

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 14 January 2019

Meeting time: 13.00

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

2 Legislation (Wales) Bill: Evidence session 2

13.00

(Pages 1 – 13)

Sir Nicholas Green, Chair, Law Commission

Mr. Nicholas Paines QC, Law Commission

Mr. Henni Ouahes, Law Commission

Dr. Charles Mynors, Law Commission

CLA(5)–2–19 – Briefing

CLA(5)–2–19 – Paper 1 – Law Commission response to the consultation on the Welsh Government’s consultation on the draft Legislation Bill

3 Legislation (Wales) Bill: Evidence Session 3

13.45

(Pages 14 – 30)

Dr Catrin Fflur Huws

Professor Thomas Watkin

CLA(5)–02–19 – Briefing

CLA(5)–02–19 – Paper 2 – Written evidence from Professor Thomas Watkin on the legislation (Wales) Bill



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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

14.30

(Pages 31 – 33)

CLA(5)–02–19 – Paper 3 – Statutory instruments with clear reports

Negative Resolution Instruments

4.1 SL(5)298 – The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018

Affirmative Resolution Instruments

4.2 SL(5)292 – The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

The following summary of consultation response relates to the this instrument and was laid before the Assembly. [Adult Placement Services Regulations – consultation summary of responses](#)

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

Negative Resolution Instruments

5.1 SL(5)299 – The Local Authority Fostering Services (Wales) Regulations 2018

(Pages 34 – 91)

CLA(5)–02–19 – Paper 4 – Report

CLA(5)–02–19 – Paper 5 – Regulations

CLA(5)–02–19 – Paper 6 – Explanatory Memorandum

Affirmative Resolution Instruments

5.2 SL(5)293 – The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

(Pages 92 – 148)

CLA(5)–02–19 – Paper 7 – Report

CLA(5)–02–19 – Paper 8 – Regulations

CLA(5)–02–19 – Paper 9 – Explanatory Memorandum

The following summary of consultation response relates to the this instrument and was laid before the Assembly. [Advocacy Services Regulations – consultation summary of responses](#)

5.3 SL(5)296 – The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

(Pages 149 – 228)

CLA(5)–02–19 – Paper 10 – Report

CLA(5)–02–19 – Paper 11 – Regulations

CLA(5)–02–19 – Paper 12 – Explanatory Memorandum

The following summary of consultation response relates to the this instrument and was laid before the Assembly. [Fostering Services Regulations – consultation summary of responses](#)

6 Proposed negative instruments that raise no reporting issues under standing order 21.3B

(Pages 229 – 231)

CLA(5)–02–19 – Paper 13 – Proposed negative instruments with clear reports

6.1 pNeg(5)04 – The Equality Act 2010 (Statutory Duties) (Wales) (Amendment) (EU Exit) Regulations 2019

6.2 pNeg(5)05 – The Livestock (Records, Identification and Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

6.3 pNeg(5)06 – The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) (EU Exit) Regulations 2019

6.4 pNeg(5)07 – The Animal By-Products and Transmissible Spongiform Encephalopathies (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

7 Statutory Instruments requiring Consent: Brexit

7.1 SICM(5)13 – The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2018

(Pages 232 – 275)

CLA(5)–02–19 – Paper 14 – Letter from the Minister for the Environment, Energy and Rural Affairs

CLA(5)– 02–19 – Paper 15 – Welsh Government Written Statement:

Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)– 02–19 – Paper 16 – Statutory Instrument Consent Memorandum

CLA(5)– 02–19 – Paper 17 – Regulations

CLA(5)– 02–19 – Paper 18 – Explanatory Memorandum

CLA(5)– 02–19 – Paper 19 – Commentary

7.2 SICM(5)14 – The Public Procurement (Amendment) (EU Exit) Regulations 2019 – amendments to Section 155 (2) and (3) of the Equality Act 2010

(Pages 276 – 346)

CLA(5)–02–19 – Paper 20 – Letter from the First Minister

CLA(5)– 02–19 – Paper 21 – Welsh Government Written Statement:

Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)– 02–19 – Paper 22 – Statutory Instrument Consent Memorandum

CLA(5)– 02–19 – Paper 23 – Regulations

CLA(5)– 02–19 – Paper 24 – Explanatory Memorandum

CLA(5)– 02–19 – Paper 25 – Commentary

7.3 SICM(5)15 – The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019

(Pages 347 – 371)

CLA(5)–02–19 – Paper 26 – Letter from the Minister for Environment, Energy and Rural Affairs

CLA(5)– 02–19 – Paper 27 – Welsh Government Written Statement:

Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)– 02–19 – Paper 28 – Statutory Instrument Consent Memorandum

CLA(5)– 02–19 – Paper 29 – Regulations

CLA(5)– 02–19 – Paper 30 – Explanatory Memorandum

CLA(5)– 02–19 – Paper 31 – Commentary

7.4 SICM(5)16 – The Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019

(Pages 372 – 394)

CLA(5)–02–19 – Paper 32 – Letter from the Minister for Environment, Energy and Rural Affairs

CLA(5)– 02–19 – Paper 33 – Welsh Government Written Statement:

Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)– 02–19 – Paper 34 – Statutory Instrument Consent Memorandum

CLA(5)– 02–19 – Paper 35 – Regulations

CLA(5)– 02–19 – Paper 36 – Explanatory Memorandum

CLA(5)– 02–19 – Paper 37 – Commentary

7.5 SICM(5)17 – The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

(Pages 395 – 480)

CLA(5)–02–19 – Paper 38 – Letter from the Minister for Environment, Energy and Rural Affairs

CLA(5)– 02–19 – Paper 39 – Welsh Government Written Statement:
Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)– 02–19 – Paper 40 – Statutory Instrument Consent Memorandum

CLA(5)– 02–19 – Paper 41 – Regulations

CLA(5)– 02–19 – Paper 42 – Explanatory Memorandum

CLA(5)– 02–19 – Paper 43 – Commentary

8 Written statements under Standing Order 30C

8.1 WS–30C(5)59 – The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2018

(Pages 481 – 484)

CLA(5)–02–19 – Paper 44 – Statement

CLA(5)–02–19 – Paper 45 – Commentary

8.2 WS–30C(5)62 – The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations

(Pages 485 – 501)

CLA(5)–02–19 – Paper 46 – Statement

CLA(5)–02–19 – Paper 47 – Commentary

8.3 WS–30C(5)63 – The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations

(Pages 502 – 505)

CLA(5)–02–19 – Paper 48 – Statement

CLA(5)–02–19 – Paper 49 – Commentary

8.4 WS–30C(5)64 – The Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit)

(Pages 506 – 508)

CLA(5)–02–19 – Paper 50 – Statement

CLA(5)–02–19 – Paper 51 – Commentary

8.5 WS-30C(5)70 – The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

(Pages 509 – 515)

CLA(5)-02-19 – Paper 52 – Statement

CLA(5)-02-19 – Paper 53 – Commentary

8.6 WS-30C(5)71 – The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018

(Pages 516 – 520)

CLA(5)-02-19 – Paper 54 – Statement

CLA(5)-02-19 – Paper 55 – Commentary

8.7 WS-30C(5)72 The Plant Health (EU Exit) Regulations 2019

(Pages 521 – 525)

CLA(5)-02-19 – Paper 56 – Statement

CLA(5)-02-19 – Paper 57 – Commentary

8.8 WS-30C(5)73 – The Recognition of Professional Qualifications (Amendment etc.)

(Pages 526 – 529)

CLA(5)-02-19 – Paper 58 – Statement

CLA(5)-02-19 – Paper 59 – Commentary

8.9 WS-30C(5)74 – The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendments etc) (EU Exit) Regulations 2018

(Pages 530 – 535)

CLA(5)-02-19 – Paper 60 – Statement

CLA(5)-02-19 – Paper 61 – Commentary

9 Revised Written statements under Standing Order 30C

9.1 WS-30C(5)34r – The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

(Pages 536 – 546)

CLA(5)-02-19 – Paper 62 – Letter from the First Minister, 3 January 2019

CLA(5)-02-19 – Paper 63 – Letter to the First Minister, 11 December 2018

CLA(5)-02-19 – Paper 64 – Revised Statement

CLA(5)–02–19 – Paper 65 – Revised Commentary

9.2 WS–30C(5)35r – The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

(Pages 547 – 558)

CLA(5)–02–19 – Paper 66 – Letter from the First Minister, 3 January 2019

CLA(5)–02–19 – Paper 67 – Letter to the First Minister, 11 December 2018

CLA(5)–02–19 – Paper 68 – Revised Statement

CLA(5)–02–19 – Paper 69 – Revised Commentary

10 Papers to note

10.1 Letter from Jane Hutt Assembly Member for the Vale of Glamorgan

(Pages 559 – 565)

CLA(5)–02–19 – Paper 70 – Letter from Jane Hutt Assembly Member for the Vale of Glamorgan

10.2 Letter from the Minister for Environment, Energy and Rural Affairs: SL(5)285 – The Carcase Classification and Price Reporting (Wales) Regulations 2018

(Pages 566 – 569)

CLA(5)–02–19 – Paper 71 – Letter from the Minister for Environment, Energy and Rural Affairs, 8 January 2019

CLA(5)–02–19 – Paper 72 – Letter to the Minister for Environment, Energy and Rural Affairs, 18 December 2018

10.3 Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill

(Pages 570 – 571)

CLA(5)–02–19 – Paper 73 – Letter from the Minister for Health and Social Care: Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill, 9 January 2019

10.4 Legislation (Wales) Bill: Letter from the Counsel General

(Pages 572 – 581)

