

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
11 May 2015

Meeting time:
13.30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

1 Introduction, apologies, substitutions and declarations of interest

2 Evidence in relation to the Renting Homes (Wales) Bill (Pages 1 – 51) *(Indicative time 1.30pm)*

Lesley Griffiths AM, Minister for Communities and Tackling Poverty
Simon White, Welsh Government
Neil Buffin, Welsh Government

CLA(4)–12–05 – Paper 1 – Statement of Policy Intent

CLA(4)–12–15 – Research Service Briefing

CLA(4)–12–15 – Legal Advice Note

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

Negative Resolution Instruments

CLA527 – The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 (Pages 52 – 78)

Negative procedure; Date made: 22 April 2015; Date laid: 23 April 2015; Coming into force date: 14 May 2015.

CLA(4)–12–15 – Paper 2 – Report

CLA(4)–12–15 – Paper 3 – Regulations

CLA(4)–12–15 – Paper 4 – Explanatory Memorandum

CLA528 The Eastern High School (Change to School Session Times) Order 2015 (Pages 79 – 88)

Negative procedure: Date made: 20 April 2015; Date laid: 24 April 2015; Coming into force date: 1 June 2015.

CLA(4)–12–15 – Paper 5 – Report

CLA(4)–12–15 – Paper 6 – Order

CLA(4)–12–15 – Paper 7 – Explanatory Memorandum

4 Papers to note (Pages 89 – 93)

CLA(4)–12–15 – Paper 8 – Letter from the Minister for Natural Resources in relation to CLA493 – The Environmental Permitting (England and Wales) Regulations 2015

CLA(4)–12–15 – Paper 9 – Letter from the Chair to the Minister in relation to CLA493 – The Environmental Permitting (England and Wales) Regulations 2015

CLA(4)–12–15 – Paper 10 – Letter from the Chair of the Finance Committee

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

(vi) the Committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

Discussion of Oral Evidence

Making Laws in the Fourth Assembly – Key Issues (Pages 94 – 152)

CLA(4)–12–15 – Paper 11 – Covering Paper

CLA(4)-12-15 – Paper 12 – Key Issues

CLA(4)-12-15 – Paper 13 – Summary of Written Evidence

CLA(4)-12-15 – Paper 14 – Results of Questionnaire

Update – Qualifications Wales Bill (Pages 153 – 183)

**CLA(4)-12-15 – Paper 15 – Children, Young People and Education Committee:
Consultation Letter**

CLA(4)-12-15 – Paper 16 – Background paper

CLA(4)-12-15 – Paper 16 – Annex

Agenda Item 2



Llywodraeth Cymru
Welsh Government

Renting Homes (Wales) Bill

Policy intent for subordinate legislation made under the Bill

February 2015

POLICY INTENT FOR PROPOSED SUBORDINATE LEGISLATION TO BE MADE UNDER THE RENTING HOMES (WALES) BILL 2015

1. This document describes the policy intention and direction proposed by the Welsh Ministers using the powers in the Renting Homes (Wales) Bill.
2. The Bill brings together and modernises the existing and complex legislation for renting a home into one new piece of legislation. In doing so, it aims to improve the arrangements. It proposes two main types of occupation contract, which will replace existing forms of occupation arrangements. The principal aspects of these new occupation contracts, the “key matters” and “fundamental terms”, will be set out on the face of the Bill. Supplementary terms will be set out in regulations made by the Welsh Ministers, with additional terms negotiated and agreed by landlords and contract-holders.
3. Key matters will cover, for example, the address of the property, the level of rent and the rental period. Fundamental terms set out the primary rights and responsibilities under the contract and will cover, for example, the requirement to provide a written statement of the contract and the process for ending the contract. Supplementary terms, which will be set out in regulations to be made by the Welsh Ministers, will relate to other rights and responsibilities that apply under the contract.
4. Because the Bill proposes to change, consolidate and update substantial and complex areas of housing legislation, it provides the Welsh Ministers with the powers necessary to implement such legislation. These powers will allow the Welsh Ministers to set out supplementary terms of occupation contracts, to prescribe matters of procedural detail and, importantly, to be able to respond promptly to the need for changes in such matters if circumstances change in the future. In most cases, the powers replicate those in the existing legislation, which is being replaced by the Bill. The powers are also closely aligned with the powers proposed by the Law Commission in its draft Bill (Volume 2 of its Renting Homes 2006 Final Report).
5. With the exception of the power to commence the remaining provisions of the Act, which is by way of order (section 254(2)), the powers within this Bill are regulation making powers. The Welsh Government has undertaken to consult on the regulations relating to supplementary provisions (section 23(1)). In relation to other subordinate legislation, the precise nature and extent of consultation will be determined by reference to the subject matter of the legislation.
6. This statement should be read in conjunction with the Bill and Explanatory Memorandum, as published on introduction.

REGULATIONS RELATING TO:	Bodies to be considered Community Landlords.
SECTION	Section 9(6)
DESCRIPTION OF THE POWER/REGULATION	
<p>Provides the Welsh Ministers with a power to amend section 9, that is, the list of “persons” (individuals, authorities or bodies) defined as “community landlords” under the Bill. This is to enable the Bill to reflect changes in housing practice in the future.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>Future housing practice or legislation may require the definition or description of community landlords under the Bill to be changed. This is necessary as a person defined as a community landlord is required to issue a secure contract by default. For landlords other than community landlords, referred to as “private landlords” under the Bill, the standard contract is the default. This power will therefore enable the Welsh Ministers to ensure any wider changes in the law regarding the provision of social rented housing are reflected in the definition of a community landlord. For example, section 80(3) of the Housing and Regeneration Act 2008 changed, in England, the description “registered social landlord” to “private registered provider of social housing”. Since some social housing in Wales is provided by English-based providers, any further such change will need to be reflected in the definition of community landlord under the Bill. The affirmative procedure is appropriate for this power as the definition of what does or does not constitute a community landlord under the Bill has a significant impact on the rights of those who rent their home, as it will determine their right to either a secure or standard contract.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention of the power is to ensure landlords who might be required to issue secure contracts in the future are included within the definition of a community landlord. There is the possibility that new providers of social housing may need to be defined as community landlords. In such a scenario, we would wish to act swiftly to ensure individuals are provided with secure contracts as soon as possible.</p>	

REGULATIONS RELATING TO:	Determination of fundamental provisions
SECTION:	Section 22(1)&(2)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 22(1) provides the Welsh Ministers with a power to make regulations as to whether a provision made by other legislation is, or is not, a “fundamental provision” of an occupation contract. Section 22(2) enables the Welsh Ministers to make regulations regarding whether a fundamental provision must be incorporated as a fundamental term in an occupation contract and, if it must be incorporated, whether it can be modified. Where such regulations make changes to the Renting Homes (Wales) Act they will be subject to the affirmative procedure. Otherwise the negative procedure would apply.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>Allows the Welsh Ministers to ensure fundamental provisions reflect future changes in legislation and housing practice. Should future housing legislation require a matter to be included in an occupation contract this power will enable that to be achieved in a timely manner.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention is to provide the ability to react swiftly to future legislation which affects Renting Homes occupation contracts. The ability to incorporate future housing legislation which might affect occupation contracts is essential for the contracts to remain effective.</p> <p>The power under Section 22(2) complements the power provided under 22(1). For example, if future legislation requires the creation of a new fundamental provision, it is essential that determination over its incorporation into occupation contracts, and whether it can be subject to modification, is also provided for.</p>	

REGULATIONS RELATING TO:	Determination of supplementary provisions
SECTION:	Section 23(1)
DESCRIPTION OF THE POWER/REGULATION	
Creation of supplementary provisions to be incorporated as terms of occupation contracts.	
WHY THE REGULATION POWER IS REQUIRED	
<p>In line with the Law Commission's recommendations, while the essential rights and obligations will be represented by fundamental provisions, other more practical matters are dealt with through supplementary provisions prescribed by the Welsh Ministers in regulations. Supplementary provisions will be incorporated into occupation contracts as supplementary terms.</p> <p>Examples of supplementary terms would be a requirement for the contract-holder to pay the council tax, to maintain a garden, take care of the dwelling and check smoke alarms are working and return keys to the landlord at the end of the contract. The landlord and contract-holder are free to agree that a supplementary provision should not be incorporated as a term or be incorporated with modifications.</p> <p>Prescribing supplementary provisions through regulations will enable the Welsh Ministers to ensure occupation contracts remain current and respond to changes to future legislation and housing practice. The power requires the Welsh Ministers to consult stakeholders before making regulations determining supplementary provisions.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention is to ensure the terms of occupation contracts remain current and reflect changes in housing practice. For example, if there was to be a substantial alteration to the funding of local government, then the contractual term requiring the contract-holder to pay the "council tax" may need to be changed. It would not be appropriate for such a change to require the making of primary legislation. The intention of the requirement to consult is to ensure the proposed supplementary provisions accurately describe the matter to be addressed and are readily understandable.</p>	

REGULATIONS RELATING TO:	Prescribing model written statements of contracts
SECTION:	Section 29(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>In line with the Law Commission's recommendations, this power enables the Welsh Ministers to prescribe model written statements of contracts for use by landlords and contract-holders as the basis for the occupation contracts provided for under the Bill.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The Bill requires landlords to issue written statements of the occupation contract within 14 days of the contract-holder occupying the dwelling (this allows for initial occupation on the basis of a verbal contract only, for example in response to an emergency). The written statement must include the relevant key matters, fundamental terms, supplementary terms as well as any additional terms.</p> <p>The power to issue model written statements of contracts will assist landlords in complying with their obligations. There are a number of model written statements of contracts which it is proposed will be prescribed under this power:</p> <ul style="list-style-type: none"> • Secure contract - community landlord • Fixed term standard contract (less than seven years) • Fixed term standard contract (seven years or more) • Periodic standard contract • Introductory standard contract • Prohibited conduct standard contract • Supported standard contract <p>However, these will need to be updated in a timely manner if changes are made to a supplementary term as a consequence of regulations made under section 23(1).</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The intention is to ensure model written statements of contracts can be readily updated as required. This will assist landlords in complying with their obligations under the new legislation.</p>	

REGULATIONS RELATING TO:	Explanatory information which must be contained in written statements
SECTION:	Section 32(4)
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to specify explanatory information which must be contained in written statements.	
WHY THE REGULATION POWER IS REQUIRED	
<p>The fundamental and supplementary terms in occupation contracts will be drafted as clearly as possible. However, it is necessary for the written statement to include explanatory information about any matters that are prescribed to assist the reader. For example, the illustrative model contracts prepared by the Law Commission included a note explaining the contract-holder did not need to pay a day's rent for each day the landlord was late in providing the written statement of contract. Explanatory information may also be used to sign-post the reader to sources of other relevant information or advice. Such explanatory notes will vary over time, not least as a consequence of changes to supplementary terms as a consequence of the power in section 23(1).</p>	
POLICY INTENTION OF THE REGULATIONS	
The policy intention is to help ensure landlords and contract-holders understand the terms of the occupation contract.	

