are currently being developed on the basis they will be non-legislative in nature, likely to be underpinned by Ministerial Concordats.</p> <p>Once implemented, the frameworks may provide appropriate structures for the four governments to discuss the development of policy and legislation relating to those framework areas. For example, through inter-governmental groups established under the frameworks.</p> <p>Discussions are continuing between the four governments to develop these two frameworks. In particular, work is progressing on the draft Framework Outline Agreements which set out the proposed decision-making and governance arrangements. The aim is by the end of 2020 these frameworks will have a Framework Outline Agreement in place, which has received provisional confirmation by Ministers, and are operable in draft form.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 3.</p>	<p>Accept</p>

<p>The Minister should set out clearly, and with an appropriate explanation, which clauses of the UK Bill, as they apply to Wales:</p> <ul style="list-style-type: none"> ✦ are necessary to meet legal obligations arising from the UK's departure from the EU; ✦ are related to the UK's departure from the EU but are not necessary to meet legal obligations 	<p>None of the clauses in the Bill, as they apply to Wales, are necessary to meet legal obligations arising from the UK's departure from the EU</p> <p>The following clauses are related to the UK's departure from the European Union but are not necessary to meet legal obligations.</p> <p><u>Part 3</u> Clause 52 and Schedule 9 - Under Article 4 of the EU's Single Use Plastic Directive (DIR (EU) 2019/904), Member States have an obligation to achieve a 'substantial and sustained' consumption reduction in single use plastic cups for beverages and food container numbers. The Article does not stipulate how this reduction should be achieved, however suggested mechanisms includes the introduction of financial charges or levies. The single use carrier bag charge has shown the effectiveness of using this approach.</p> <p>Whilst the UK had voted to leave the EU at the point the Directive was introduced, there were ongoing uncertainties at the time of our future obligations and the details of any potential agreement with the EU. Despite this, the Directive's aim of reducing the environmental impact of single use plastics was supported by the Welsh Government and reflected our ambitions of moving Wales towards a circular economy. On this basis, a decision was made for Welsh Ministers to seek charging powers in the UK Environment Bill to enable us to maintain parity with other EU member states and to allow for the timely introduction of regulations in the absence of a suitable Welsh Bill.</p> <p>Clause 57 – Hazardous waste: The Hazardous Waste (Wales) Regulations 2005 were made under section 2(2) of the European Communities Act 1972. This Clause provides a power to allow Welsh Ministers to continue to be able to amend or replace the 2005 Regulations to ensure the manner in which hazardous waste is regulated prevents significant harm to the environment and human health.</p> <p>Clause 66 – Fixed Penalty Notices: This power is needed as there is no power in the Environmental Protection Act 1990 to amend the level of the FPNs relating to fly-tipping and householder duty of care. Such amendments have, in the past, been made under section 2(2) of the European Communities Act, which has now been repealed and cannot be used after the end of the Implementation Period. Without this new power, Welsh Ministers will be unable to amend existing penalties for the FPNs relating to fly-tipping and householder duty of care.</p> <p><u>Part 8</u> Clause 125 and Schedule 19 (REACH) are related to the UK's departure from the EU, and are considered necessary to enable Ministers to keep the UK/GB REACH regime up-to-date</p>
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	<p>(including mirroring changes to EU REACH where appropriate) following the end of the implementation period.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 4.</p> <p>The Minister should set out clearly which clauses of the UK Bill as they apply to Wales are not covered by recommendation 3.</p>	<p>Accept</p> <p>The following clauses, as they apply to Wales, are not covered by recommendation 3:</p> <p><u>Part 1</u> Clause 19 - Statements about Bills containing new environmental law and Clause 43 - Meaning of environmental law (as it relates to clause 19).</p> <p><u>Part 3</u> Clause 47 and Schedule 4 – Producer Responsibility Obligations Clause 48 and Schedule 5 – Producer Responsibility Disposal Costs Clauses 49 – 51 – Resource efficiency Clause 55: Electronic Waste Tracking Clause 60 – Regulations made under the Environmental Protection Act 1990 Clause 61 – Powers to make charging schemes Clause 63 and Schedule 10 – Enforcement Powers Clause 65 – Littering Enforcement¹ Clause 67 – Regulation of Polluting Activities</p> <p><u>Part 4</u> Clause 69 – Local Air Quality Management Clause 70 – Smoke Control Areas</p> <p><u>Part 5</u> Clauses 75 and 76 – Plans and proposals Clause 77 – Authority’s power to require information Clause 79 – Electronic service of documents Clause 81 – Water Quality Secretary of State Powers Clause 82 – Water Quality Welsh Ministers Powers</p> <p>Clause 85 – Water Quality interpretation Clauses 87 – 89 – Land drainage</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 5.</p> <p>The Minister should explain why it was necessary to include the clauses identified in</p>	<p>Accept</p> <p>The former First Minister set out the criteria where it would be acceptable to use a UK Bill to take forward Welsh Government policy. These continue to be the policy approach used when determining the appropriateness of using UK Bills.</p>