CLA(5)–02–19 – Paper 74 – Letter from the Counsel General, 10 January 2019

10.5 Autism (Wales) Bill: Letter from Paul Davies AM the Member in Charge of the Bill

(Pages 582 – 588)

CLA(5)–02–19 – Paper 75 – Letter from Paul Davies AM, 10 January 2019

11 Statutory Instruments requiring Consent: Brexit: Previously considered

11.1 SICM(5)8 (No.2) – The Marine Environment (Amendment) (EU Exit) Regulations 2018

(Pages 589 – 610)

CLA(5)– 02–19 – Paper 76 – Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs

CLA(5)– 02–19 – Paper 77 – Welsh Government Written Statement:

Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)– 02–19 – Paper 78 – Statutory Instrument Consent Memorandum

CLA(5)– 02–19 – Paper 79 – Regulations

CLA(5)– 02–19 – Paper 80 – Explanatory Memorandum

CLA(5)– 02–19 – Paper 81 – Commentary

CLA(5)–02–19 – Paper 82 – SICM(5)8 (No.2) – The Marine Environment (Amendment) (EU Exit) Regulations 2018

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

13 Consideration of Evidence: Legislation (Wales) Bill

14 SICM(5)8 (No.2) – The Marine Environment (Amendment) (EU Exit) Regulations 2018

CLA(5)-02-19 – Draft report

15 Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill: Draft Report

(Pages 611 – 629)

CLA(5)-02-19 – Paper 83– Draft Report

Document is Restricted

**RESPONSE BY THE LAW COMMISSION OF ENGLAND AND WALES TO THE WELSH GOVERNMENT'S
CONSULTATION DOCUMENT ON THE DRAFT LEGISLATION (WALES) BILL**

1. The Law Commission is the statutory independent body created by the Law Commissions Act 1965 to keep the law of England and Wales under review and to recommend reform where it is needed. The driving principle of all our law reform work is to ensure that the law is fair, modern, accessible and as cost-effective as possible. We believe that, for the law to be fair, it must be capable of being understood by the courts, legal practitioners and citizens.
2. We are committed to performing our statutory task for the benefit of the people of Wales as much as for the people of England. We have established processes and firm relationships with the Welsh Government and the National Assembly, which allow us to take on useful and productive law reform for Wales. In particular the Wales Act 2014 amended the Law Commissions Act so as to enable us to enter into an agreed Protocol with the Welsh Government setting out the approach that the Commission and Welsh Ministers will jointly take to the Commission's law reform work in Wales. The Act also gives a new power to the Welsh Ministers to refer law reform work directly to the Commission and requires Welsh Ministers to report annually to the Assembly about the implementation of our reports relating to Welsh devolved matters. As our then Chairman, Sir David Lloyd Jones observed:

"The Protocol and the Wales Act 2014 represent a landmark in the development of a productive working relationship between the Commission and the Welsh Government. They set out how we will work together in relation to Welsh devolved matters of law reform, placing obligations on both; and how the Welsh Government will account to the National Assembly for its response to the Commission's work."

3. This consultation response is confined to questions 1 and 2 in the consultation document: *Do you agree that it is necessary to impose a statutory obligation on future governments in Wales in order to improve accessibility of Welsh law? If so, do you agree with the approach taken in Part 1 of the Draft Bill to impose such an obligation?* We strongly agree with both.
4. In our report for the Welsh Government on *The Form and Accessibility of the Law Applicable in Wales/Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru*, published in 2016, we noted the need for the law to be clear and accessible; we surveyed the reasons why the law in Wales had become inaccessible; these were in part a reflection of problems of inaccessibility affecting the United Kingdom as a whole, but were compounded in Wales by the nature and process of devolution. Our analysis was similar to that contained in the present consultation document. To address these problems, we recommended that the Welsh Government pursue a policy of codification, executed in accordance with our further recommendations. Our conception of codification was that legislation whose subject-matter is within the competence of the Assembly and is currently scattered across the statute book is brought together in a piece of Assembly legislation, accompanied by reform as appropriate; and that future legislation in the subject area of a code should take effect by way of amending the code.
5. Our further recommendations included recommendations that those areas in which the law was in most need of this treatment should be identified and the process of codification set in train; that the

Welsh Government should institute regular programmes of codification; and that the Counsel General should be obliged to present a codification programme to the National Assembly, and to report to the Assembly on the progress of the programme at regular intervals. We made a number of ancillary recommendations, including as to flexible, streamlined legislative procedures within the Assembly for codification Bills.

6. We were very pleased that the Welsh Government accepted, or accepted in principle, all but one of our recommendations. We also welcomed the Counsel General's announcement in April 2017 of the launch of a pilot programme of consolidation, codification and better publication of legislation. He also explained that the Welsh Government saw a code not simply (as we had conceived it) as a piece of Assembly legislation, but rather as a collection of related primary legislation, secondary legislation and guidance; this view of codification is set out in paragraphs 25 to 30 of the consultation document. We had envisaged that codified primary legislation would continue to be accompanied by secondary legislation and guidance, all of which we suggested should be accessible together through the Law Wales portal; we accordingly see no conflict of substance between the Welsh Government's conception and ours.
7. One of the constituents of the pilot programme has been the codification of planning law, on which we have also been undertaking a project for the Welsh Government. We plan to publish a report in the autumn, and are working with the Office of the Legislative Counsel on draft legislation. Our contribution principally takes the form of public consultation, and the formulation of recommendations, on what we have for convenience called "technical reforms" to be made at the same time as restating the existing fragmented legislation in an Assembly Bill.
8. Technical reform falls short of introducing new substantive policy, but goes further than traditional consolidation in the direction of improving the resulting legislation; one of the unsatisfactory features of traditional consolidation is that effort is put into reproducing features of the existing law that are not in truth worth preserving. Our work on planning law takes advantage of the opportunity that is presented, at the same time as restating the legislation, to make improvements to it such as clarifying its meaning, omitting obsolete provisions and mechanisms, streamlining procedures under the legislation, or removing anomalies and inconsistencies. It is not merely a desktop exercise; consultation is vital in order to ensure that the right judgements are made on, for example, what is a desirable form of streamlining, what meaning should be given to an ambiguous provision or whether a provision is obsolete.
9. We note that the consultation document describes consolidation as involving "no or only minor amendments to the substance of the law" (paragraph 24), and describes codification as a method of organising and publishing the law once it has been consolidated (paragraph 25). We hope that the advantages offered by the more ambitious approach to consolidation recommended in our report, of which the eventual new Planning Bill will be an example, will prove attractive to the Welsh Assembly and Government.
10. Placing the Counsel General under a duty to keep the accessibility of Welsh law under review (section 1 of the draft Bill), together with the Counsel General's and Welsh Ministers' joint duty to present a programme of activities to each newly elected Assembly and report periodically on its progress (section 2) are in our view an eminently suitable way of giving effect to our recommendations. We welcome the provision made in draft section 2 for the programme to include activities undertaken in collaboration with ourselves; our participation will of course have to be in accordance with our own statutory powers, but we see the Welsh Ministers' power to refer projects directly to us as a convenient means of achieving this.

Agenda Item 3

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

Document is Restricted

NATIONAL ASSEMBLY FOR WALES
CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE
INQUIRY INTO THE LEGISLATION (WALES) BILL

Written Evidence from Professor Thomas Glyn Watkin

1. I am grateful to the Constitutional and Legislative Affairs Committee for the invitation to make a written submission and participate in an oral evidence session in relation to this inquiry. The opinions expressed in this paper are entirely my own and do not represent the views of any body or institution with which I am or have been associated.
2. The Inquiry's terms of reference state it will address:
 - the general principles of the Legislation (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
 - any potential barriers to the implementation of the provisions and whether the Bill takes account of them;
 - whether there are any unintended consequences arising from the Bill;
 - the financial implications of the Bill (as set out in Part 4 of the Explanatory Memorandum);
 - the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 3 of the Explanatory Memorandum).

The General Principles

3. The bill seeks to promote the accessibility of Welsh law, as defined in section 1(2). This it seeks to achieve by placing a duty upon the Counsel General to keep the accessibility of Welsh law under review (section 1(1)), and requiring the Welsh Ministers and the Counsel General to prepare programmes setting out what they intend to do to improve such accessibility (section 2(1)). Each programme must include proposals which are intended to contribute to an ongoing process of consolidating and codifying Welsh law, maintaining Welsh law in that form and facilitating the use of the Welsh language (section 2(3)). These purposes build upon recommendations made by this Assembly Committee in its report *Making Laws in Wales* (October 2015) and by the Law Commission in its report on the *Form and Accessibility of the Law Applicable in Wales* (Law Comm. No. 336, June 2016).
4. What is envisaged may be achieved is a highly laudable objective. Citizens of the United Kingdom, including those in Wales, suffer from having their lives regulated by laws which are not easy to access. This is, in part, the consequence of how relevant legislation has been drafted and accumulated. Bills are rightly drafted to allow those who legislate on behalf of the citizen to scrutinize legislative proposals prior to deciding whether the proposals should become law. The structure of bills reflects their use in that context. They set out the changes which it is proposed should be made to the law in order to achieve a particular policy objective. Likewise, if the bill is

enacted, the resulting Act or Statute records the changes to the law which it has been decided should be made. Neither a bill nor an Act is structured to set out for the benefit of the citizen what the resulting state of the law is on a particular topic. Nor does the so-called statute book do that. The statute book merely records in chronological order the various changes which have been made to the law over the centuries. It is not so much that it is not designed to be a statement of the law, but rather that it is not really designed at all. It is just a chronological collection.