REGULATIONS RELATING TO:	Required information relating to deposit schemes
SECTION:	Section 45(3)
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to specify what information must be given to the contract-holder (or any person who paid the deposit on his or her behalf) to comply with section 45(2)(b) regarding deposit schemes.	
WHY THE REGULATION POWER IS REQUIRED	
<p>This power reflects current arrangements in respect of tenancy deposits and will enable the Welsh Ministers to update the required information to be provided following changes in legislation and housing practice. The current Housing (Tenancy Deposits) (Prescribed Information) Order 2007 is an example of the kind of information that will be required, and includes:</p> <ul style="list-style-type: none"> • the amount of the deposit paid; • the address of the property to which the tenancy relates; • the name, address, telephone number, and any e-mail address or fax number of the landlord; and • the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy. 	
POLICY INTENTION OF THE REGULATIONS	
The policy intention is to ensure the information which must be provided to a contract-holder regarding the safeguarding of his or her deposit can be readily updated..	

REGULATIONS RELATING TO:	Prohibited conduct definition
SECTION:	Section 56
DESCRIPTION OF THE POWER/REGULATION	
<p>This power enables the Welsh Ministers to amend section 55 in respect of what constitutes anti-social behaviour and other prohibited conduct.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>This power was recommended by the Law Commission. It will allow the definition of prohibited conduct to be swiftly updated by the Welsh Ministers, ensuring new forms of anti-social behaviour, domestic abuse or other negative behaviours can be captured by the definition.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The intention here is to provide the Welsh Ministers with the ability to react in a timely manner to emerging forms of anti-social behaviour, domestic abuse or other negative behaviours not falling within the current definition. The nature of such behaviours can evolve rapidly and it is important for occupation contracts to be capable of being updated accordingly, thus remaining an effective tool against current and future forms of anti-social behaviour and domestic abuse.</p>	

REGULATIONS RELATING TO:	Sub-occupation and the variation of time periods relating to exclusion of contract-holder by sub-holder after abandonment
SECTION:	Section 68
DESCRIPTION OF THE POWER/REGULATION	
<p>Allows the variation of time periods in sections 66 and 67. Section 66(11) provides for a four-week warning period for the contract-holder, during which the sub-holder is required to make inquiries to be satisfied the contract-holder no longer considers himself or herself to be a party to the head contract and the sub-occupation contract. Section 67(2) provides for variation of the six-month period during which the contract-holder can apply for a remedy to the court on the grounds he or she had not abandoned the contracts and there is good reason for a failure to respond or the sub-holder had not acted in accordance with the requirements.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The provisions in the Bill are aligned with the recommendations of the Law Commission. However, as an entirely new area of law, it is considered important to have the ability to vary the relevant time periods in the light of experience.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention here is, through the monitoring of implementation, to ensure both the four-week warning period and six-month remedy period are appropriate. It is important for the Welsh Ministers to have the ability to act swiftly should changes be necessary.</p>	

REGULATIONS RELATING TO:	Fitness for human habitation
SECTION:	Section 94
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to prescribe matters or circumstances to consider in determining whether premises are fit for human habitation.	
WHY THE REGULATION POWER IS REQUIRED	
These matters will be prescriptive and detailed in nature and are better suited to regulations than the face of the Bill.	
POLICY INTENTION OF THE REGULATIONS	
The intention here is to set out the matters to be considered in determining whether a dwelling is fit for human habitation. This may include referring to existing guidance on the 29 hazards listed under the Housing Health and Safety Rating System, which include excess cold, mould, carbon monoxide, pests, fire and electrical hazards. This power will enable the Welsh Ministers to specify in regulations additional matters which are considered to make a dwelling unfit for habitation. In exercising the power under section 94(1), the Welsh Ministers may prescribe matters and circumstances by reference to any regulations made under section 2 of the Housing Act 2004. The power will ensure all such guidance can be kept up to date.	

REGULATIONS RELATING TO:	Notice periods in relation to withdrawal from the contract by joint contract-holders
SECTION:	Sections 112 and 131
DESCRIPTION OF THE POWER/REGULATION	
This power enables the Welsh Ministers to prescribe supplementary provisions specifying a minimum period of notice required to be given by a joint contract-holder who wishes to withdraw from either a secure or standard contract (sections 112 and 131 respectively).	
WHY THE REGULATION POWER IS REQUIRED	
In line with the Law Commission's recommendations, this will enable the notice periods to be altered should this prove necessary in the light of experience.	
POLICY INTENTION OF THE REGULATIONS	
The policy intention here is, through the monitoring of implementation, to ensure the required notice period is appropriate. It is important for the Welsh Ministers to have the ability to act swiftly should change be necessary.	
REGULATIONS RELATING TO:	Landlord's review of a decision to give notice requiring possession under introductory and prohibited conduct standard contracts

SECTION:	Section 199(5)
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to specify the procedure to be followed in relation to a landlord's review of a decision to give a notice requiring possession.	
WHY THE REGULATION POWER IS REQUIRED	
To set the detailed requirements and procedure for the review of the landlord's decision. The regulations will be administrative in nature and are better suited to subordinate legislation.	
POLICY INTENTION OF THE REGULATIONS	
The intention here reflects existing arrangements in relation to landlord reviews, for example under section 125B of the Housing Act 1996 which provides a regulation making power in relation to the procedure to be followed in connection with reviewing a landlord's decision to extend an introductory tenancy. Regulations here will largely be administrative, for example setting out requirements in relation to the person(s) to adjudicate, the right to an oral hearing, and permitted attendees/representatives.	

REGULATIONS RELATING TO:	Safeguarding of property remaining in the dwelling following abandonment
SECTION:	Section 217(1)
DESCRIPTION OF THE POWER/REGULATION	
Enables the Welsh Ministers to make provision relating to the safeguarding of property remaining in the dwelling of an abandoned property when a contract ends under section 216.	
WHY THE REGULATION POWER IS REQUIRED	
The regulations will be administrative in nature and are appropriate for subordinate legislation.	
POLICY INTENTION OF THE REGULATIONS	
The intention here is to set out within the regulations the proper treatment of the former contract-holder's property following possession under the abandonment procedure. Any regulations might, for example, set out the time periods for which such property must be kept and how the proceeds of sale of any property may be treated by the landlord in offsetting any monies owed by the contract-holder.	
REGULATIONS RELATING TO:	Relevant periods of time in relation to abandonment by the contract-holder.
SECTION:	Section 219
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to amend the relevant time periods under sections 216 and 218 in relation to abandonment.	

WHY THE REGULATION POWER IS REQUIRED

Allows the variation of time periods for the purposes of sections 216 and 218. Section 216 provides for a four-week warning period for the contract-holder, during which the landlord is required to make inquiries to be satisfied the contract-holder has abandoned the dwelling. Section 218 provides for variation of the six-month period during which the contract-holder can apply for a remedy to the court on the grounds he or she had not abandoned the dwelling and there is good reason for a failure to respond or the landlord had not acted in accordance with the requirements. It will be important to monitor the time periods with regard to abandonment, ensuring that the stated periods work from both the perspective of landlord and contract-holder.

POLICY INTENTION OF THE REGULATIONS

The policy intention here is to ensure both the four-week warning period and six-month remedy period are appropriate. It is important for the Welsh Ministers to have the ability to act swiftly should changes be necessary. The appropriateness of these periods will be monitored as part of the evaluation of the Bill.

REGULATIONS RELATING TO:	Relevant periods of time in relation to the exclusion of joint contract-holders.
SECTION:	Section 225
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to amend relevant periods of time in relation to the exclusion of joint contract-holders under sections 221, 222, 223 and 224.	
WHY THE REGULATION POWER IS REQUIRED	
It will be important to monitor the time periods with regard to joint contract-holder exclusion and termination of warning notices, given by both landlord and joint contract-holders.	
POLICY INTENTION OF THE REGULATIONS	
The intention here is to monitor the implementation of such warning notice periods to ensure they remain fair for both landlord and joint contract-holder. It is considered the periods as they currently stand are fair to both landlord and contract-holder but it is important that the ability to act swiftly is maintained in such an important area.	

REGULATIONS RELATING TO:	Prescription of the form for notices and documents required
SECTION:	Section 233(3)
DESCRIPTION OF THE POWER/REGULATION	
Enables the Welsh Ministers to prescribe the form for notices and documents required or authorised under the Bill.	
WHY THE REGULATION POWER IS REQUIRED	
Various provisions in the Bill require notices to be given by either landlord or contract-holder. To assist both parties with issuing notices which comply with the requirements this power enables the Welsh Ministers to prescribe the form of these notices. These will also require periodic adjustment and updating to remain current.	
POLICY INTENTION OF THE REGULATIONS	
The intention here is to facilitate the contractual relationship between the parties to an occupation contract by making available template notices in the correct form, which may change over time as a consequence of other changes, such as applicable time periods.	