<p>recommendation 4 within the UK Bill, rather than within a Welsh Bill in the Sixth Senedd</p>	<p>Powers requested for Welsh Ministers within the UK Environment Bill adhere to this criteria as either:</p> <ul style="list-style-type: none"> • The UK Government’s legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Assembly; • The interconnected nature of the relevant Welsh and English administrative systems mean it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument. <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 6</p> <p>The Minister should explain why an Environmental Bill was not prioritised in any of the Welsh Government’s annual legislative programmes to cover:</p> <ul style="list-style-type: none"> ✦ environmental governance, including an appropriate body for Wales, arising from the UK’s departure from the EU; ✦ other non-Brexit related environmental policies that now appear within the UK Bill. 	<p>Accept</p> <p>The First Minister announced changes to the Welsh Government’s legislative programme for the remainder of this Senedd on 15 July. He reflected on the pressures that the end of transition and Covid-19 had put on the programme and that difficult decisions to remove Bills from the programme had been required based on priorities.</p> <p>Unfortunately, this meant legislation on environmental principles and governance could not be brought forward this term, but the First Minister reiterated his commitment to do so.</p> <p>As I have previously noted, the Welsh Government has finite resources for developing its legislative programme. There are always more proposals requiring primary legislation than there is the capacity to deliver. Decisions on which proposals are to be progressed and ultimately included in a legislative programme are taken by Cabinet, taking into consideration a number of factors such as the Government’s priorities across all its responsibilities, the relative maturity of development of a proposal, its likely size and timescale for delivery and the other policy and legal pressures in a portfolio which might impact on delivery.</p> <p>My officials are currently developing and preparing interim measures for receiving complaints about Environmental Governance in Wales to take effect by the end of the transition period for leaving the EU on 31 December 2020.</p> <p>In relation to principles, whilst we have a set of environmental principles in our Environment Act, the Welsh Government has already committed to continue to apply the four EU environmental principles in policy making until we include these in legislation.</p>