5. Since at least the nineteenth century, serious attempts have been made to try to impose some order upon the accumulated mass of enactments, by for instance publishing editions, such as *The Statutes Revised*, which remove spent or repealed enactments and edit into the texts later amendments to them. The development of electronic sources of such texts is the latest most effective version of that endeavour. They do not however alter the basic problem which is that the collection remains chronological and is not designed to make the law – as opposed to individual pieces of law-making – accessible.
6. Over much the same period, attempts have also been made to restructure the accumulated mass of legislation based on its subject matter, in works such as *Halsbury's Statutes* and *Halsbury's Statutory Instruments*. In addition, *Halsbury's Laws of England* is a more ambitious, encyclopaedic work which sets out the relevant law on each subject and not simply legislation. Together, these works regroup the relevant legislation or law under appropriate subject headings arranged alphabetically. These works require continual updating as new laws are made, again a task which can be more effectively performed in a digital age.
7. Neither of these approaches delivers for the benefit of citizens a text which is an official, accessible statement of what the law is. In truth, the target audience for these works is mainly the legal professions, and access to them reflects that fact in terms of their cost. Their structure has led to the jibe that the English lawyer's idea of order is either chronological or alphabetical, in contrast to the rational order of the law codes of many other countries. However, even in those countries, the comprehensive nature of their codes of law is often compromised by the enactment of what is termed 'complementary legislation', that is free-standing enactments which are not inserted into the codes themselves. Such enactments, when frequent, undermine the accessibility which the codes are meant to achieve. Their existence highlights the importance of a sustained political will to maintain a codified structure once adopted if accessibility is to be permanently achieved.

Consolidating and codifying Welsh law, and maintaining it in that form

8. The importance of maintenance is recognized in the Explanatory Memorandum to the Bill which states that:

only a sustained effort over the long term can solve the problems. What is required is a permanent change to our law making processes (¶ 14).

Crucial to the success of consolidating and codifying the law is that both continue over the long term and become an accepted part of the culture of law making in Wales. This means accepting that the law is constantly

evolving and must, even after it has first been consolidated, be revisited periodically to ensure that it remains well ordered and accessible. It also means maintaining the overall structure – not the content, which will always change in accordance with policy and political wishes – of the statute book. Once the law is consolidated and codified we should only move away from the new structure in exceptional circumstances (¶ 31).

9. However, the Explanatory Notes which accompany the Bill are less clear in this regard. They state that:

Codifying the law is intended to bring order to the statute book. This involves organising and publishing the law by reference to its content (and not merely when it was made), and maintaining a system under which that law retains its structure rather than proliferating (¶ 17),

but then appears to roll back on the broader vision of the EM :

a Code would not (generally) be one legislative instrument but rather a collection of enactments under a unifying overarching title. Those enactments which make up the Code on any particular subject would be made available together. Similarly these enactments will remain the means by which the law is formally articulated. The Code is not intended to be a legal instrument in its own right but rather a means of collating and publishing the law more effectively (¶ 17).

10. The technical document on the Draft Taxonomy for Codes of Welsh Law repeats the latter two paragraphs (¶¶ 3 & 4), and the Annexes anticipate the collection of existing legislative sources under Proposed Codes and Topics. The approach is not dissimilar to that adopted in constructing the alphabetical, encyclopaedic works mentioned above (¶¶ 5–7), although it is clearly intended that both primary and secondary legislation should be incorporated within each code, together with other relevant sources, such as guidance. It will also be the case that the sources will have been officially consolidated and will constitute an official statement of the legislation contained in each code. Nevertheless, if, as is stated, “The Code is not intended to be a legal instrument in its own right but rather a means of collating and publishing the law more effectively (EN ¶17)”, it is difficult to see how this can effect “a permanent change to our law making processes” (EM ¶14).
11. If the codes merely collate and publish primary and secondary legislation which continues to be enacted and made as at present, the only change to existing law-making processes that may be required may be the addition of an opportunity for the legislature to scrutinize how such legislation is being incorporated into the codes. Without such a stage, the exercise will be entirely the preserve of the executive and will be conducted, albeit more thoroughly and more regularly, in much the same way as legislation.gov.uk is currently revised and updated. However, unless some rôle is accorded to the legislature in this process, it is difficult to see how the content of non-government bills could be fairly accommodated. At the very least, an expedited legislative process might need to be introduced to deal with post-enactment revision of the codes. It might also be asked where the drafters producing those revisions should be located – in the government, the legislature or at arms length to both.

12. If, on the other hand, the code becomes the principal legal instrument in its field, the changes required to the existing law-making processes are likely to be much more extensive. Bills and draft statutory instruments (other than in exceptional circumstances – see EM ¶31) could be drafted so as to amend the text of the code. The legislature could control the structure of the statute book by ensuring that – other than in exceptional circumstances – bills and instruments conformed to the new requirements. Standing Orders and requirements as to Proper Form might reflect this.
13. Questions also arise regarding the amendment of the code by secondary legislation. Would all such amendments attract the affirmative resolution procedure, or could some amendments to the codes still be made by the negative procedure? With the advent of codes, might the existing procedures themselves need to be reconsidered and possibly even replaced?
14. Greater clarity is needed with regard to these issues. However, seeking greater clarity regarding the long-term vision should not hinder the essential first steps which are proposed in this bill. Almost certainly, the ongoing process of consolidation and codification will encounter fresh challenges in its path. Given the relative youth of its devolved legislature and the still manageable quantity of its statutory output, Wales is well-placed to take bold, first steps towards codifying its legislation as proposed by the bill’s provisions.

Potential barriers to Implementation and Unintended Consequences

Consolidation and the Equal Standing of Welsh and English Versions

15. As stated in the Explanatory Notes,

Section 2(3) also requires each programme to include activities intended to facilitate use of the Welsh language... A key aspect of this will be consolidating the law bilingually so that much more of the law for which the National Assembly and Welsh Government are responsible is made in Welsh (¶ 20).

Both the Explanatory Notes and the Draft Taxonomy state that:

Consolidating the law generally involves bringing all legislation on a particular topic together, better incorporating amendments made to legislation after it has been enacted and modernising the language, drafting style and structure. This involves no or only minor amendments to the substance of the law consolidated. In Wales consolidation of the law will involve for the most part re-enacting laws previously made by the UK Parliament, and doing so bilingually (EN ¶16; DT ¶2).

16. There is a clear intention, therefore, in producing the codes to ‘repatriate’ laws currently to be found in UK legislation and to express them bilingually in the resulting codifications. This raises a question concerning the status of the two language versions in such circumstances. The Government of Wales Act 2006 provides that

“The English and Welsh texts... [of Assembly Measures, Acts and any subordinate legislation] are to be treated for all purposes as being of equal standing” (GoWA 2006, s. 156(1)). Such equal standing, however, only applies to legislation “which is in both English and Welsh when it is enacted, or... when it is made”. Given that, as quoted above, consolidation “involves no or only minor amendments to the substance of the law consolidated”, the question arises as to when provisions which have been consolidated are to be treated as having been enacted or made. This is particularly important if, as the Law Commission stated in its report on the *Form and Accessibility of the Law Applicable in Wales*:

In order for the equal status of both versions of legislation under s. 156 of GoWA 2006 to have any meaning, it is necessary for the interpretation of bilingual legislation to take account of both language versions. We endorse the approach... [which] recognizes that the exact meaning to be given to legislation depends on the meaning of both language texts (¶¶ 12.17–12.18).

17. It would be convenient and preferable for the consolidated law to be treated as having been enacted or made when the consolidation was accomplished, but it could be argued that, if there was no intention to change the meaning of the provisions when consolidating, the Welsh version could not therefore be treated as of equal standing. In passing, one assumes that the English text would undergo such minor amendment as was appropriate to bring it into line with the Welsh interpretation provisions.
18. If the approach taken to the question of the relevance of the Welsh version to the interpretation of consolidated legislation was to deny its relevance, then there would be portions of a Code in which the two language versions were of equal standing and other portions in which they were not. This would be a potential pitfall when using the Welsh version and could discourage its use.

Section 8 and Grammatical Variations

19. Section 8 of the Bill introduces a provision of a kind which is not in the Interpretation Act 1978, but can be found, as noted in Annex A to the Explanatory Memorandum, in the interpretation provisions of other jurisdictions, citing Canada and Hong Kong as examples.
20. The Explanatory Notes state that the proposed section:

makes clear that, where an Assembly Act or Welsh subordinate instrument defines a word or expression, parts of speech relating to the word or expression also carry the definition. For example, if the word “walk” is defined, then the parts of speech relating to “walk”, such as “walking” and “walker”, are to be interpreted in the light of that definition (¶ 59).

21. They go on to say that:

It often goes without saying that a definition applies in these circumstances. In some cases though this needs to be put beyond

doubt... Section 8 of the Bill makes general provision about the application of definitions, to avoid ambiguity and remove the need to make separate provision in individual Acts and instruments (¶ 60).

22. In his Gray Lectures, delivered at the University of Cambridge in 1966, the late Professor David Daube drew attention to the fact that agent nouns in particular, but also on occasion action nouns, have a narrower meaning than the verbs which correspond to them. Thus, while a *baker* undoubtedly bakes, not everyone who bakes is a *baker* (David Daube, *Roman Law: Linguistic, Social and Philosophical Aspects*, Edinburgh, 1969, pp.1–63, example cited at p.2). Agent nouns and action nouns are often more than a modification or a grammatical form of a verb; they are frequently words with a different, more restricted even if connected, meaning.
23. Care needs to be taken regarding this provision, and it should not be assumed that any correspondence, for example, of verb and agent noun in one language will necessarily be replicated in another. As this provision is disapplied where ‘the context requires otherwise’, the problem may be resolved by interpretation, but it would be better avoided rather than resolved.
24. The usefulness of the provision with regard to dealing with mutational and other like changes in Welsh is not questioned.