REGULATIONS RELATING TO:	Supplemental, incidental, consequential, transitory, transitional or saving provision.
SECTION:	Section 252(1)

DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to make supplemental, incidental, consequential, transitory, transitional or saving provision.	
WHY THE REGULATION POWER IS REQUIRED	
The power is needed for the purpose of giving full effect to any provision of the Renting Homes (Wales) Act or in consequence of any such provision.	
POLICY INTENTION OF THE REGULATIONS	
To enable effective implementation.	

REGULATIONS RELATING TO:	Consequential amendments, modifications, repeals and revocations of, an enactment other than a provision of this Act.
SECTION:	Section 253(2)
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to make consequential amendments to, and modifications, repeals and revocations of, an enactment other than a provision of this Act.	
WHY THE REGULATION POWER IS REQUIRED	
The power is needed to enable consequential changes, etc. to be made to existing legislation to give full effect to the provisions of the Act.	
POLICY INTENTION OF THE REGULATIONS	
To enable effective implementation.	

REGULATIONS RELATING TO:	Commencement
SECTION:	Section 254(2)
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to provide for commencement of the remaining provisions of the Act.	
WHY THE REGULATION POWER IS REQUIRED	
Part 11 of the Bill comes into force on the day on which the Act is passed. The remaining provisions of the Act come into force on a day appointed by the Welsh Ministers by order. This power is necessary to bring those provisions that do not come into force upon passing of the Act into force in a planned manner to ensure the Act is brought fully into force.	
POLICY INTENTION OF THE REGULATIONS	
To enable effective implementation.	

REGULATIONS RELATING TO:	Supported housing, obtaining consent for notice of extension
SECTION:	Schedule 2 Paragraph 15(10)
DESCRIPTION OF THE POWER/REGULATION	
This enables the Welsh Ministers to make regulations relating to paragraph 15(5), which prevents landlords from giving a notice of extension without a local authority's consent, and in particular the procedure for obtaining consent.	
WHY THE REGULATION POWER IS REQUIRED	
To set out the detailed procedure for obtaining local authority consent to issue a notice of extension. The regulations will be administrative in nature and are better suited to subordinate legislation.	
POLICY INTENTION OF THE REGULATIONS	
The intention here is to set out the procedures to be followed in obtaining local authority consent to extend a supported housing contract. Such regulations will be similar to existing regulations around landlord reviews, for example those issued under section 125B of the Housing Act 1996. These regulations will be administrative and will ensure correct procedure is followed in the granting of local authority consent. Regulations could include, for example, ensuring the appropriate person is making the decision to grant consent.	
REGULATIONS RELATING TO:	Schedule 2 amendments
SECTION:	Schedule 2 Paragraph 17
DESCRIPTION OF THE POWER/REGULATION	

Schedule 2 sets out types of tenancies and licences which would not normally be an occupation contract under the Bill (exceptions to section 7). Paragraph 17 of Schedule 2 provides a power for the Welsh Ministers to amend Schedule 2.

WHY THE REGULATION POWER IS REQUIRED

In line with the Law Commission’s recommendations, this power is required to enable the Welsh Ministers to amend Schedule 2 to reflect changes in the provision of housing.

POLICY INTENTION OF THE REGULATIONS

The policy intention is to ensure the list of excluded tenancies and licences can be updated in a timely manner.

REGULATIONS RELATING TO:	Prescription of designated course
SECTION:	Schedule 3 Paragraph 10(2)
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to prescribe a “designated course” for the purposes of this paragraph.	
WHY THE REGULATION POWER IS REQUIRED	
These regulations will be wholly administrative and appropriate for subordinate legislation.	
POLICY INTENTION OF THE REGULATIONS	
The intention is to ensure that designated courses reflect any changes within education legislation, allowing for the inclusion (or removal) of relevant courses. It will be important to act in a timely manner to ensure the appropriate form of occupation contract is issued.	

REGULATIONS RELATING TO:	Determination of key workers
SECTION:	Schedule 3 Paragraph 15(3)
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to make regulations on the determination of key workers for the purposes of this paragraph.	
WHY THE REGULATION POWER IS REQUIRED	
Regulations may set out whether a contract holder is a key worker. This is to ensure community landlords are able to appropriately house key workers under a standard contract, rather than a secure contract.	
POLICY INTENTION OF THE REGULATIONS	
The policy intention is to ensure the definition of what constitutes a key worker remains current.	

REGULATIONS RELATING TO:	Schedule 3 amendments
SECTION:	Schedule 3 Paragraph 17
DESCRIPTION OF THE POWER/REGULATION	
Schedule 3 sets out those circumstances in which community landlords will not be required to issue a secure contract, for example for introductory purposes, the provision of accommodation to key workers or the provision of accommodation to homeless persons. The power enables the Welsh Ministers to amend Schedule 3.	
WHY THE REGULATION POWER IS REQUIRED	
In line with the Law Commission's recommendations, this power is required to enable the Welsh Ministers to amend Schedule 3 to reflect changes in the provision of housing.	
POLICY INTENTION OF THE REGULATIONS	
The policy intention is to ensure the list of exceptions under which community landlords are not required to issue a secure contract can be updated in a timely manner.	

REGULATIONS RELATING TO:	Power to amend period required for a notice of extension with regard to introductory standard contracts
SECTION:	Schedule 4, Paragraph 3(7)
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to amend the time within which a notice of extension must be given to a contract-holder, and provides that the power in section 253(2) includes power to make consequential amendments to Schedule 4.	
WHY THE REGULATION POWER IS REQUIRED	
This power is required to ensure the period within which a notice of extension must be given remains appropriate.	
POLICY INTENTION OF THE REGULATIONS	
The policy intention is to ensure the notice period can be amended in a timely manner should this prove necessary.	

REGULATIONS RELATING TO:	Procedure to be followed in connection review of a landlord's decision to extend the introductory period
SECTION:	Schedule 4, Paragraph 4(7)
DESCRIPTION OF THE POWER/REGULATION	
Enables the Welsh Ministers to specify the procedure to be followed in relation to a landlord's review of a decision to give notice of extension of an introductory standard contract.	
WHY THE REGULATION POWER IS REQUIRED	
To prescribe the procedure to be followed for the review of a landlord's decision to extend the introductory period. This reflects existing legislation in section 125B of the Housing Act 1996, which provides a regulation making power in relation to the procedure to be followed in connection with a landlord's review under section 123B of the 1996 Act, in extending an introductory tenancy. The regulations may, for example, set out details in relation to the persons to adjudicate, the right to an oral hearing, permitted attendees, postponement and adjournment. The regulations will be administrative in nature and are better suited to subordinate legislation.	
POLICY INTENTION OF THE REGULATIONS	
The policy intention is to ensure the procedures relating to the review of a landlord's decision are kept up to date, reflecting changing housing practice.	
REGULATIONS RELATING TO:	Conferring powers and imposing duties on scheme administrators with regard to deposit schemes
SECTION:	Schedule 5 Paragraph 1(6)

DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to impose powers and duties on scheme administrators with regard to deposit schemes.	
WHY THE REGULATION POWER IS REQUIRED	
This carries forward an existing power under section 212 of Housing Act 2004. The regulations will be administrative in nature making them appropriate for subordinate legislation.	
POLICY INTENTION OF THE REGULATIONS	
The intention here is to ensure the correct operation of the deposit scheme. Regulations may, for example, set out details regarding how deposits must be administered.	

REGULATIONS RELATING TO:	Power to change the notice period for extending prohibited standard contracts
SECTION:	Schedule 7 Paragraph 4(7)
DESCRIPTION OF THE POWER/REGULATION	
Allows the Welsh Ministers to amend the time within which a notice of extension must be given to a contract-holder in the probation period, and provides that the power in section 253(2) includes power to make consequential amendments to Schedule 7.	
WHY THE REGULATION POWER IS REQUIRED	
This power is required to ensure the period within which a notice of extension must be given remains appropriate.	
POLICY INTENTION OF THE REGULATIONS	
The policy intention is to ensure the notice period can be amended in a timely manner should this prove necessary.	

REGULATIONS RELATING TO:	Prescription for the procedure to be followed in reviewing a landlord's decision to extend the prohibited standard contract
SECTION:	Schedule 7 Paragraph 5(7)
DESCRIPTION OF THE POWER/REGULATION	
Enables the Welsh Ministers to specify the procedure to be followed in relation to a landlord's review of a decision to give notice of extension of a prohibited conduct standard contract.	
WHY THE REGULATION POWER IS REQUIRED	
Allows the Welsh Ministers to specify the procedure to be followed in relation to a landlord's review of a decision to give notice of extension.	
POLICY INTENTION OF THE REGULATIONS	
To set out detailed procedures for the review of a landlord's decision. This reflects existing legislation around landlord reviews, for example section 125B of the Housing Act 1996, which provides for regulation making powers in relation to a landlord review in extending an introductory tenancy. The regulations may, for example, set out details in relation to the persons to adjudicate, the right to an oral hearing, permitted attendees, postponement and adjournment. The regulations will be administrative in nature and are better suited to subordinate legislation.	

REGULATIONS RELATING TO:	Rent assessment with regard to certain converted contracts
SECTION:	Schedule 11 Paragraph 16(2)
DESCRIPTION OF THE POWER/REGULATION	
<p>The Welsh Ministers are required to make provision enabling the contract-holder under a relevant converted contract, following receipt of a notice under section 104 or 123, to apply to a prescribed person(s) for a determination of the rent for the dwelling. The rent is to be determined in accordance with prescribed assumptions and will be the rent for the dwelling under the contract (unless the landlord and contract-holder agree otherwise). Relevant converted contracts are those to which section 13 of Housing Act 1988 applies (increases of rent under assured periodic tenancies).</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>This requires the Welsh Ministers to make regulations in respect of application to a prescribed person for determination of rent and for the rent to be determined in accordance with prescribed assumptions.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention is to preserve an existing right under section 13 of Housing Act 1988. In 2013-14, six such applications were heard by a Rent Assessment Committee of the Residential Property Tribunal for Wales.</p>	

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

Document is Restricted

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

Document is Restricted

Agenda Item 3.1

Constitutional and Legislative Affairs Committee

Draft Report

CLA

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

These Regulations make provision, in relation to Wales, for the administration of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (OJ No. L 347, 20.12.2013, p. 608) (“the Direct Payments Regulation”) and the three other associated EU Regulations referred to in regulation 2(1).