	<p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 7</p> <p>The Minister should confirm that it remains the Welsh Government’s policy to create a Welsh environmental governance body using primary legislation.</p>	<p>Accept</p> <p>The First Minister announced changes to the Welsh Government’s legislative programme for the remainder of this Senedd on 15 July. He reflected on the pressures the end of transition and Covid-19 had put on the programme and difficult decisions to remove Bills from the programme had been required based on priorities.</p> <p>Unfortunately, this meant legislation on environmental principles and governance could not be brought forward this term, but the First Minister reiterated his commitment to do so.</p> <p>My officials are currently developing and preparing interim measures for receiving complaints about Environmental Governance in Wales to take effect by the end of the transition period for leaving the EU on 31 December 2020.</p> <p>In relation to principles, whilst we have a set of environmental principles in our Environment Act, the Welsh Government has already committed to continue to apply the four EU environmental principles in policy making until we include these in legislation.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 8.</p> <p>The Minister should confirm that primary legislation to create a Welsh environmental governance body will include standalone sections, in line with its commitment to consolidated legislation, and will not amend the UK Bill as a means of delivering the Welsh Government’s policy objectives.</p>	<p>Accept</p> <p>The intention is for Wales to have its own Welsh Environmental Principles and Governance Bill, the provisions of which will provide the necessary framework and mechanics for a Welsh environmental governance body, along with legislating to enshrine the four EU environmental principles into Welsh law.</p> <p>At our current stage of policy development we do not envisage amending the UK Bill as a means of delivering the Welsh Government’s policy objectives.</p> <p>However it may be necessary to make consequential amendments to the UK Bill once a Welsh Bill is in place to ensure both pieces of legislation are able to operate smoothly alongside one another.</p> <p>Financial Implications – There are no additional financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 9.</p>	<p>Accept</p>

<p>The Minister should explain how she will seek amendments to the UK Bill to reflect the outcome of relevant Welsh Government consultation exercises that have closed after the UK Bill's introduction to the UK Parliament.</p>	<p>Should the outcome of recent consultations result in a need to change the proposed provisions in the Bill, I will request the UK Government seeks the necessary amendments on our behalf.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 10.</p> <p>The Minister should seek an amendment to the UK Bill such that the clauses covered by recommendation 4 are subject to a sunset clause requiring them to expire after a specified date.</p>	<p>Reject</p> <p>The First Minister announced changes to Government's legislative programme for the remainder of this Senedd on 15 July. He reflected on the pressures the end of transition and Covid-19 had put on the programme and difficult decisions to remove Bills from the programme had been required based on priorities.</p> <p>We usually consider sunset clauses in UK legislation where there is a clear timetable for replacement of Welsh provisions and as, we do not have an Environment Bill scheduled in this term, we do not have sufficient certainty.</p>
<p>Recommendation 11</p> <p>The Minister should explain: ✦ why consent is required for clauses 21, 45, 46, 78, 90, 100, 115, 122 and 124 of the UK Bill in so far as they relate to the general provisions in Part 8 of the UK Bill; ✦ why information included in her letter of 14 May 2020 in response to Q11 is not included in the LCM with appropriate commentary and in accordance with Standing Order 29;</p> <p>✦ why her response to Q11 does not refer to clauses 55, 57, 60, 61, 65, 66, 67, 75-77, 79, 81, 82, 85 and 87-89.</p>	<p>Accept</p> <p>The list provided in response to Q11 was included in error.</p> <p>The nature of the general provisions means that we cannot recite with certainty what their specific application will be in all cases, and therefore what specific nexus they might have with a 'relevant provision'.</p> <p>However, to the extent that the general provisions in clauses 126 to 133 either concern or else may be exercised or understood in such a way as to bite on a relevant provision elsewhere in the Bill (i.e. on clauses 19, 43, 47 to 52, 55, 57, 60 to 61, 63, 65 to 66 to 67, 69 to 70, 75 to 77, 79, 81 to 82, 85, 87 to 89 and 125), we believe they constitute a 'relevant provision' for the purposes of Standing Order 29 in their own right.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 12.</p>	<p>Accept</p>