Choice of Proposed Codes and Topics

25. Somewhat inevitably, the proposed codes and topics anticipated in the Draft Taxonomy reflect the subjects in relation to which the Assembly enjoyed legislative competence under the previous devolution settlements. While it is unavoidable that Welsh law to date will relate to those fields and headings, there is perhaps a danger that their conversion into Codes could, almost inadvertently, confine Welsh law-making within its former limits. To borrow and adapt F.W. Maitland’s famous aphorism (*Equity*, p. 296), having buried the conferred powers model, we should not let it rule us from its grave.

Thomas Glyn Watkin*
5 January 2019

* Professor Thomas Glyn Watkin, since retiring, has been an honorary professor at both Bangor and Cardiff Law Schools. Prior to retirement, he was First Welsh Legislative Counsel to the Welsh Assembly Government (2007–10), Professor of Law and Head of Bangor Law School (2004–2007) and Professor of Law at Cardiff Law School (2001–2004), having previously been successively Lecturer, Senior Lecturer and Reader in Law at Cardiff (1975–2001) and Legal Assistant to the Governing Body of the Church in Wales (1981–1998). He is a Fellow of the Learned Society of Wales, and an ordinary academic bencher of the Middle Temple.

Statutory Instruments with Clear Reports

14 January 2019

SL(5)298 – The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018

Procedure: Negative

The purpose of these Regulations is to impose requirements on fostering services providers (both local authorities and independent providers) in relation to the establishment and functions of fostering panels. They are intended to replace and update the requirements in Part IV of The Fostering Services (Wales) Regulations 2003 ('the 2003 Regulations').

The Regulations broadly replicate the 2003 Regulations, but introduce two significant changes:

- the establishment of a central list of people who are considered suitable to sit on a fostering panel, and from which fostering panel members may be drawn
- the introduction of a two-stage process for the assessment of prospective foster parents.

To enable this new approach, legal powers contained in the Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 are used.

Parent Act: Social Services and Well-being (Wales) Act 2014

Date Made: 10 December 2018

Date Laid: 11 December 2018

Coming into force date: 29 April 2019



SL(5)292 – The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

Procedure: Affirmative

Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) introduces a new system of regulation of care and support services in Wales, replacing that established under the Care Standards Act 2000.

The Act introduces a new concept of “regulated services” and section 2 of the Act defines “regulated service” as including an adult placement service.

Paragraph 6 of Schedule 1 to the Act defines “adult placement service” as a service carried on (whether or not for profit) by a local authority or other person for the purposes of placing adults with an individual in Wales under a carer agreement (and includes any arrangements for the recruitment, training and supervision of such individuals).

These Regulations impose requirements on service providers in relation to adult placement services, including requirements as to the standard of care and support to be provided to an individual who is placed under a carer agreement. Paragraph 6 of Schedule 1 to the Act defines “carer agreement” as an agreement for the provision by an individual of accommodation at the individual’s home together with care and support for up to three adults.

Parent Act: Regulation and Inspection of Social Care (Wales) Act 2016

Date Made:

Date Laid: 10 December 2018

Coming into force date: 29 April 2019



Agenda Item 5.1

SL(5)299 – The Local Authority Fostering Services (Wales) Regulations 2018

Background and Purpose

Section 94A of the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") provides that regulations may make provision about the exercise by local authorities of functions conferred on them by regulations made under section 87 (regulations about looked after children) of that Act.

Regulations made under section 87 of the 2014 Act may make further provision about children looked after by local authorities, including regulations about the placing of children with local authority foster parents (section 92 of that Act).

These Regulations impose requirements on local authority fostering services providers, described as "local authority providers" in these Regulations.

Procedure

Negative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2(vii) (inconsistencies between the Welsh and English texts) in respect of this instrument.

1. In the Welsh text of regulation 10(5), reference is made to "baragraff (1)(a), (b), (g) ac (i)", while the English refers to "paragraph (1)(a), (b), (c) and (h)".
2. In the English text of regulation 11, reference is made to "(d) any area authority"; there is no corresponding reference in the Welsh text.

Merits Scrutiny

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

Implications arising from exiting the European Union

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

Government Response

We acknowledge this point and an amendment will be made at the next available opportunity.

Legal Advisers

Constitutional and Legislative Affairs Committee

7 January 2019



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

2018 No. 1339 (W. 261)

SOCIAL CARE, WALES

**The Local Authority Fostering
Services (Wales) Regulations 2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 94A of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) provides that regulations may make provision about the exercise by local authorities of functions conferred on them by regulations made under section 87 (regulations about looked after children) of that Act.

Regulations made under section 87 of the 2014 Act may make further provision about children looked after by local authorities, including regulations about the placing of children with local authority foster parents (section 92 of that Act).

These Regulations impose requirements on local authority fostering services providers, described as “local authority providers” in these Regulations.

Part 1 of these Regulations contains definitions of certain terms used in the Regulations.

Part 2 of these Regulations outlines the general requirements which apply to local authority providers as to the way in which the service is provided, including requirements in relation to the statement of purpose (with Schedule 1 setting out the information to be contained in a statement of purpose prepared by a local authority provider), the arrangements for monitoring and improvement and the requirement to appoint a manager to be responsible for the management of the service.

Part 3 sets out requirements relating to the provision of information. Part 4 sets out requirements as to the standard of care and support to be provided, meeting the language and communication needs of a child and treating children with respect and sensitivity.

Part 5 requires policies and procedures to be in place in relation to safeguarding and the appropriate use of

control and restraint. The regulations in this Part place specific requirements as to the action to be taken in the event of an allegation or evidence of abuse, to ensure children are safe and protected from abuse, neglect and improper treatment. This Part also details other policies and procedures which must be in place, including a procedure to be followed when a child who has been placed with foster parents goes absent without permission and a policy and procedures to deal with bullying.

Part 6 sets out requirements to ensure children access health, education and other services.

Part 7 contains requirements as to staffing, which include general requirements as to the deployment of sufficient numbers of staff and specific requirements as to the fitness of individuals working at the service. These requirements apply not just to employees but extend also to volunteers and to other persons working at the fostering service, which would include agency staff. The fitness requirements include a requirement for specific information and documentation to be available in respect of persons working in fostering services, as set out in Schedule 3.

Other requirements contained in Part 7 include requirements relating to supporting and developing staff, providing information to staff and the operation of a suitable disciplinary procedure. To ensure that employees report incidents of abuse to an appropriate person, the regulations in this Part require the provider's disciplinary procedure to provide that a failure to report would itself be grounds for disciplinary proceedings. This Part also includes restrictions on persons who may not be employed by the local authority provider in specified key roles.

Part 8 ensures that premises, facilities and equipment to be used in relation to fostering services are suitable and safe.

Part 9 sets out the requirement to keep records in respect to fostering services and Schedule 2 sets out the specific records which must be kept. This Part also sets out the obligations on a local authority provider in relation to dealing with complaints and whistleblowing concerns.

Part 10 outlines the support and other assistance to be given to foster parents. This Part also requires local authority providers to supervise foster parents and to ensure that foster parents are familiar with and act in accordance with key policies and procedures.

Part 11 describes the duties which must be carried out by the manager employed by the local authority fostering service. These include responsibilities relating to the oversight of the adequacy of resources, making reports to the local authority provider,

ensuring that there are systems in place to record complaints and ensuring that policies and procedures are kept up to date.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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

2018 No. 1339 (W. 261)

SOCIAL CARE, WALES

**The Local Authority Fostering
Services (Wales) Regulations 2018**

Made 12 December 2018

Laid 13 December 2018

Coming into force 29 April 2019

CONTENTS

PART 1
General

1. Title and commencement
2. Interpretation

PART 2

General requirements for local authority providers

3. Requirements in relation to the provision of the local authority fostering service
4. Content of statement of purpose
5. Requirements in relation to statement of purpose
6. Requirements in relation to monitoring and improvement
7. Requirement to appoint a local authority manager
8. Fitness requirements for appointment of manager
9. Other requirements in relation to the manager
10. Requirement to provide the service in accordance with policies and procedures

11. Duty of candour

PART 3

Requirements on local authority providers as to the information to be provided to individuals on commencement of the provision of care and support

12. Information about the service etc.

PART 4

Requirements on local authority providers as to the standard of care and support to be provided

13. Standards of care and support to children
14. Information for children
15. Compliance with foster care agreement
16. Language and communication
17. Respect and sensitivity
18. Duty to promote contact

PART 5

Requirements on local authority providers - safeguarding

19. Safeguarding – overarching requirements
20. Safeguarding policies and procedures
21. The appropriate use of control and restraint
22. Prohibition on the use of corporal punishment
23. Deprivation of liberty
24. Policy and procedures on bullying
25. Procedures when child is absent without permission

PART 6

Requirements on local authority providers to ensure access to health, education and other services

26. Access to health services
27. Education, employment and leisure activities

PART 7

Staffing

28. Staffing – overarching requirements
29. Fitness of staff

- 30. Supporting and developing staff
- 31. Information for staff
- 32. Disciplinary procedures
- 33. Restrictions on employment

PART 8

Premises, facilities and equipment

- 34. Premises, facilities and equipment – local authority providers
- 35. Adequacy of facilities
- 36. Premises, facilities and equipment – foster parents

PART 9

Other requirements on local authority providers

- 37. Records with respect to fostering services
- 38. Conflicts of interest
- 39. Complaints policy and procedures
- 40. Whistleblowing

PART 10

Support and oversight of foster parents

- 41. Support, training and information for foster parents
- 42. Policies and procedures to foster parents
- 43. Supervision
- 44. Effective working relationships
- 45. Supporting children to manage their money

PART 11

Duties of local authority managers

- 46. Oversight of adequacy of resources
- 47. Other reports to the local authority provider
- 48. Engagement with children and others
- 49. Duty to ensure there are systems in place to record complaints
- 50. Duty to ensure there are systems in place for keeping of records
- 51. Duty to ensure policies and procedures are up to date
- 52. Quality of care review

53. Support for raising concerns

SCHEDULE 1– Information to be contained in a statement of purpose by a local authority provider

SCHEDULE 2 – Records to be kept by local authority providers

SCHEDULE 3

Part 1 – Information and documentation to be kept in respect of persons working in fostering services

Part 2 – Interpretation of Part 1

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 87, 92, 94A and 196(1) and (2) of the Social Services and Well-being (Wales) Act 2014(1).