Procedure: Negative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Regulation 17 purports to revoke the Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2010 and the Common Agricultural Policy Single Payment and Support Schemes (Wales) (Amendment) Regulations 2012. Those Regulations were previously revoked by the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 (‘the 2014 Regulations’). Both Regulation 17 and the 2014 Regulations contain saving provisions, but the combined effect of a duplicated revocation and two sets of saving provisions is unclear. [Standing Order 21.2 (v) and (vi) – needs further explanation due to defective drafting.]

Merits Scrutiny

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

2. The Regulations come into force on 14 May 2015 and regulation 10(1) requires applications to be submitted to the Welsh Ministers by the 15th May. Neither the Regulations nor the Explanatory Memorandum explain how applicants are expected to comply with that very limited window. The Explanatory Memorandum should have explained what steps had been taken by the Welsh Ministers in advance of the coming into force of the Regulations to enable applications to be submitted by that deadline. [Standing Order 21.3(ii) – that it gives rise to an issue of public importance likely to be of interest to the Assembly].

Legal Advisers

Constitutional and Legislative Affairs Committee

May 2015

2015 No. 1252 (W. 84)

AGRICULTURE, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision, in relation to Wales, for the administration of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (OJ No. L 347, 20.12.2013, p. 608) (“the Direct Payments Regulation”) and the three other associated EU Regulations referred to in regulation 2(1).

Regulation 3 specifies the minimum eligible area of a holding in respect of which direct payments may be granted to a farmer.

Regulation 4 fixes the date on which parcels used as the basis for a claim under the basic payment scheme must be at the disposal of farmers.

Regulation 5 specifies the activities a farmer must carry out in order to maintain an agricultural area in a state suitable for grazing or cultivation.

Regulation 6 specifies the minimum agricultural activity required to be carried out on land that is naturally kept in a state suitable for grazing or cultivation.

Regulation 7 designates the short rotation coppice trees eligible under the basic payment scheme and sets the maximum harvest cycle.

Regulation 8 provides for the basis on which an increase in direct payments to qualifying farmers aged 40 or less and participating in the young farmers schemes must be calculated.

Regulation 9 fixes the threshold at which agricultural activities will not be considered to be insignificant,

sets out how a farmer demonstrates that his principal business consists of exercising an agricultural activity and provides for an exemption from the exclusion from eligibility for direct payments of a farmer who received EUR 5,000 or less of direct payments in the previous year.

Regulation 10 sets out how payment entitlements under the basic payment scheme will be allocated and fixes the date on which the number of eligible hectares must be at the disposal of farmers.

Regulation 11 sets out how payment entitlements under the basic payment scheme may be transferred via sale or lease and makes provision for the period within which a transferor must notify the Welsh Ministers of a transfer of payment entitlements.

Regulation 12 provides that the period within which the transferee of a holding must inform the Welsh Ministers of the transfer and request payment is 30 days beginning with the first day after the date of the transfer.

Regulation 13 sets out those non-agricultural activities which are permitted on an agricultural area for a period of up to 28 days per calendar year and designates those areas which are classed as being predominantly used for non-agricultural activities and are therefore ineligible for the purposes of the basic payment scheme.

Regulations 14 to 16 make provision relating to the “greening” component of direct payments, linking payments to agricultural practices beneficial for the climate and environment. Regulation 14 sets out the period to be taken into account for the purposes of determining whether crop diversification requirements have been met. Regulation 15 provides for the designation of permanent grasslands which are environmentally sensitive. Regulation 16 sets out the five areas which are to be Ecological Focus Areas (“EFAs”) and details the scope of the EFAs relating to land lying fallow, landscape features, areas of short rotation coppice, afforested areas and areas with nitrogen fixing crops.

Regulation 17 revokes Regulations which make provision in relation to Wales for the administration of the European Single Payment and Support Scheme but with a saving provision for the continued application of the Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2010 (S.I. 2010/1892 (W. 185)) in respect of aid applications relating to claim years before 2015.

A Regulatory Impact Assessment of the effects of these Regulations on the costs of business, in relation to farm businesses in Wales, has been prepared in respect of these Regulations. Copies can be obtained

from the Department of Natural Resources, Welsh
Government, Cathays Park, Cardiff, CF10 3NQ.

2015 No. 1252 (W. 84)

AGRICULTURE, WALES

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

Made 22 April 2015

Laid before the National Assembly for Wales
23 April 2015

Coming into force 14 May 2015

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy of the European Union.

These Regulations make provision for a purpose mentioned in that section and it appears to the Welsh Ministers that it is expedient for any reference in these Regulations to EU instruments to be construed as a reference to those instruments as amended from time to time.

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

Title, application and commencement

1.—(1) The title of these Regulations is the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015.

(2) These Regulations apply in relation to Wales.

⁽¹⁾ S.I. 2010/2690.
⁽²⁾ 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(3) These Regulations come into force on 14 May 2015.

Interpretation

2.—(1) In these Regulations—

“non-native invasive weeds” (“*chwyn goresgynnol estron*”) means the following—

Japanese knotweed (*Fallopia japonica*)

Giant hogweed (*Heracleum mantegazzianum*)

Himalayan balsam (*Impatiens glandulifera*)

Rhododendron ponticum (*Rhododendron ponticum*);

“permanent grassland” (“*glaswelltir parhaol*”) has the same meaning given in Article 4(1)(h) of the Direct Payments Regulation but also includes land where native dwarf shrubs including those in the family Ericaceae (heathers) and the species *Ulex gallii* (western gorse), and/or native species in the families Juncaceae (rushes) and Cyperaceae (sedges), are predominant and can be grazed;

“single application” (“*cais sengl*”) means an application for direct payments in relation to area related aid schemes;

“the Direct Payments Delegated Regulation” (“*y Rheoliad Taliadau Uniongyrchol Dirprwyedig*”) means Commission Delegated Regulation (EU) No. 639/2014 supplementing the Direct Payments Regulation(1);

“the Direct Payments Implementing Regulation” (“*y Rheoliad Gweithredu Taliadau Uniongyrchol*”) means Commission Implementing Regulation (EU) No. 641/2014 laying down rules for the application of the Direct Payments Regulation(2);

“the Direct Payments Regulation” (“*y Rheoliad Taliadau Uniongyrchol*”) means Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy(3);

“the European Regulations” (“*y Rheoliadau Ewropeaidd*”) means—

- (a) the Direct Payments Regulation;
- (b) the Direct Payments Delegated Regulation;
- (c) the Direct Payments Implementing Regulation; and
- (d) the Horizontal Implementing Regulation;

(1) OJ No. L 181, 20.6.2014, p. 1.

(2) OJ No. L 181, 20.6.2014, p. 74.

(3) OJ No. L 347, 20.12.2013, p. 608, as amended by Regulation (EU) No. 1310/2013 (OJ No. L 347, 20.12.2013, p. 865).

“the Horizontal Implementing Regulation” (“*y Rheoliad Gweithredu Llorweddol*”) means Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance⁽¹⁾.

(2) Terms used in these Regulations that are also used in any of the European Regulations have the meaning they bear in those Regulations.

(3) Any reference in these Regulations to an EU instrument is a reference to that instrument as amended from time to time.

Minimum eligible area of holding

3. For the purposes of Article 10(1) and (2) of the Direct Payments Regulation, no direct payments may be granted to a farmer where the eligible area of the holding for which the payments are claimed or due to be granted in accordance with Article 10(1)(b) is less than 5 hectares.

Date on which eligible land must be at farmer’s disposal

4. In relation to any year in which the farmer makes a declaration in respect of parcels pursuant to Article 33(1) of the Direct Payments Regulation, the date on which those parcels must be at the farmer’s disposal is the 15 May of that year.

Maintenance of an agricultural area in a state suitable for grazing or cultivation

5. For the purposes of Articles 4(1)(c)(ii) and 4(2)(a) of the Direct Payments Regulation and Article 4 of the Direct Payments Delegated Regulation, an agricultural area will be deemed to be maintained in a state suitable for grazing or cultivation where a farmer controls non-native invasive weeds and scrub on that area.

Minimum agricultural activity on land naturally kept in a state suitable for grazing or cultivation

6. For the purposes of Articles 4(1)(c)(iii) and 4(2)(b) of the Direct Payments Regulation and Article 5 of the Direct Payments Delegated Regulation, on agricultural areas naturally kept in a state suitable for grazing or cultivation, a farmer will be deemed to be carrying out the minimum activity where that—

- (a) area is grazed at an annual stocking density of 0.01-0.05 livestock units per hectare; or

(1) OJ No. L 227, 31.7.2014, p. 69.

- (b) farmer controls non-native invasive weeds and scrub on that area.

Short rotation coppice

7. For the purposes of Article 4(1)(k) and (2)(c) of the Direct Payments Regulation—

- (a) the list of planted tree species is—
 - Alder (*Alnus spp*)
 - Silver Birch (*Betula pendula*);
 - Hazel (*Corylus avellana*);
 - European Ash (*Fraxinus excelsior*);
 - Lime (*Tilia cordata*);
 - Sweet chestnut (*Castanea sativa*);
 - Sycamore (*Acer pseudoplatanus*);
 - Willow (*Salix spp*);
 - Poplar (*Populus spp*); and
- (b) the maximum harvest cycle is 20 years.