<p>The Minister should provide information, in either a supplementary document or within any supplementary LCM, justifying why it is appropriate to take each of the delegated powers for the Welsh Ministers contained within the UK Bill, and the choice of procedure for each power.</p>	<p>The information provided in Annex A of the LCM fulfilled the requirements of SO29.3:</p> <p>“A Legislative Consent Memorandum must” SO29.3(iv):“where the Bill contains any relevant provision conferring power to make subordinate legislation on Welsh Ministers, set out the Senedd procedure (if any) to which the subordinate legislation to be made in the exercise of the power is to be subject;”</p> <p>I have since provided the additional information requested to the Committee in my letter of 14 May.</p> <p>In the interests of ensuring ease of access to all of the information, I will instruct my officials to collate the information into one document and publish this alongside the LCM after summer recess.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation</p>
<p>Recommendation 13.</p> <p>The Minister should confirm that she requested the procedure to be used for each delegated power for the Welsh Ministers contained in the UK Bill and that in each case her request was granted.</p>	<p>Accept</p> <p>For each delegated power for the Welsh Ministers, I agreed the procedure to be used.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation</p>
<p>Recommendation 14.</p> <p>The Minister should clarify why it was necessary to include regulation-making powers in the UK Bill under clause 52 and Schedule 9 rather than in a future Welsh Bill covering recycling policy as part of its wider environmental and sustainability agenda.</p>	<p>Accept</p> <p>As noted in Recommendation 3, the Welsh Government sought the inclusion of powers via the UK Bill as this provided the most suitable vehicle at the time, to enable us to meet potential EU Directive obligations. Whilst the terms of the UK’s exit currently mean we are no longer legally obligated to transpose the Directive or meet the required timescales, the Welsh Government still aims to match its ambitions in relation to single use plastic.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 15</p> <p>The Minister should explain why she is</p>	<p>Accept.</p> <p>I refer the Committee to my responses to recommendation 3 and 5.</p>

<p>taking regulation-making powers in the UK Bill without a clear indication of when she intends to use them and therefore why they could not be included in a Welsh Environmental Bill within the Sixth Senedd.</p>	<p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 16</p> <p>The Minister should seek an amendment to the UK Bill applying the affirmative procedure to the making of regulations under section 33ZB(10A) and 34ZB(8A) of the <i>Environmental Protection Act 1990</i>, as inserted by clause 66 of the UK Bill.</p>	<p>Reject</p> <p>Given this is an updating power (substituting one figure for another), negative procedure is deemed appropriate given its limited scope. The process of amending the penalty amounts requires secondary legislation and are subject to an appropriate assessment of impacts to ensure the fixed penalty notices are set at a suitable level.</p>
<p>Recommendation 17</p> <p>The Minister should explain:</p> <ul style="list-style-type: none"> ▪ why it is so important to include clause 70 as it applies to Wales in the UK Bill, rather than in the Clean Air Bill to be introduced in the Sixth Senedd; ▪ without these powers, when the Welsh Ministers would next be due to amend regulations relating to smoke control areas using their powers under the <i>Clean Air Act 1993</i>. 	<p>Accept</p> <p>In relation to air quality, specifically clause 70 and Schedule 12 to the UK Environment Bill, the rationale for using the UK Environment Bill is to bring about benefits for both manufactures and consumers as soon as possible. Businesses and manufacturers will benefit as the delay between obtaining a recommendation from the technical experts who recommend products for use and placing products on the market will be reduced; the adoption of published list will minimise the margin of error when recording and updating the lists of products which can be lawfully used; and a streamlined, more effective process will increase consumer choice as more products enter the market sooner. In addition to the economic benefits for manufacturers and increased consumer choice for the public, there will also be an environmental benefit as this improvement to the operation of the smoke control regime in Wales will make it easier to identify products which can be lawfully used in smoke control areas. The UK Environment Bill was judged to be the delivery vehicle which could bring about this improvement to the operation of the smoke control regime in Wales sooner than any other mechanism.</p> <p>Once clause 70 is enacted, the Welsh Ministers' power to make subordinate legislation to authorise approved fuels under section 20(6) of The Clean Air Act 1993 will be repealed, as will the Welsh Ministers' power to make subordinate legislation to exempt appliances/fireplaces under section 21(5) of the same</p>