PART 1

General

Title and commencement

1.—(1) The title of these Regulations is the Local Authority Fostering Services (Wales) Regulations 2018.

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

Interpretation

2. In these Regulations—

“the 2014 Act” (“*Deddf 2014*”) means the Social Services and Well-being (Wales) Act 2014;

“the 2016 Act” (“*Deddf 2016*”) means the Regulation and Inspection of Social Care (Wales) Act 2016(2);

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the Care Planning, Placement and Case Review (Wales) Regulations 2015(3);

(1) 2014 anaw 4; *see* section 197(1) for the definition of “regulations” and “specified”.

(2) 2016 anaw 2.

(3) S.I. 2015/1818 (W. 261).

“the 2018 Regulations” (“*Rheoliadau 2018*”) means the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018⁽¹⁾;

“area authority” (“*awdurdod ardal*”) means the local authority or local authority in England for the area in which the child is placed, or is to be placed, where this is different from the authority which is looking after the child;

“care and support plan” (“*cynllun gofal a chymorth*”) means a plan for the child made under section 83 of the 2014 Act;

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

“the Disclosure and Barring Service” (“*y Gwasanaeth Datgelu a Gwahardd*”) and “DBS” (“*GDG*”) mean the body formed by section 87(1) of the Protection of Freedoms Act 2012⁽²⁾;

“employee” (“*cyflogai*”) has the same meaning as in section 230(1) of the Employment Rights Act 1996⁽³⁾;

“foster care agreement” (“*cytundeb gofal maeth*”) means the written agreement covering the matters specified in Schedule 3 to the 2018 Regulations;

“general practitioner” (“*ymarferydd cyffredinol*”) means a registered medical practitioner⁽⁴⁾ who—

- (a) provides primary medical services under Part 4 of the National Health Service (Wales) Act 2006⁽⁵⁾, or
- (b) provides services which correspond to services provided under Part 4 of the National Health Service (Wales) Act 2006, otherwise than in pursuance of that Act;

“improper treatment” (“*triniaeth amhriodol*”) means discrimination or unlawful restraint, including inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005⁽⁶⁾;

“local authority foster parent” (“*rhiant maeth awdurdod lleol*”) has the same meaning as that

(1) S.I. 2018/1333 (W. 260). These Regulations are made under section 93 of the 2014 Act and make provision for securing that a child is not placed with a local authority foster parent unless that person is approved as a local authority foster parent by such local authority.

(2) 2012 c. 9.

(3) 1996 c. 18.

(4) The definition of a “registered medical practitioner” in Schedule 1 to the Interpretation Act 1978 (c. 30) was substituted by S.I. 2002/3135, Schedule 1, paragraph 10 with effect from 16 November 2009.

(5) 2006 c. 42.

(6) 2005 c. 9.

given in section 197 of the 2014 Act, and includes a person with whom a child is placed under regulation 26 of the 2015 Regulations (temporary approval of a relative, friend or other person connected with a child) or regulation 28 of those Regulations (temporary approval of a particular prospective adopter as a foster parent);

“local authority fostering service” (*“gwasanaeth maethu awdurdod lleol”*) means any service provided in Wales by a local authority which consists of or includes the placement of children with foster parents or exercising functions in connection with such a placement, and “service” (*“gwasanaeth”*) is to be construed accordingly;

“local authority manager” (*“rheolwr awdurdod lleol”*) means the person appointed by the local authority fostering services provider as manager under regulation 7;

“local authority provider” (*“darparwr awdurdod lleol”*) means the local authority providing the local authority fostering services;

“parent” (*“rhiant”*), in relation to a child, includes any person who has parental responsibility for the child;

“personal outcomes” (*“canlyniadau personol”*) means—

- (a) the outcomes that the child wishes to achieve, or
- (b) the outcomes that any persons with parental responsibility wish to achieve in relation to the child;

“placement” (*“lleoliad”*) means the placement of a child with foster parents under section 81(5), (6)(a) and (b) of the 2014 Act;

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

“Social Care Wales” (*“Gofal Cymdeithasol Cymru”*) has the meaning given in section 67(3) of the 2016 Act;

“social worker” (*“gweithiwr cymdeithasol”*) means a person who is registered as a social worker in the register maintained by Social Care Wales under section 80 of the 2016 Act, in Part 16 of the register maintained by the Health and Care Professions Council under article 5 of the Health and Social Work Professions Order 2001⁽²⁾ or in a corresponding register maintained under the law of Scotland or Northern Ireland;

(1) 2010 c. 15.

(2) S.I. 2002/254.

“staff” (“*staff*”) includes—

- (a) persons employed by the local authority provider to work at the service as an employee or a worker, and
- (b) persons engaged by the local authority provider under a contract for services,

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

“statement of purpose” (“*datganiad o ddiben*”) means the document containing the information which must be provided in accordance with Schedule 1 for the place in relation to which the service is provided;

“worker” (“*gweithiwr*”) has the same meaning as in section 230(3) of the Employment Rights Act 1996⁽¹⁾.

PART 2

General requirements for local authority providers

Requirements in relation to the provision of the local authority fostering service

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

Content of statement of purpose

4. The local authority provider must prepare a statement of purpose which contains the information listed in Schedule 1.

Requirements in relation to statement of purpose

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

(2) The local authority provider must—

- (a) keep the statement of purpose under review, and
- (b) where appropriate, revise the statement of purpose.

(3) The local authority provider must give notice to the persons listed in paragraph (4) of any revision to be made to the statement of purpose at least 28 days before it is to take effect.

⁽¹⁾ 1996 c. 18.

(4) The persons who must be given notice of any revision to the statement of purpose in accordance with paragraph (3) are—

- (a) the Welsh Ministers,
- (b) any child placed by the local authority provider, unless it would not be appropriate to do so having regard to the child's age and understanding,
- (c) the parents of any such child,
- (d) foster parents and prospective foster parents,
- (e) persons working for the purposes of the local authority fostering service.

(5) The local authority provider must provide the up to date statement of purpose to any person on request, unless it is not appropriate to do so or would be inconsistent with the well-being of a child.

Requirements in relation to monitoring and improvement

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

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

- (a) any child placed by the local authority provider,
- (b) the parents of any such child, unless this is inappropriate or inconsistent with the child's well-being,
- (c) foster parents,
- (d) persons working for the purposes of the local authority fostering service, and
- (e) any area authority,

on the quality of the service.

(3) When making any decisions on plans for improvement of the quality of the service, the local authority provider must take into account the views of those persons consulted in accordance with paragraph (2).

Requirement to appoint a local authority manager

7.—(1) The local authority provider must appoint one of its officers to be responsible for the management of the service.

(2) The local authority provider must immediately give notice in writing to the Welsh Ministers—

- (a) of the name of the person appointed as manager,

- (b) of the date on which the appointment is to take effect,
- (c) if the person appointed as manager ceases to manage the local authority fostering service.

Fitness requirements for appointment of manager

8.—(1) The local authority provider must not appoint a person to manage the service unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to manage the service unless the requirements of regulation 29(2) (fitness of staff) are met in respect of that person.

Other requirements in relation to the manager

9.—(1) The local authority provider must ensure that the person who is appointed as the manager—

- (a) is supported to carry out their duties effectively, and
- (b) undertakes appropriate training.

(2) The local authority provider must ensure that the manager complies with the requirements of Part 11 (duties of local authority managers).

(3) In the event that the local authority provider has reason to believe that the manager has not complied with a requirement imposed by the regulations in Part 11, the provider must take such action as is necessary to ensure that the requirement is complied with.

(4) The local authority provider must put suitable arrangements in place to ensure that the service is managed effectively at any time when there is no manager appointed or when the manager is absent from the service.

Requirement to provide the service in accordance with policies and procedures

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

- (a) safeguarding (see regulation 20),
- (b) appropriate use of control or restraint (see regulation 21),
- (c) bullying (see regulation 24),
- (d) absence (see regulation 25),
- (e) medication (see regulation 26 (access to health services)),
- (f) supporting and developing staff (see regulation 30),
- (g) staff discipline (see regulation 32),

- (h) complaints (see regulation 39),
- (i) whistleblowing (see regulation 40),
- (j) support for foster parents on how to help children manage their money (see regulation 45).

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

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

- (a) appropriate to the needs of children for whom care and support is provided,
- (b) consistent with the statement of purpose, and
- (c) kept up to date.

(4) The local authority provider must put arrangements in place to ensure that the service is provided in accordance with its policies and procedures.