Young farmers

8.—(1) For the purposes of the payment calculation required by Article 50(6) of the Direct Payments Regulation, the number of entitlements a young farmer has activated in accordance with Article 32(1) of that Regulation will be multiplied by 25% of an amount calculated by dividing a fixed percentage of the national ceiling for the calendar year 2019 by the number of all eligible hectares declared on the single application for the claim year 2015.

(2) For the purpose of Article 50(9) of the Direct Payments Regulation, a single maximum limit of 25 is applicable to the number of eligible hectares declared by the farmer.

Active farmers

9.—(1) For the purposes of Article 9(2) sub-paragraph 3(b) of the Direct Payments Regulation, a farmer's agricultural activities are not insignificant if that farmer's total holding size is greater than or equal to 21 hectares, in accordance with the third sub-paragraph of Article 13(1) of the Direct Payments Delegated Regulation.

(2) For the purposes of Article 9(2) sub-paragraph 3(c) of the Direct Payments Regulation, a farmer's principal business or company objects consist of exercising an agricultural activity where that farmer provides the Welsh Ministers with evidence that at least 40% of the total receipts obtained by the business in the most recent fiscal year for which evidence is available were obtained from agricultural activities, in

accordance with the third sub-paragraph of Article 13(3) of the Direct Payments Delegated Regulation.

(3) For the purposes of Article 9(4) of the Direct Payments Regulation, the maximum amount is EUR 5,000.

Basic Payment Scheme entitlements

10.—(1) For the purposes of Article 22(1) of the Horizontal Implementing Regulation, applications for allocation of payment entitlements under the basic payment scheme in accordance with Article 24 or Article 30, except paragraph 7(e), of the Direct Payments Regulation, must be submitted to the Welsh Ministers no later than the 15 May of the relevant calendar year.

(2) An application for allocation of payment entitlements must be submitted to the Welsh Ministers at the same time as the aid application under the basic payment scheme, in accordance with Article 22(2) of the Horizontal Implementing Regulation.

(3) For the purposes of the third sub-paragraph of Article 24(1) of the Direct Payments Regulation, the Welsh Ministers will allocate payment entitlements to farmers who—

- (a) are entitled to be granted direct payments in accordance with Article 9 of the Direct Payments Regulation; and
- (b) submit an application for allocation of payment entitlements under the basic payment scheme in accordance with paragraphs (1) and (2) of this regulation; and
- (c) either—
 - (i) were producing fruits, vegetables, ware potatoes, seed potatoes or ornamental plants; or
 - (ii) were cultivating vineyards; or
 - (iii) never held owned or leased-in single payment scheme entitlements but can submit verifiable evidence that on 15 May 2013 they produced, reared or grew agricultural products, including through harvesting, milking, breeding animals and keeping animals for farming purposes.

(4) For the purposes of Article 24(2) of the Direct Payments Regulation, the date on which the number of eligible hectares must be at the disposal of the farmer is the 15 May 2015.

Transfer of entitlements

11.—(1) In the case of a sale of a holding or part of it, a farmer may, by contract signed before 15 May

2015, transfer together with the holding or part of it, the corresponding payment entitlements to be allocated, in accordance with Article 20 of the Direct Payments Delegated Regulation.

(2) In the case of a lease of a holding or part of it, a farmer may, by contract signed before 15 May 2015, lease-out together with the holding or part it, the corresponding payment entitlements to be allocated, in accordance with Article 21 of the Direct Payments Delegated Regulation.

(3) For the purposes of Article 8(1) of the Direct Payments Implementing Regulation, the period within which the transferor of payment entitlements must notify the Welsh Ministers of the transfer is from 16 May of the preceding calendar year to 30 April (both those dates included) of the first calendar year in which the transferee may include those entitlements in the transferee's application for direct payments.

Transfer of holding

12. For the purposes of Article 8(3)(a) of the Horizontal Implementing Regulation, the period within which the transferee must inform the Welsh Ministers of the transfer and request payment of the aid or support, or both, is 30 days beginning with the first day after the date of the transfer.

Non-agricultural activities

13.—(1) In accordance with Article 32(3) of the Direct Payments Regulation—

- (a) non-agricultural activities which may be carried out on an agricultural area of a holding for a period of up to 28 days per calendar year are listed in Part 1 of the Schedule;
- (b) areas which are classed as being predominantly used for non-agricultural activities are listed in Part 2 of the Schedule;
- (c) any area where the principal purpose of the land is for recreational activities, or a non-agricultural activity listed in Part 1 of the Schedule, is not consistent with the land being considered as remaining in agricultural use.

Crop diversification

14. For the purposes of the first sub-paragraph of Article 40(1) of the Direct Payments Delegated Regulation, the relevant cultivation period in any year is 1 May to 15 July (both dates included).

Permanent grassland

15.—(1) Any permanent grassland—

(a) located in a site of special scientific interest; and

(b) in relation to which written consent to plough is required in accordance with section 28E of the Wildlife and Countryside Act 1981(1) but such consent has not been obtained,

is designated as environmentally sensitive permanent grassland for the purposes of Article 45(1) of the Direct Payments Regulation.

(2) In this regulation—

“site of special scientific interest” (“*safle o ddiddordeb gwyddonol arbennig*”) has the meaning given in section 52(1) of the Wildlife and Countryside Act 1981.

Ecological focus areas

16.—(1) For the purposes of Article 46(2) of the Direct Payments Regulation, the areas mentioned in points (a) (land lying fallow), (g) (areas of short rotation coppice), (h) (afforested areas) and (j) (areas with nitrogen-fixing crops) and, subject to paragraph (3), point (c) (landscape features), are considered to be Ecological Focus Areas.

(2) In accordance with Article 45(2) of the Direct Payments Delegated Regulation, there shall be no agricultural production on land lying fallow in any year between 1 February and 31 July (both dates included).

(3) For the purposes of the second sub-paragraph of Article 45(4) of the Direct Payments Delegated Regulation, landscape features are limited to—

- (a) hedges up to 10 metres wide; and
- (b) traditional stone walls at least 1 metre high and no more than 4 metres wide.

(4) For the purposes of Article 45(8) of the Direct Payments Delegated Regulation—

- (a) the list of planted tree species that can be used for short rotation coppice is—

Alder (*Alnus spp*),

Silver Birch (*Betula pendula*),

Hazel (*Corylus avellana*),

European Ash (*Fraxinus excelsior*),

Lime (*Tilia cordata*),

Sweet chestnut (*Castanea sativa*),

Sycamore (*Acer pseudoplatanus*),

Willow (*Salix spp*),

Poplar (*Populus spp*); and

(1) 1981 c. 69.

- (b) within the first 2 years of planting any of the species in paragraph (4)(a)—
 - (i) no mineral fertiliser may be used on those species, and
 - (ii) plant protection products can only be used for the treatment of non-native invasive weeds; and
- (c) the maximum harvest cycle is 20 years.

(5) For the purposes of Article 45(10) of the Direct Payments Delegated Regulation—

- (a) the list of nitrogen fixing crops is—
 - Alfalfa (*Medicago sativa*),
 - Bean (*Phaseolus spp*),
 - Bean (*Vigna spp*),
 - Birdsfoot trefoil (*Lotus corniculatus*),
 - Chickpea (*Cicer spp*),
 - Clover (*Trifolium spp*),
 - Faba bean (*Vicia faba*),
 - Lentil (*Lens culinaris*),
 - Lupin (*Luninus spp*),
 - Pea (*Pisum spp*),
 - Vetch (*Vicia spp* except *Vicia faba*),
 - Medicago Lupulina (*medick*),
 - Glycine max (*soybean*),
 - Melilotus albus (*sweet clover*),
 - Onobrychus viciifolia (*sainfoin*); and
- (b) in any year, any nitrogen fixing crop must be sown by 15 May and be present for 14 weeks from the date that it was sown, or until 1 August at the latest.

(6) When calculating the total hectares represented by the Ecological Focus Area of a holding, the Welsh Ministers will make use of the conversion and weighting factors set out in Annex X to the Direct Payments Regulation.

Revocations and savings

17.—(1) Subject to paragraph (2), the following instruments are revoked—

- (a) The Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2010 (“the 2010 Regulations”)(1) ; and
- (b) The Common Agricultural Policy Single Payment and Support Schemes (Wales) (Amendment) Regulations 2012(2).

(1) S.I. 2010/1892 (W. 185).
 (2) S.I. 2012/3093 (W. 311).

(2) The 2010 Regulations as in force immediately before 2015 shall continue to apply in respect of aid applications relating to 2014 and earlier claim years.

Rebecca Evans
Deputy Minister for Farming and Food, under the
authority of the Minister for Natural Resources, one of
the Welsh Ministers
22 April 2015

SCHEDULE Regulation 13

Non-agricultural activities

PART 1

Non- agricultural activities permitted on agricultural areas up to 28 days per calendar year

Clay pigeon shooting

Car boot sales

Festivals

Country shows and fairs

Farm auctions and sales

Equestrian activities

Ballooning

Car parking*

Scout camps

Guide camps

Caravan sites

Camping sites

TV and film locations

Motor sports

Moto cross

* Whether or not associated with any other non-agricultural activity

PART 2

Areas classed as being predominantly used for non-agricultural activities

Golf courses

Gallops

Airports

Solar parks

Permanent sports installations and facilities

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

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015.

I am satisfied that the benefits outweigh any costs.

Rebecca Evans
Deputy Minister for Farming and Food
22 April 2015

1. Description

The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 ('the Regulations') sets out the decisions made by Wales in respect of the European Union (EU) reform of the Common Agricultural Policy (CAP). The Regulations provide a legislative framework for those decisions and include, amongst others, the greening options for Wales and the Young Farmers Scheme. Payment options for the BPS are currently subject to a public consultation. Once that has concluded and a decision taken, the necessary provisions will be included in a future Statutory Instrument amending these Regulations.

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

These Regulations have been developed in response to public consultations and monthly meetings with stakeholders. The changes have been discussed in detail in the RIA.