	<p>Act. The duty on Welsh Ministers (as distinct from a power) introduced by the enactment of the Bill to create published lists will be an administrative function as opposed to a regulation-making/legislative function.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 18.</p> <p>The Minister should explain clearly why it is more appropriate to replace existing sections in the <i>Water Industry Act 1991</i> with regulation-making powers under that Act.</p>	<p>Accept</p> <p>Clause 75(3) in so far as it applies to Wales repeals section 37B and 37C of the Water Industry Act 1991. These provisions relate to Water Resource Management Plans and Drought Plans. Section 37B deals with the publication of, and representations on, those plans. This includes wide powers for the Welsh Ministers to make Regulations and Directions in respect of such plans. Section 37C then deals with the provisions of information between licensed water suppliers to provide the water undertakers.</p> <p>Section 37B includes a requirement for water companies to consult the Welsh Ministers and Natural Resources Wales before preparing a draft Water Resource Management of Drought Plan. However, a requirement to consult on draft plans is included in the Water Resources Management Plan Regulations 2007 and the Drought Plan Regulations 2005 and so the requirement to consult still exists despite the repeal of section 37B of the Act.</p> <p>Clause 75(7) of the Environment Bill inserts new Section 39F into the Water Industry Act 1991. This does not confer new powers on Ministers – it essentially re-enacts most of the powers currently contained in Section 37B to make regulations and directions and, instead of requiring consultation responses on plans to be sent to the Welsh Ministers it enables the regulations to provide for another system, for example to respond directly to the water company holding the consultation.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 19</p> <p>The Minister should explain the rationale for taking the powers of direction in proposed sections 39G(1) and 94C(8) of the <i>Water Industry Act 1991</i> (inserted by clauses 75 and 76 of the UK Bill) and explain how they will be used.</p>	<p>Accept</p> <p>Proposed Section 39G(1) says regulations made under section 39F may confer on the Minister power to make provision by directions. This does not give the Minister Direction making powers – it enables regulations to provide the Minister with powers of Direction.</p> <p>The power to enable the Minister to give Directions is narrow and specific and is limited to the procedure and detail for preparing and publishing a water resource management or drought plans. They largely replicate the powers of Direction</p>

	<p>currently conferred on the Minister by section 37 which the Bill repeals and do not provide additional powers.</p> <p>An example is the Water Resources Management Plan (Wales) Directions 2016 which direct the water companies to prepare a WRMP for 2020</p> <p>The procedure for preparing Drainage and Wastewater Management Plans is intended to broadly mirror the process applied to water resource management and drought plans, so section 94C(8) which applies to DWMP's replicates section 39G(1) which applies to the other plans.</p> <p>Any use of the powers of Direction will be prescribed the Regulations made under these provisions, and will form part of the regulatory framework. These will be consulted on before they are made. The powers of Direction will be used for detailed points of process or procedure as at present.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 20</p> <p>The Minister should explain: ▪ why she has not discussed clause 81 with UK Ministers given that it is a concurrent plus power that impacts on Wales; and ▪ why the Secretary of State's powers under this clause are more limited in Scotland than in Wales.</p>	<p>Accept</p> <p>Engagement at Official level has been sufficient to secure agreement on these clauses. Welsh Government and Defra officials have discussed both the standalone Clause 82 and concurrent Clause 81. The rationale for the territorial extent of Clause 81 was, if the devolved administrations consented, the substances and standards to be taken into account in assessing the chemical status of surface water or groundwater could be set on a UK basis to the extent of England, Wales, NI and the cross border river basin districts with Scotland. This would deliver two benefits; having uniform standards across these territories and avoiding the need for several sets of regulations.</p> <p>The Secretary of State's powers in Clause 81 are not more limited in Scotland than in Wales.</p> <p>Subsection (4) establishes the Secretary of State can only exercise the powers in this section to make provision which could be made by the Welsh Ministers or DAERA under their own powers in clauses 82 and 83 respectively, with their consent. As there is no comparable standalone clause for Scottish Ministers*, subsection (5) establishes a similar consent mechanism should the Secretary of State exercise the powers in a part of a Scottish <i>cross-border</i> river basin districts which are in Scotland. This is necessary as subsection (2), which establishes the relevant water quality legislation, includes both the Solway Tweed and Northumbria River Basin District (RBD) Regulations. These are cross-border regions which straddle the border between England and Scotland.</p>