(5) The local authority provider must ensure that the content of the policies and procedures which are required to be in place under paragraph (1)(a), (b), (c) and (h) takes into account the needs of any other children who may be affected by the placement being made.

Duty of candour

11. The local authority provider must act in an open and honest way with—

- (a) any child placed by it,
- (b) the parents of any such child,
- (c) foster parents and prospective foster parents,
- (d) any area authority,
- (e) in the case of a child who is placed with an area authority, that area authority.

PART 3

Requirements on local authority providers as to the information to be provided to individuals on commencement of the provision of care and support

Information about the service etc.

12.—(1) The local authority provider must prepare a written guide to the service.

- (2) The guide must be—
- (a) dated, reviewed at least annually and updated as necessary,
 - (b) in a language, style, presentation and format which is appropriate for both children (of all ages and understanding) and adults,
 - (c) given to—
 - (i) any child placed by the provider,
 - (ii) any foster parents and prospective foster parents,
 - (iii) in the case of a child who is placed with an area authority, that authority, and
 - (d) made available to others on request, unless this is not appropriate or would be inconsistent with the well-being of the child.

- (3) The guide must contain the following—
- (a) a summary of the policies and procedures which the local authority provider must put in place under regulation 10(1)(a), (b), (c), (d), (e), (h) and (j),
 - (b) information about how to make a complaint,
 - (c) information about the availability of independent advocacy services for children who are looked after by a local authority,
 - (d) information about the role and contact details for the Children's Commissioner for Wales⁽¹⁾.

(4) The local authority provider must ensure that children receive such support as is necessary to enable them to understand the information contained in the guide.

PART 4

Requirements on local authority providers as to the standard of care and support to be provided

Standards of care and support to children

13. The local authority provider must ensure that foster parents give care and support to a child placed with them—

- (a) in accordance with the child's care and support plan, and
- (b) in a way which maintains, protects and promotes the safety and well-being of the child.

(1) The office of the Children's Commissioner for Wales was created by section 72 of the Care Standards Act 2000 (c. 14).

Information for children

14.—(1) The local authority provider must put arrangements in place to ensure that children have the information they need to make and participate in day to day decisions about the way care and support is provided to them and how they are supported to achieve their personal outcomes.

(2) Information provided must be available in an appropriate language, style, presentation and format for children of all ages.

(3) The local authority provider must put arrangements in place to ensure that children receive such support as is necessary to enable them to understand the information provided.

Compliance with foster care agreement

15. The local authority provider must monitor the foster parents' compliance with the requirements of the foster care agreement.

Language and communication

16.—(1) The local authority provider must ensure that the language needs of children are met.

(2) The local authority provider must ensure that children are provided with access to such aids and equipment as may be necessary to facilitate their communication with others.

Respect and sensitivity

17.—(1) The local authority provider must put arrangements in place to ensure that children placed by the provider are treated with respect and sensitivity.

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

- (a) respecting the child's privacy and dignity,
- (b) respecting the child's rights to confidentiality,
- (c) promoting the child's autonomy and independence, and
- (d) having regard to any relevant protected characteristics (as defined in section 4 of the Equality Act 2010⁽¹⁾) of the child.

Duty to promote contact

18. The local authority provider must ensure foster parents promote contact between a child placed with them and the child's parents, relatives and friends, in accordance with the child's care and support plan and any court order relating to contact.

⁽¹⁾ 2010 c. 15.

PART 5

Requirements on local authority providers - safeguarding

Safeguarding – overarching requirements

19. The local authority provider must put arrangements in place to ensure that children placed by it are safe and are protected from abuse⁽¹⁾, neglect⁽²⁾ and improper treatment.

Safeguarding policies and procedures

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

- (a) for the prevention of abuse, neglect and improper treatment, and
- (b) for responding to any allegation or evidence of abuse, neglect or improper treatment.

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

(3) The local authority provider must ensure that its safeguarding policies and procedures are operated effectively.

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

- (a) act in accordance with its safeguarding policies and procedures,
- (b) take immediate action to ensure the safety of all children for whom care and support is provided,
- (c) make appropriate referrals to other agencies, and
- (d) keep a record of any evidence or the substance of any allegation, any action taken and any referrals made.

The appropriate use of control and restraint

21.—(1) The local authority provider must have a policy and procedures in place on the use of control or restraint.

(2) The policy and procedures must prohibit care and support being provided in a way which includes acts intended to control or restrain a child unless those acts—

(1) See section 197(1) of the 2014 Act for the definition of “abuse”.

(2) See section 197(1) of the 2014 Act for the definition of “neglect”.

- (a) are necessary to prevent a risk of harm posed to the child or other persons or likely serious damage to property, and
 - (b) are a proportionate response to such a risk.
- (3) The policy and procedures must require foster parents to be trained in any methods of control or restraint to be used.
- (4) The policy and procedures must require foster parents to—
 - (a) make a record of any incident in which control or restraint is used, and
 - (b) notify the local authority provider of any such incident within 24 hours.
- (5) The local authority provider must ensure that any control or restraint used by foster parents is carried out in accordance with these policies and procedures.
- (6) For the purposes of this regulation, a person controls or restrains a child if that person—
 - (a) uses, or threatens to use, force to secure the doing of an act which the child resists, or
 - (b) restricts the child's liberty of movement, whether or not the child resists, including by the use of physical, mechanical or chemical means.

Prohibition on the use of corporal punishment

22. The local authority provider must ensure that foster parents do not use any form of corporal punishment at any time against any child.

Deprivation of liberty

23. A child must not be deprived of their liberty for the purpose of receiving care and support without lawful authority.

Policy and procedures on bullying

24. The local authority provider must have in place a policy on the prevention of bullying and procedures for dealing with an allegation of bullying.

Procedures when child is absent without permission

25. The local authority provider must ensure that there is a procedure to be followed when any child who has been placed with foster parents by the provider is absent without permission.

PART 6

Requirements on local authority providers to ensure access to health, education and other services

Access to health services

26.—(1) The local authority provider must ensure that foster parents promote the health and development of children placed with them.

(2) In particular, the local authority provider must ensure that foster parents—

- (a) register each child with a general practitioner,
- (b) provide each child with access to such medical, dental, optical, nursing, psychological and psychiatric advice, treatment and services as the child may require,
- (c) provide each child with such individual support, aids and equipment which the child may require as a result of any particular health needs or disability they may have, and
- (d) provide each child with guidance, support and advice on health, personal care and health promotion issues appropriate to the child's needs and wishes.

(3) The local authority provider must have a policy and procedures in place in relation to the administration of medicines by foster parents.

Education, employment and leisure activities

27.—(1) The local authority provider must ensure that the educational attainment of children placed with foster parents is promoted.

(2) In particular the local authority provider must—

- (a) establish a procedure for monitoring the educational attainment, progress and school attendance of children placed with foster parents,
- (b) in relation to school aged children placed with foster parents, ensure foster parents promote the children's regular attendance at school and participation in school activities, and
- (c) provide foster parents with such information and assistance, including equipment, as may be necessary to meet the educational needs of children placed with them.

(3) The local authority provider must ensure that foster parents promote the leisure interests of children placed with them and support them to engage in play

and recreational activities appropriate to their age and to participate freely in cultural life and the arts⁽¹⁾.

(4) Where any child placed with foster parents has attained the age where they are no longer required to receive compulsory full-time education, the local authority provider must assist with the making of, and give effect to, arrangements made for the child in respect of their education, training and employment.

PART 7

Staffing

Staffing - overarching requirements

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

- (a) the statement of purpose for the service,
- (b) the care and support needs of children,
- (c) the need to support children to achieve their personal outcomes,
- (d) the need to safeguard and promote the health and welfare of children, and
- (e) the requirements of these Regulations.

Fitness of staff

29.—(1) The local authority provider must not—

- (a) employ a person under a contract of employment to work at the service unless that person is fit to do so,
- (b) allow a volunteer to work at the service unless that person is fit to do so, or
- (c) allow any other person to work at the service in a position in which they may in the course of their duties have regular contact with children who are receiving care and support unless that person is fit to do so.

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

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

(1) Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 (nawm 2) requires the Welsh Ministers, when exercising any of their functions, to have due regard to the requirements of Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”). Article 31 of Part 1 of the Convention recognises a child’s right to play.

- (b) the person has the qualifications, skills, competence and experience necessary for the work they are to perform,
- (c) the person is able by reason of their health, after reasonable adjustments are made, of properly performing the tasks which are intrinsic to their role,
- (d) the person has provided full and satisfactory information or documentation, as the case may be, in respect of each of the matters required under paragraphs 1 to 9 of Schedule 3, and this information or documentation is available at the service for inspection by the Welsh Ministers, and
- (e) where the person is employed by the local authority provider to manage the service, from 1 September 2022, the person is registered as a social care manager⁽¹⁾ with Social Care Wales.

(3) An appropriate DBS certificate must be applied for by, or on behalf of, the local authority provider, for the purpose of assessing the suitability of a person for a post referred to in paragraph (1). But this requirement does not apply if the person working at the service is registered with the Disclosure and Barring Service update service (referred to in this regulation as the DBS update service).

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

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

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

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

- (a) take necessary and proportionate action to safeguard children, and

⁽¹⁾ See section 79(1)(b) of the 2016 Act for the definition of a "social care manager".

- (b) where appropriate, inform—
 - (i) Social Care Wales,
 - (ii) the Disclosure and Barring Service.