3. Legislative background

The reform of the CAP is governed by Regulation (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within framework of the Common Agricultural Policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009. It came into force on 17 December 2013 and is supplemented by a number of European Commission (EC) Delegated and Implementing Regulations. Member States may introduce their own domestic legislation to implement certain aspects of the EU legislation.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the CAP of the European Union by virtue of S.I. 2010/2690. This designation allows Welsh Ministers to make Regulations for the purpose of implementing any EU obligation in exercise of the powers contained in section 2(2).

The Regulations would be made by the negative procedure.

4. Purpose & intended effect of the legislation

The EU periodically reforms the CAP. The current changes taking place are for the period 2014-2020 but owing to the time taken for all institutions and Member States to reach agreement, they were not implemented until 2015. The EU Regulations' provisions are either compulsory or optional. Some of the compulsory elements also offer choices as to how they are implemented. The choices available to the Welsh Government regarding these options and the decisions taken are set out in the RIA.

Reform of CAP direct payments from January 2015 will see the introduction of a suite of changes including the introduction of a payment for greening and a separate support scheme for young farmers. The policy aim is to implement these changes in a managed manner.

Detailed information on these changes is included in the RIA.

5. Consultation

The Welsh Government has developed its Pillar 1 proposals and made decisions on the basis of extensive consultation activity. The consultation paper published in July 2013 was supplemented by public meetings across Wales. A further consultation on aspects of the Basic Payment Scheme (BPS) which are not the subject of this Statutory Instrument is in progress and ends on 23 June 2015. Developing policy decisions have been shared with and commented on by a working group which has included as members the FUW, NFU (Cymru), CLBA, CAAV, YFC and TFA.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

This paper is split into sections for ease of reading:

1. Basic Payment Scheme; this includes minimum claim size, active farmer and entitlements
2. Greening; this includes permanent grassland, Crop Diversification and Ecological Focus Area
3. Young Farmers Scheme
4. Small Farmers Scheme

The European Union periodically reforms the CAP. This reform applies to Wales as part of the UK, which is an EU Member State. The reforms are given effect by pan-European legislation which provides a legal framework that the Welsh Government must adhere to. If we choose to do nothing and not implement CAP reform we would risk infraction proceedings and disallowance penalties. In addition, there would be no mechanism for farmers in Wales to receive any payments and the Welsh Government would run the risk of being substantially fined. Therefore, the reform must be implemented. The “do nothing” options have not been covered as, without running the above risks, it is not possible to do nothing.

The options we have in introducing this reform of the CAP are explained in the sections below.

1. Basic Payment Scheme (BPS)

Minimum Claim Size

The EU Regulations state that all claims must be a minimum of 1 hectare (ha) but may be increased to 5ha. Currently the Welsh Government has a minimum claim size of 0.3ha. The options were to apply a minimum claim size of between 1-5ha. The Welsh Government will be applying a 5ha minimum claim size.

The consultation proposed setting a new minimum threshold of 3ha. 3ha was seen as a reasonable option and was aligned with the minimum holding size used for Pillar 2 Glastir Schemes. It was also felt that 5ha might disadvantage young or new entrants. Points made during the evening CAP meetings supported 5ha however, the view being that people entering farming would need at least this amount of land to have a viable business. Consultation responses brought little in the way of comment with only a small majority in favour of 5ha¹.

In the context of Welsh farming, 5ha is still a very small farm. With some 16,000 claiming farms and 1,333,000ha of claimed land, the Welsh average

¹ 12 respondents opted for 5 ha, 10 for 3 ha and 1 would like more than 5 ha.

farm size is much larger at 83ha. Claim data from 2012 records that 887 farms with less than 5ha claimed SPS worth €496,000, a very small sum relative to a Pillar 1 budget of some €327m. Of these small farms, 805 had claims of less than €1,000 and only 19 claimed more than €2,000. The minimum claim size could be raised to 5ha without materially impacting on the farming industry – the farms that would lose out would mostly lose negligible sums - and that would free around €0.5m a year for distribution to larger farms as well as having a small administrative benefit by reducing the number of claims processed. In addition, Welsh Ministers wanted to focus Pillar 1 support on productive farms and in a Welsh context these are larger than 5ha.

There would be no direct impact on Glastir schemes by raising the limit from the proposed 3ha to 5ha. Having different size limits makes no difference to how either Pillar 1 or Pillar 2 operates. Glastir entry is also not conditional on being eligible for Pillar 1. 27 farms claiming SPS with 3-5ha are also in Glastir. It is possible that the withdrawal of Pillar 1 payments might impact on the operation of these farms to the point that they are no longer viable but given their SPS payments are very small this seems very unlikely.

Active Farmer

The EU Regulations provide that payments will only be made to people who are 'active farmers'. The European Commission (EC) has concerns that organisations whose main business is something other than agriculture, or people who are claiming payments but are not farming themselves, should be prevented from claiming BPS payments. The EU Regulations also introduce a 'negative list' where those claimants carrying out certain business activities on the negative list should not be eligible to claim. This list includes airports, water companies, railways, real estate services, permanent sport and recreational grounds. The Welsh Government is required to;

- a) set criteria for activities that maintain the land in a suitable state for grazing/cultivation without preparatory action that goes beyond usual methods and machines; and
- b) define minimum activity on land naturally kept fit for grazing or cultivation.

Under **a)**, the Welsh Government has decided that the area must be grazed at an annual stocking density of 0.01-0.05 livestock units per hectare or the claimant must control non-native invasive weeds and scrub on that area.

Under **b)**, the Welsh Government has decided that the claimant must control non-native invasive weeds and scrub on that area.

These requirements will affect all claimants but they should not incur any additional costs as the requirements do not go beyond those activities which demonstrate that they are an active farmer.

It is important to strengthen the definitions as without reference to stocking rates/control of weeds, a landowner with naturally kept land would be able to

comply with the agricultural activity definition as long as the field parcels are kept in grazing condition. This could require as little effort as mowing the parcel once a year. The addition of a minimum stocking density/control of weeds ensures the claimant has to make some effort. It is also intended to deter those persons who do not keep any livestock from claiming payments meant for those claimants the EC consider to be active farmers. The Welsh Government has discussed these decisions with the EC and has taken account of their views in making this decision.

For those persons carrying out a business on the negative list, there are three further tests which may allow them access to the BPS². These tests may be modified by Member States. Following consultation with Defra, other UK Devolved Administrations and industry stakeholders, the criteria listed at a)-b) below will be used by the Welsh Government. Those claimants carrying out an activity on the negative list will need to satisfy one of the tests below in order to be eligible for the BPS;

- a) the annual amount of direct payments is at least 5% of the total receipts that if obtained from non-agricultural activities in the most recent fiscal year for which such evidence is available.
- b) a farmer's agricultural activities are not insignificant if that farmer's total holding size is greater than or equal to 21 hectares.
- c) a farmer's principal business or company objects consist of exercising an agricultural activity where that farmer provides the Welsh Ministers with evidence that at least 40% of the total receipts obtained by the business in the most recent fiscal year for which evidence is available were obtained from agricultural activities

Option a) does not alter the provision as it is set out in the EU Regulation.

For option b), the Welsh Government has decided that an eligible agricultural area in excess of the median hectareage size of a farm in Wales cannot be considered insignificant. The justification for this is that if someone is farming an area of land that is bigger in area than at least half the claiming farms in the territory, then it is reasonable that they should be considered to be an active farmer for the purposes of the BPS. In Wales' case the median farm size set for the criterion is 21ha.

For option c), the Welsh Government has decided that demonstrating that 40% of total receipts are from agricultural activities is sufficient to provide assurance that a claimant undertakes agricultural activity either as its principal business, or as one of no more than two principal businesses. A claimant who cannot show that their agricultural receipts exceed 40% of total receipts cannot reasonably be said to be undertaking agricultural activity as their principal business. This is felt to be the best test, within WTO rules, of whether agricultural activity is the principal business or company object.

² Article 9(2)(a-c) of Regulation (EU) No 1307/2013

The Welsh Government also had the option to add further business types to the negative list on the basis of objective and non discriminatory criteria. The Welsh Government has not added to this list. An active farmer workshop with industry stakeholders could not identify any additional businesses or activities which should be added to the negative list. This has benefits to the Welsh farming industry as we do not want to penalise farms that have positively diversified into non-farming enterprises if their main business activity is still farming.

Entitlements

All farms must have entitlements to claim the Basic Payment Scheme. Under the Single Payment Scheme, claimants were allocated historical entitlements based on what they produced during the reference years of 2000, 2001 and 2002. Historical entitlements were extinguished on 31 December 2014. They will be replaced by new entitlements in 2015 with one entitlement being awarded per hectare of land. In order to be eligible for this first allocation of new entitlements a person must:

- Have received a SPS payment in 2013;
- Or instead be able to provide evidence, such as receipts or accounts, to prove that they were farming in 2013 and had not claimed SPS previously.

The Welsh Government also had a choice whether to allow farmers who had not had SPS entitlements in the past to claim. It was decided to allow this to benefit all farmers in Wales. There will be farmers who were never able to claim SPS due to them not having entitlements or farming within the reference period for the SPS. By taking up this option, the Welsh Government is allowing all farmers to be allocated entitlements irrespective of whether they claimed SPS or not. It is not possible to estimate the new number of entitlements until all the claims have been received in 2015.

The Welsh Government was able to decide whether to apply additional objective and non-discriminatory eligibility criteria for new farmers to be allocated entitlements. This will not be taken forward. Applying additional criteria may mean that Pillar 1 support can be targeted to those who have proven experience but this may prove a barrier to new entrants. Further, those who previously claimed SPS will not have had to comply with the same criteria. Therefore, to apply extra criteria to some, but not all, would be unfair.