	<p>Scottish Ministers did not want to take a cl. 82/83 type stand alone power in the Environment Bill as the Regulations for the non-cross-border area of Scotland (the 'Scotland RBD') is set out in Scottish primary legislation and they plan to create powers of their own in a Scottish Bill.</p>
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Financial Implications – There are no financial implications as a result of accepting this recommendation.

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

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Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

28 January 2021

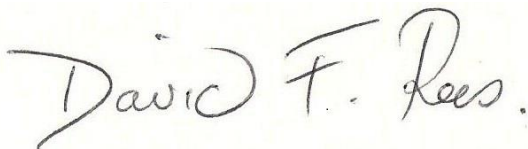
Dear Mick

Common Frameworks

As you are aware, the External Affairs and Additional Legislation Committee has been monitoring the common frameworks programme of work, and as such I wrote to the Counsel General and Minister for European Transition on 27 January 2021 to seek clarification on the status of the frameworks that relate to Wales.

This might be of interest to your Committee, and I enclose a copy of the correspondence for your information.

Yours sincerely,



David Rees MS
Chair of the External Affairs and Additional Legislation Committee

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



Jeremy Miles MS
Counsel General and Minister for European Transition
Welsh Government

27 January 2021

Dear Jeremy,

Common Frameworks

The External Affairs and Additional Legislation Committee (“the Committee”) has been monitoring the common frameworks programme of work and has also engaged in the scrutiny of several framework areas.

I am writing to seek clarification on the status of the frameworks that relate to Wales.

Our understanding is that each of the framework areas applicable to Wales has a provisional Framework Outline Agreement (“provisional Framework”) in place, with the exception of the frameworks relating to: mutual recognition of professional qualifications; services; fertiliser; and organics. **Can you confirm whether this interpretation is correct, please?**

For a provisional Framework to be operable, we had understood that it would require the agreement of each government of the four nations through the JMC EN. **Can you please clarify the status of each framework area i.e. whether a provisional Framework has been agreed by each of the four governments at JMC EN and, if not, what the status of these framework areas is. For example, are they considered operable between Scotland, Wales and England, but not Northern Ireland in some cases?**

If provisional Frameworks exist, we believe it imperative that they be published as soon as possible. Whilst we have an interest in terms of scrutinising these agreements, our principal concern is one of transparency. It is important that provisional Frameworks (and associated documents such as concordats) are made available to stakeholders and the public so that they can begin to understand how these areas of policy are to function in the UK now that we have left the transition period has ended. **We ask that you publish all provisional Frameworks that are**

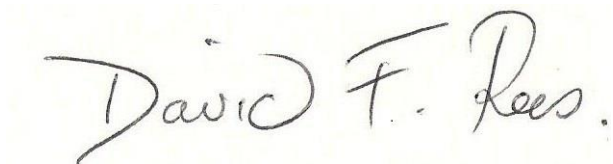


currently operable as soon as possible, even if they are not yet deemed ready for full formal scrutiny. As we have reported previously, we believe that they should be laid before the Senedd alongside any other step to place them in the public domain.

At the heart of the frameworks programme is a commitment from the four governments to not diverge from retained EU law in a framework area until a framework agreement is finally agreed. **Can you please confirm that this commitment still holds from the Welsh Government's perspective and, in so far as you understand it, this commitment is held by the governments of the other UK nations?**

Thank you for considering these questions. I look forward to receiving your response.

Yours sincerely,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large 'D' and 'R'.

David Rees MS

Chair of the External Affairs and Additional Legislation Committee