Supporting and developing staff

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

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

- (a) receives an induction appropriate to their role,
- (b) is made aware of their own responsibilities and those of other staff,
- (c) receives appropriate supervision and appraisal,
- (d) receives core training appropriate to the work to be performed by them,
- (e) receives specialist training as appropriate, and
- (f) receives support and assistance to obtain such further training as is appropriate to the work they perform.

(3) The local authority provider must ensure that any person employed to work at the service as a manager is supported to maintain any registration with Social Care Wales.

Information for staff

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

(2) The local authority provider must ensure that there are suitable arrangements in place to make staff aware of any codes of practice about the standards of conduct expected of social care workers which are required to be published by Social Care Wales under section 112(1)(a) of the 2016 Act.

Disciplinary procedures

32.—(1) The local authority provider must put in place and operate a disciplinary procedure.

(2) The disciplinary procedure must include—

- (a) provision for the suspension, and the taking of action short of suspension, of employees in the interests of the safety or well-being of children receiving care and support from the service, and

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

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

- (a) an officer of the Welsh Ministers,
- (b) the local authority provider,
- (c) an officer of the local authority,
- (d) in the case of an incident of abuse or suspected abuse of a child, an officer of the National Society for the Prevention of Cruelty to Children, or
- (e) a police officer,

as the case may be.

Restrictions on employment

33.—(1) The local authority provider must not employ to work for the purposes of the fostering service in a position to which paragraph (2) applies, a person who is—

- (a) a foster parent approved by the fostering service, or
- (b) a member of the household of such a foster parent.

(2) This paragraph applies to any management, social work or other professional position, unless in the case of a position which is not a management or a social work position, the work is undertaken on an occasional basis, as a volunteer, or for no more than 5 hours in any week.

PART 8

Premises, facilities and equipment

Premises, facilities and equipment - local authority providers

34. The local authority provider must ensure that the premises, facilities and equipment used for the operation of the service are suitable, having regard to the statement of purpose for the service.

Adequacy of facilities

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

- (a) the supervision of staff, and

- (b) the secure storage of records.

Premises, facilities and equipment - foster parents

36.—(1) The local authority provider must have arrangements in place to ensure that the premises, facilities and equipment used by foster parents for the provision of care and support to children are—

- (a) suitable and safe for the purpose for which they are intended to be used,
- (b) used in a safe way,
- (c) properly maintained, and
- (d) kept clean to a standard which is appropriate for the purpose for which they are being used.

(5) The local authority provider must ensure that foster parents are properly trained on how to operate any equipment that they may use when providing care and support to a child.

PART 9

Other requirements on local authority providers

Records with respect to fostering services

37.—(1) The local authority provider must maintain the records specified in Schedule 2 for 15 years.

(2) The local authority provider must—

- (a) ensure that the records specified in Schedule 2 are accurate and up to date,
- (b) keep the records securely,
- (c) make suitable arrangements for the records to continue to be kept securely in the event the service closes,
- (d) make the records available to the Welsh Ministers on request,
- (e) ensure that children who use the service—
 - (i) are made aware of their rights to access their records, and
 - (ii) have such access to their records as is permitted by law.

Conflicts of interest

38. The local authority provider must have effective arrangements in place to identify, record and manage potential conflicts of interest.

Complaints policy and procedures

39.—(1) The local authority provider must have a complaints policy in place and ensure that the service is operated in accordance with that policy.

(2) The complaints policy must include procedures for considering complaints made to the local authority provider by or on behalf of children placed by the provider about—

- (a) the provider,
- (b) foster parents, and
- (c) any other matter considered by the provider to be relevant.

(3) The complaints policy must include procedures for considering complaints made to the local authority provider by or on behalf of any other children who may be affected by the placement made about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(4) The complaints policy must include procedures for considering complaints made to the local authority provider by foster parents about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(5) The complaints policy must include procedures for considering complaints made to the local authority provider by the parents of any child placed by the provider about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(6) The local authority provider must put effective arrangements in place for dealing with complaints including arrangements for—

- (a) identifying and investigating complaints,
- (b) ensuring that appropriate action is taken following an investigation, and
- (c) keeping records relating to the matters in subparagraphs (a) and (b).

(7) The local authority provider must provide a summary of complaints, responses and any subsequent action taken to the Welsh Ministers within 28 days of being requested to do so.

(8) The local authority provider must—

- (a) analyse information relating to complains and concerns, and
- (b) having regard to that analysis, identify any areas for improvement.

Whistleblowing

40.—(1) The local authority provider must ensure that all persons working at the service (including any person allowed to work as a volunteer) are able to raise concerns about the service.

(2) These arrangements must include—

- (a) having a whistleblowing policy in place and acting in accordance with that policy, and
- (b) establishing arrangements to enable and support people working at the service to raise such concerns.

(3) The local authority provider must ensure that the arrangements required under this regulation are operated effectively.

(4) When a concern is raised, the local authority provider must ensure that—

- (a) the concern is investigated,
- (b) appropriate steps are taken following an investigation, and
- (c) a record is kept relating to the matters in subparagraphs (a) and (b).

PART 10

Support and oversight of foster parents

Support, training and information for foster parents

41.—(1) The local authority provider must ensure that foster parents have the information they need to provide care and support to a child placed with them in accordance with the child's care and support plan.

(2) The local authority provider must ensure foster parents receive such training, advice and support, including support outside office hours, as appears necessary in the interests of children placed with the foster parents and to enable them to provide care and support to children in accordance with each child's care and support plan.

(3) The local authority provider must ensure prospective foster parents receive such training, information and advice as is considered necessary.

(4) The local authority provider must monitor and review the information, training, advice and support provided to foster parents and prospective foster parents and make any improvements which may be necessary.

Policies and procedures to foster parents

42. The local authority provider must ensure that foster parents are familiar with and act in accordance with the policies and procedures established under regulations 20, 21, 24, 25, 26, 39 and 45.

Supervision

43. The local authority provider must ensure that foster parents are appropriately supervised.

Effective working relationships

44. The local authority provider must—

- (a) maintain good professional relationships with foster parents, and
- (b) encourage and assist foster parents to maintain good personal relationships with children placed with them.

Supporting children to manage their money

45.—(1) The local authority provider must have a policy and procedures in place to enable foster parents to provide support and assistance to children on how to manage their money.

(2) The policy and procedures which are required by this regulation to be in place must set out the steps which are to be taken by foster parents to enable and support children to manage their own money and to protect children from financial abuse⁽¹⁾.

(3) The policy and procedures must ensure that there is adequate oversight and monitoring by the local authority provider of savings which are made by foster parents on behalf of children.

(4) Where a child's money is held by the foster parents for any purpose, the policy and procedures required by this regulation must provide that the money is held in an account in the child's name or in an account which enables clear demarcation of the child's money.

(5) The policy and procedures must ensure that foster parents pass on all records of savings (including expenditure from savings) to the local authority provider when the placement of a child to whom the records relate comes to an end.

(1) See section 197(1) of the 2014 Act for the definition of "financial abuse".

PART 11

Duties of local authority managers

Oversight of adequacy of resources

46.—(1) The local authority manager must report to the local authority provider on the adequacy of the resources available to provide the service in accordance with the requirements of these Regulations.

(2) Such reports must be made on a quarterly basis.

Other reports to the local authority provider

47. The local authority manager must, without delay, report to the local authority provider—

- (a) any concerns about the provision of the service,
- (b) any significant changes to the way the service is managed or provided, and
- (c) any concerns that the service is not being provided in accordance with the statement of purpose for the service.

Engagement with children and others

48.—(1) The local authority manager must put suitable arrangements in place for obtaining the views of—

- (a) any child placed by the local authority provider,
- (b) the parents of any such child, unless this is inappropriate or inconsistent with the child's well-being,
- (c) foster parents, and
- (d) staff employed at the service,

on the quality of care and support provided and how this can be improved.

(2) The local authority manager must report the views obtained to the local authority provider so that these views can be taken into account by the provider when making any decisions on plans for improvement of the quality of care and support provided by the service.

Duty to ensure there are systems in place to record complaints

49. The local authority manager must ensure that there are effective systems in place to record complaints.

Duty to ensure there are systems in place for keeping of records

50. The local authority manager must ensure that there are effective systems in place in relation to the keeping of records, which include systems for ensuring the accuracy and completeness of records which must be kept under regulation 37.

Duty to ensure policies and procedures are up to date

51. The local authority manager must put suitable arrangements in place to ensure that the provider's policies and procedures are kept up to date, having regard to the statement of purpose for the service.

Quality of care review

52.—(1) The local authority manager must put suitable arrangements in place to establish and maintain a system for monitoring, reviewing and improving the quality of the service.

(2) The system established under paragraph (1) must make provision for the quality of care and support to be reviewed as often as required but at least every six months.

Support for raising concerns

53. The local authority manager must ensure that the local authority provider's whistleblowing policy is being complied with and that the arrangements to enable and support people working at the service to raise such concerns are being operated effectively.

Huw Irranca-Davies

Minister for Children, Older People and Social Care
under authority of the Cabinet Secretary for Health and
Social Services, one of the Welsh Ministers

12 December 2018

SCHEDULE 1

Regulations 2 and 4

Information to be contained in a statement of purpose by a local authority provider

The statement of purpose prepared by a local authority provider must contain the following information—

- (a) the name and principal address of the local authority,
- (b) the name of the local authority manager,
- (c) a statement of the range of needs of the children for whom the service is to be provided,
- (d) how the service is to be provided to meet the needs of children and to support them to achieve their personal outcomes,
- (e) details of the management and staff structure of the service,
- (f) details of the facilities and equipment that will be available for foster parents to assist them to meet the needs of children for care and support and to support them to achieve their personal outcomes,
- (g) details of the arrangements made to support the cultural, linguistic and religious needs of children,
- (h) details of the arrangements made to provide support to children in relation to their sexual orientation and gender identity,
- (i) details of the arrangements made for consulting children about the operation of the local authority fostering service,
- (j) details of how the local authority will meet children's language and communication needs, including through the medium of Welsh.