2. Greening

Greening is the informal name for what the EU Regulations term as agricultural practices beneficial for the climate and the environment. It is a compulsory element of the payment system and makes up 30% of Pillar 1 payments. There are three elements of greening:

- Permanent grassland, this is grass which has not been ploughed for five years or more and Wales is required to keep within 5% of the area we declared to the Commission as permanent grassland.
- Ecological Focus Area (EFA), a claimant will need to have ecological focus areas on their arable land if they have more than 15 hectares of arable land.
- Crop Diversification, this is the 2 or 3 crop rule, claimants with more than 10 hectares of arable land will need to follow these rules on the minimum area of crops they grow and the areas they cover.

The simplest greening option has been chosen with the aim that there will be more benefits for the environment; hence the 15% transfer, from Pillar 1 to Pillar 2.

Use of a national certification scheme

The Welsh Government is not implementing a national certification scheme and will adopt the EC's default greening proposals based on maintaining permanent grassland, crop diversification and ecological focus area. The default measures represent the most straightforward means for the majority of farms to qualify without significantly impacting on their businesses. It is estimated that 86% of farms of 20ha or more could comply with the default greening requirements without significantly changing their operations. For farms smaller than this, the figure rises to 98%. There was significant support for this option in the consultation responses with 3 to 1 of those responding to this question favouring the default requirements.

Permanent Grassland

As well as the adoption of the default requirements for permanent grassland, for greening purposes the Welsh Government has decided to designate environmentally sensitive permanent grassland in all SSSIs unless the SSSI has written consent to plough in accordance with Section 28E of the Wildlife and Countryside Act 1981. This is an exception as some SSSI's require ploughing for protection of the habitat.

The Welsh Government had the option to apply an obligation to maintain permanent grassland at either a holding or all-Wales level in order to ensure that the ratio of permanent grassland does not decrease by more than 5%. The Welsh Government has decided to keep the ratio of permanent grassland to total agricultural area maintained at the all-Wales level.

Crop Diversification

The Welsh Government has adopted the default requirements for crop diversification.

Ecological Focus Area

The Welsh Government has adopted the default requirements for Ecological Focus Areas (EFA). The EFAs used in Wales will be fallow land, hedges and traditional stone walls from the landscape features options along with short rotation coppice, afforested areas used to claim the Single Payment Scheme in 2008 and nitrogen fixing crops. This was decided following significant discussions with stakeholders and represents the best option for Welsh farms in terms of established farming practices and Wales' geography.

The Welsh Government does not permit adjacent EFA areas between farms or group EFA applications.

3. Young Farmers Scheme

The Young Farmers Scheme is mandatory. It allows up to 2% of the national ceiling to be utilised to enable young farmers (under 40 years of age) to receive a top-up on their basic payment for up to five years.

The Welsh Government has decided to not set any additional eligibility criteria for young farmers than what is set by the EU Regulations. This ensures that we are not placing additional barriers to entry on young farmers, thus making the process fairer and open to all potential applicants. It is also simpler to administer.

The payments for this Scheme will be made on a maximum of 25ha and the payment methodology chosen is calculated by dividing a fixed percentage of the national ceiling for the calendar year 2019 by the number of all eligible hectares declared in 2015. This was agreed following an industry stakeholder meeting.

4. Small Farmers Scheme

There will be no Small Farmer Scheme in Wales as the impact of this scheme would be extremely low, affecting only 1,104 farms. The Small Farmer Scheme would provide exemption from cross compliance requirements for those eligible. The Welsh Government believes that all farmers claiming BPS should be required to observe cross compliance obligations and any exemption may raise the risk of a decrease in environmental and animal health standards in Wales.

Consultation

There has been extensive consultation throughout the CAP Reform period. There have been three written consultation documents completed; December 2011, February 2013 and July 2013, along with a further exercise launched on 31 March 2015. The links to these are below.

December 2011 – CAP Conversation

<http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/cap/pillar-1-direct-payments/documents/111219capconversation/?lang=en>

February 2013 – CAP Reform – Direct Payments – Next Steps

<http://wales.gov.uk/consultations/environmentandcountryside/130206cap-reform-direct-payments-to-farmers-next-steps/?status=closed&lang=en>

July 2013 – December 2013 – Welsh Government Proposals for Direct Payments Consultation

<http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/cap/pillar-1-direct-payments/documents/proposals-for-direct-payments-to-farmers/?lang=en>

March 2015 – June 2015 – Proposals for the Basic Payment Scheme

<http://gov.wales/consultations/environmentandcountryside/basic-payment-scheme-proposals/?lang=en>

Direct Payments to farmers – Decisions Booklet

<http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/cap/pillar-1-direct-payments/documents/direct-payments-to-farmers-decisions-booklet/?lang=en>

Accompanying the consultation were three rounds of evening meetings throughout Wales. One series took place in the spring of 2013; another in Autumn 2013 and the final round early 2014.

Further to the consultations carried out, we have engaged industry stakeholders throughout the process with the NFU, FUW, CLA, CAAV, TFA and YFC sitting as members of the CAP Modelling Group and CAP High Level Group. These met on a monthly / bimonthly basis throughout the process to discuss all of the options for the BPS along with all other aspects of the reform of the CAP.

APPENDIX A

The Competition Assessment

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

Constitutional and Legislative Affairs Committee

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Constitutional and Legislative Affairs Committee Draft Report

**Title: The Eastern High School (Change to School Session Times)
Order 2015**

Procedure: Negative

This Order is made under section 2 of chapter 1 of the Education Act 2002 which enables the Welsh Ministers, upon the application of a qualifying body, to exempt that body from particular provisions of education legislation. By virtue of the order regulation 4(2), (3) and (4) of the changing of School Sessions Times Regulations 2009 will not apply to the governing body of Eastern High School. This will allow the governing body to make alterations to when school sessions start and finish including when the school day starts and ends from 1 June 2015 rather than at the beginning of a school term or year. The order has effect until 31 August 2015.

Technical Scrutiny

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

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to note this Order. Chapter 1 of the Education Act 2002 is to facilitate the implementation of innovative projects which may, in the opinion of the Welsh Ministers, contribute to the raising of educational standards by lifting regulatory requirements for a time-limited period to facilitate the trialling of an innovative project which has the potential to raise educational standards.

A search of the Lexis legislative data base indicates that this is the first time this power has been exercised by the Welsh ministers.

Members may also wish to note that, notwithstanding its local application, this Order is made pursuant to a formal statutory procedure.

Legal Advisers**Constitutional and Legislative Affairs committee****24 April 2015**

2015 No. 1227 (W. 81)

EDUCATION, WALES

**The Eastern High School (Change
to School Session Times) Order
2015**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 2 of the Education Act 2002. Article 2 provides that regulation 4(2), (3) and (4) of the Changing of School Session Times (Wales) Regulations 2009 does not apply to the governing body of Eastern High School. This will allow the governing body to make alterations to when the school sessions start and end including when the school day starts and ends from 1 June 2015, rather than at the beginning of a school term or school year. Article 3 specifies that the Order has effect until 31 August 2015.

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

2015 No. 1227 (W. 81)

EDUCATION, WALES

**The Eastern High School (Change
to School Session Times) Order
2015**

Made 20 April 2015

Laid before the National Assembly for Wales
24 April 2015

Coming into force 1 June 2015

The governing body of Eastern High School (“the governing body”) have, in accordance with section 4(2) of the Education Act 2002(1) (“the Act”), consulted the local authority and such persons as appear to them to be appropriate, including the parents of registered pupils at the school and the staff working at the school;

It is the opinion of the Welsh Ministers, having regard to the matters set out in section 1(2) of the Act, that the implementation by the governing body of the provisions of this Order may contribute to the raising of educational standards achieved by children in Wales;

The Welsh Ministers in exercise of the powers conferred upon the National Assembly for Wales by section 2(1) of the Act(2), and now vested in them, on the application of the governing body, make the following Order:

(1) 2002 c. 32.
(2) The functions of the National Assembly for Wales in sections 1 to 5 were vested in the Welsh Ministers by paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

Title and commencement

1.—(1) The title of this Order is the Eastern High School (Change to School Session Times) Order 2015 and it comes into force on 1 June 2015.

Exemption from the School Session Regulations

2. Regulation 4(2), (3) and (4) of the Changing of School Session Times (Wales) Regulations 2009⁽¹⁾ does not apply to the governing body of Eastern High School⁽²⁾ of Newport Road, Cardiff CF3 3XG.

Time period

3. This Order will have effect until 31 August 2015.

Huw Lewis
Minister for Education and Skills, one of the Welsh
Ministers
20 April 2015

(1) S.I. 2009/572 (W. 54).
(2) Unique School Reference Number: 6814076.

Explanatory Memorandum to the Eastern High School (Change to School Sessions Times) Order 2015

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Eastern High School (Change to School Sessions Times) Order 2015.

Huw Lewis
Minister for Education and Skills

20 April 2015

1. Description

This Order dis-applies the requirements in regulation 4(2), (3) and (4) of the Changing of School Session Times (Wales) Regulations 2009 (“the Regulations”) to the governing body of Eastern High School. This will allow the governing body to make alterations to when the school sessions start and end, including when the school day starts and ends at any time in the school year without having to wait for the start of a school term or academic year or give a minimum period of notice. Article 3 specifies that the Order shall have effect until 31 August 2015.

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

None.

3. Legislative background

This Order is made under section 2 of Chapter 1 of the Education Act 2002. Those powers were conferred on the National Assembly for Wales and are now vested in the Welsh Ministers by virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006. The purpose of Chapter 1 of that Act is to facilitate the implementation of innovative projects which may (in the opinion of the Welsh Ministers) contribute to the raising of educational standards. Specifically, section 2 gives the Welsh Ministers on the application of one or more qualifying bodies, to exempt that applicant from particular provisions of education legislation, or to relax the requirements of, or to make modifications to, such provisions in order to further such innovative projects. Orders under section 2 have effect for the period specified in the Order, which cannot initially exceed three years.

The Order suspends regulation 4(2), (3) and (4) of the Regulations. Regulation 4(2) provides that if the governing body determine to implement the proposed change, it must, not less than six weeks before any change in those times is to take effect.

- (i) inform the local authority of the change and of when it is to take effect; and
- (ii) take such steps as are reasonable practicable to secure that the parents of all registered pupils at the school are so informed.

not less than three months before the change is to take effect.

Regulation 4(3) of the Regulations provides that where the change concerns:

- (a) the times at which the first school session is to begin or the second school session is to end or both, or
- (b) if there is only one school session, the time it is to begin or end (or both),

Regulation 4(4) of the Regulations provides that a change in the times of a school session must only be made so as to take effect –

- (a) where paragraph (3) applies, at the beginning of the school year; and
- (b) in all other cases, at the beginning of a school term.

The effect of the suspension of these provisions by the Order is, therefore to exempt the governing body of Eastern High School wait until the start of a school term or beginning of the academic year to change school session times including when the school day starts and ends and to exempt the governing body from having to give minimum period of notice set out in regulation 4(2) and (3) or the Regulations.

The Order is subject to the negative procedure.

4. Purpose & intended effect of the legislation

The Power to innovate (“the Power”) provides the Governing Bodies of schools or further education institutions, local authorities, and certain qualifying foundations with an opportunity to apply to the Welsh Ministers to lift regulatory requirements in education legislation for a time-limited period (by means of a Power to Innovate Order), so they can trial a specific innovative project that has the potential to raise educational standards. The Power is the result of concerns that innovative ideas can be unintentionally thwarted by detailed regulations and legislation. It is intended to facilitate the implementation of these ideas and to ensure that no opportunity is lost to trial innovative proposals that could raise standards.

The Governing Body of Eastern High School Cardiff has applied for exemption of regulation 4(2), (3) and (4) of the Regulations to allow the governing body to make alterations to the timing of school session times including the timing of the end of the school day without having to give three months notice and wait until the start of the academic year. The school wishes to reduce the lunch hour by 20 minutes and bring the end of the school day forward from 3.20 pm to 3.00 pm.

The school has experienced a period of instability following the merger of two former high schools. The governing body considers that a one hour lunch period is not conducive to effective learning and that a reduction in the lunch time period will result in learning beginning more promptly after the lunchtime period with pupils more ready to learn.

The governing body consider that the proposal will lead to an improvement in punctuality to lessons following the lunch break and a reduction in negative

event logs made during those lessons. They also anticipate a reduction in poor behaviour and bullying incidents during the lunchtime period which will result in improved health, safety and wellbeing of pupils. Taking these issues into account the governing body considers that the quality of learning will undoubtedly improve.

Given the urgency of the situation in terms of immediate health and safety concerns and the negative impact this is having on learning and the commensurate need to implement the changes at the earliest opportunity the governing body do not consider that they can give three months notice of the changes and wait until the 1 September 2015 to implement them.

The school proposes to monitor the impact of the changes on a week by week basis until the end of the academic year. This will include measuring levels of behaviour around the school, which will be recorded through reduced damage, reduced levels of aggressive or bullying behaviour and improvements in punctuality.

The headteacher has past experience of implementing this in three previous schools which saw huge benefits in this change and believes that the changes will result in school session times which are more conducive to effective learning in Eastern High School and an associated improvement in educational standards at the school.

5. Consultation

Section 4(2) of the Education Act 2002 places a legal obligation on applicants for a Power to Innovate Order to consult with the local authority and with other appropriate persons on their proposal. Under the existing Changing of School Session Times (Wales) Regulations 2009 the governing body is required to consult with the local authority, parents of pupils at the school and school staff on the proposed changes to school session times. The Welsh Government would therefore expect these persons to be consulted as a minimum. The governing body has confirmed in its application that:

- the local authority has been consulted and agrees with the proposal;
- all parents were informed by newsletter and text of an information evening to discuss the changes. 60 families (around 15% of parents) were represented at the meeting all of whom agreed with the changes;
- the Headteacher also wrote to all parents asking them for their opinions and providing them with an opportunity to reply if they wished to take advantage of supervision of their child to be looked after until 3.20 pm. Two parents sought confirmation that 40 minutes would be sufficient to feed all pupils which was confirmed. There has been no opposition.

In addition:

- all school staff were consulted, and all agree to the changes and there has been no opposition;

- all regional representatives from all the main unions have been consulted at a joint meeting and were in complete agreement;
- the Local Authority Director of Education has been consulted and agrees the change would benefit the school. The school does not have school buses so there are no transport issues;
- the headteacher of the neighbouring school has been consulted as the new finishing time may result in students from both schools meeting outside. The headteacher has no objections with the proposed changes and the school intends to increase duty to supervise at this time of the day; and
- the School Challenge Advisors agree to the move.

The Welsh Government is therefore content that the appropriate persons have been consulted.

No further Welsh Government consultation was undertaken on this Order. The governing body has undertaken all its statutory consultation requirements and further consultation on this Order was deemed unnecessary and would reduce the expected benefits of undertaking this action by extending the timetable unnecessarily.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, local government, charities or voluntary bodies the Welsh language, equality of opportunity and sustainable development.



Llywodraeth Cymru
Welsh Government

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

Eich cyf/Your ref
Ein cyf/Our ref LF/CS/0413/15

David Melding AM
Chair – Constitutional & Legislative Affairs Committee
Tŷ Hywel
Cardiff Bay
CF99 1NA

23 April 2015

Dear

The Environmental Permitting (England and Wales) (Amendment) Regulations 2015

I am writing in response to your letter of 18 March regarding the above Regulations.

As the Committee observed in its meeting of 9 March, transposition of article 14(5)-(9) of the energy efficiency Directive took place after 5 June 2014 in all parts of the UK. In light of this, I do not anticipate any disproportionate risk to the Welsh Government. However, it is essential that the relevant authorities work together to ensure that a similar situation does not arise in future.

As you note, a common environmental permitting framework currently operates across England and Wales. The Environmental Permitting (England and Wales) Regulations 2010 have been subject to numerous amendments since they were first made, some of them substantial. This has resulted in a patchwork of legislation with no up-to-date, authoritative, consolidated version to which regulators and regulated industry can refer. My department is therefore working with Defra on proposals for the production of a consolidated version of the Regulations as they currently stand. Any separation of the England and Wales regimes whilst this work is ongoing would add complexity and uncertainty for both the regulator and the regulated.

Yours sincerely

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee**

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Carl Sargeant AM
Minister for Natural Resources
Welsh Government
5th Floor, Tŷ Hywel
Cardiff Bay
CF99 1NA

18 March 2015

Dear Carl

**CLA493 – The Environmental Permitting (England and Wales) Regulations
2015**

The Committee considered the above composite Regulations at its meeting on 9 March 2015. There are a number of areas which we found to be irregular, even taking into account the specific circumstances surrounding the introduction of these Regulations.

In addition to reporting to the Assembly on a number of technical and merit points (listed below), we wish to highlight our concerns and seek assurances on some specific issues.

We have reported to the Assembly that the Regulations have not been made bilingually. Committee officials are due to meet Government officials to discuss issues relating to composite instruments and this instrument is likely to feature in these discussions.

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Ffôn / Tel: 029 2089 8019
E-bost / Email: ruth.hatton@assembly.wales

In addition, we reported that the Regulations are over nine months late. The transposition deadline for the Energy Efficiency Directive was 5 June 2014. It would be helpful if you could indicate whether Wales is at the risk of infraction proceedings as a result.

We are aware that both Scotland and Northern Ireland have decided to draft their regulations separately. While we note that the decision to lay a composite regulation was due to England and Wales having a single environmental permitting framework, we would nevertheless be interested to hear on what scope there is for separate provision in this area, in light of the changes in the environmental regulatory framework in Wales. Such a Wales only approach may have led to more accurate, bilingual legislation for Wales.

We seek your assurances that these issues will not arise again.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

David Melding AM
Chair

Rosemary Butler AM
Presiding Officer

5 May 2015

Dear Rosemary

Budget Procedures

As you will be aware the Finance Committee have published two reports on the new budget procedures that will need to be implemented following the devolution of fiscal powers. We published our [part 1 report](#) in July 2014 and followed this up with a [part 2 report](#) in March 2015.

Whilst primarily these report make recommendations to the Government, there is clearly a responsibility on the Assembly to ensure the new procedures are fit for purpose whilst ensuring the procedures include provision for effective scrutiny by the Assembly.

Specifically in the part 1 report Conclusion 14 said:

The Committee will look further at the capacity issues of the Assembly and the Welsh Government during the second part of the inquiry. However, the Committee recommends that both the Assembly Commission and the Welsh Government commence work to look at the capacity available to undertake work in relation to the devolution of further fiscal powers to Wales.

Whilst in the part 2 report Recommendation 1 said:

The Committee recommends that the Welsh Government and the Assembly should work together to develop a new budget process, which allows for:

UK budget announcements,



a two part process,

the need to provide an early indication to other public bodies of their budgets for the following financial year,

adequate time for Assembly scrutiny, and

“future proofing” for any further fiscal devolution.

Throughout this process the Committee have worked closely with Jane Hutt AM, Minister for Finance and Government Business to ensure that the work of the Committee is informed by the Government and conclusions and recommendations have been shaped to ensure the needs of both the Assembly and the Government have been considered. The recent debate on the part 2 report was testament to our joint working, and as a Committee we hope this effective relationship with the Minister continues.

I would be grateful if you could provide the Committee with an update on the work the Assembly is undertaking:

1. to ensure there is capacity in the Assembly to undertake this important work on fiscal devolution in the coming years
2. with the Government to take forward the work required to implement new budget procedures.

I am copying this letter to Jane Hutt AM in view of the Governments role in this work. In addition as the Constitutional and Legislation Affairs Committee has shown an interest in this area as part of their current inquiry I am also copying it to David Melding AM.

Yours sincerely



Jocelyn Davies

Chair



Agenda Item 5.2

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

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