SCHEDULE 2 Regulation 37

Records to be kept by local authority providers

1. A record showing in respect of each child placed with foster parents—

- (a) the date of the child's placement;
- (b) the child's care and support plan;
- (c) the foster care agreement in respect of the child;
- (d) the name and address of the foster parents;
- (e) the date on which the child ceased to be placed there;
- (f) the child's address prior to placement;
- (g) the child's address on leaving the placement;
- (h) the statutory provision under which the child is or was provided with foster care.

2. A record of all persons working for the local authority provider, which must include in respect of a person falling within regulation 29(1) the following matters—

- (a) full name and home address;
- (b) date of birth;
- (c) sex;
- (d) qualifications relevant to, and experience of, work involving children;
- (e) copy of birth certificate and passport (if any) in respect of the person;
- (f) copy of each reference obtained in respect of the person;
- (g) whether the person is employed by the local authority provider for the purposes of the local authority fostering service under a contract of service, a contract for services, or otherwise than under a contract, or is employed by someone other than the local authority provider;
- (h) whether the person works full-time or part-time, and, if part-time, the average number of hours worked per week;
- (i) the dates on which the person commences and ceases to be so employed;
- (j) the position the person holds in the service;
- (k) records of disciplinary action and any other records in relation to the person's employment; and

- (l) a record of the date of the person's latest DBS certificate and whether there was any action taken as a result of the content of the certificate.

3. A record of all serious accidents and injuries occurring to children whilst placed with foster parents.

4. A record of all complaints made under the complaints policy put in place by the local authority provider, and the action taken by the local authority provider in respect of any such complaints.

5. Date and circumstances of any safeguarding referrals, and the outcome.

6. Date and circumstances of any incident of control or restraint used by foster parents on a child.

SCHEDULE 3

Regulations 2 and 29

PART 1

Information and documentation to be available in respect of persons working in fostering services

1. Proof of identity including a recent photograph.

2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997⁽¹⁾, a copy of a valid criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006⁽²⁾ (provision of barring information on request).

3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of a valid enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children (within the meaning of section 113BA(2) of that Act) or suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act).

4. Two written references, including a reference from the last employer, if any.

5. Where a person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable verification of the reason why the employment or position ended.

6. Documentary evidence of any relevant qualification.

7. Where relevant, documentary evidence of registration with Social Care Wales.

8. A full employment history, together with a satisfactory written explanation of any gaps in employment.

(1) 1997 c. 50.

(2) 2006 c. 47. Sections 30 to 32 of the Safeguarding Vulnerable Groups Act 2006 as originally enacted are to be replaced by new sections 30A and 30B as a result of substitutions made by section 72(1) of the Protection of Freedoms Act 2012. Section 72(1) is to be commenced on a day to be appointed.

9. Details of registration with or membership of any professional body.

PART 2

Interpretation of Part 1

10. For the purposes of paragraphs 2 and 3 of Part 1 of this Schedule—

- (a) if the person to whom the certificate relates is not registered with the DBS update service, a certificate is only valid if—
 - (i) it has been issued in response to an application by the local authority provider in accordance with regulation 29(3) or (6), and
 - (ii) no more than three years have elapsed since the certificate was issued;
- (b) if the person to whom the certificate relates is registered with the DBS update service, the certificate is valid regardless of when it was issued.

Explanatory Memorandum to:

The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and The Local Authority Fostering Services (Wales) Regulations 2018

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019
- The Local Authority Fostering Services (Wales) Regulations 2018.

I am satisfied that the benefits justify the likely costs.

Huw Irranca-Davies
Minister for Children, Older People and Social Care

13 December 2018

PART 1

1. Description

In 2011 the Welsh Government published the white paper Sustainable Social Services: A Framework for Action, which set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last assembly term, the Welsh Government made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') and the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act').

The 2014 Act provides the legal framework for improving the well-being of people who need care and support, and carers who need support. Part 6 of the Act sets out social services functions in relation to looked after and accommodated children, including those who are placed in foster care. It also enables the Welsh Ministers to put in place regulations and issue codes of practice.

The 2016 Act reforms the regulation and inspection regime for social care in Wales, and provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It also enables the Welsh Ministers to put in place regulations, publish guidance and issue codes of practice.

This Explanatory Memorandum relates to *The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019* and *The Local Authority Fostering Services (Wales) Regulations 2018*, which will come into force on 29 April 2019. These Regulations impose requirements on independent fostering service providers, and upon local authority fostering service providers, respectively.

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

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

3. Legislative background

The powers enabling *The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019* to be made are contained in a number of sections within the 2016 Act. They are, as follows:

- Section 21(5) - the circumstances in which the Welsh Ministers (instead of service providers) may designate a responsible individual
- Section 27 – Regulations about regulated services
- Section 28 – Regulations about responsible individuals
- Section 30 – Regulations about service providers who are liquidated etc.

- Section 31 – Regulations about service providers who have died
- Section 45 – Regulations which provide for offences in the event of failure by a service provider to comply with specified requirements in regulations under section 27
- Section 46 – Regulations which provide for offences in the event of failure by a responsible individual to comply with specified requirements in regulations under section 28

These Regulations will be laid under the affirmative procedure.

Statutory guidance to accompany the Regulations (under section 29 of the 2016 Act), published for consultation at the same time, has been revised and is published in draft on the Welsh Government website, to aid scrutiny of these Regulations. The statutory guidance will be finalised and published in spring 2019.

<https://gov.wales/topics/health/socialcare/regulation/?skip=1&lang=en>

The powers enabling *The Local Authority Fostering Services (Wales) Regulations 2018* to be made are contained in sections 87 (regulations about looked after children), 92 (regulations about the placing of children with local authority foster parents) and 94A (regulation of the exercise of local authority functions relating to looked after and accommodated children) of the 2014 Act.

These Regulations will be laid under the negative procedure.

A code of practice to accompany the Regulations (under section 145 of the 2014 Act), published for consultation at the same time, has been revised and is published in draft on the Welsh Government website, to aid scrutiny of these Regulations. The code of practice will be finalised and laid before the National Assembly in February 2019.

<https://gov.wales/topics/health/socialcare/regulation/?skip=1&lang=en>

4. Purpose and intended effect of the legislation

The purpose of these two sets of Regulations is to ensure that independent fostering services providers and local authority fostering services provide services to the required standards to ensure that the well-being and safety of children and young people in foster placements is promoted and maintained, and that foster parents are appropriately supported.

5. Consultation

A 12 week public consultation ran from 24 May to 16 August 2018, seeking views on draft Fostering Services (Service Providers and Responsible Individuals) (Wales)

Regulations 2019. This was accompanied by draft statutory guidance for independent service providers and a draft code of practice for local authority providers.

27 responses were received to the consultation. The key changes made to the content of the draft regulations following consultation were:

- References to ‘child sexual exploitation’ were extended to include ‘child criminal exploitation’. This was added to cover other types of exploitation such as that associated with gangs and ‘county lines’ drug dealing.
- The new duty of candour was extended to cover local authority fostering service providers.
- The requirement on a local authority to appoint one of its own officers to be responsible for managing the fostering service was amended to refer to ‘an officer’. This will allow two or more local authorities to jointly appoint an officer who may be employed by only one of them to manage local authority fostering services across more than one authority, in line with the move towards more regional working set out in the National Fostering Framework for Wales.
- The requirement to provide all the listed policies and procedures to be in an appropriate format and language for children was amended, to exclude those policies which were not directly relevant to children – i.e. whistleblowing, supporting and developing staff, and staff discipline. Additionally, providers will be required to include information about relevant policies and procedures in the children’s guide to the service.
- The regulation on supporting children to manage their money was expanded so that providers have to ensure that there is adequate oversight and monitoring of savings which are made by foster parents on behalf of children, and that foster parents pass on all records of savings to the service provider at the end of the placement. This responds to concerns raised by the Public Services Ombudsman for Wales.
- The frequency of quality of care reviews was standardised at six months for both independent and local authority fostering providers.

Section 27(4) of the Regulation and Inspection of Social Care Act (RISCA) provides that “Before making regulations under this section the Welsh Ministers must—(a) consult any persons they think appropriate, and (b) publish a statement about the consultation.” To discharge this requirement, a summary of the responses, together with the Welsh Government’s analysis and conclusions, is being laid with this Explanatory Memorandum and can be found at: <https://beta.gov.wales/fostering-services-regulations>.

PART 2 – REGULATORY IMPACT ASSESSMENT

Independent fostering services providers

In respect of independent fostering services providers¹, we have identified two main options:

- **Option 1:** as far as possible, replicate in regulations the requirements placed on fostering providers under the Fostering Service (Wales) Regulations 2003 and the relevant National Minimum Standards under the Care Standards Act 2000.
- **Option 2:** harmonise, so far as possible, the requirements on fostering providers and other services regulated under the 2016 Act, with bespoke and/or additional requirements as necessary.

Preferred option: Option 2 is the preferred option.

Under Option 2 requirements would, so far as practicable, be consistent across all regulated services, in line with the policy intent of the 2016 Act.

The 2016 Act made some fundamental changes to the way care and support services are regulated, inspected and delivered; it is therefore difficult to compare and contrast the regulations made under the 2000 Act and the proposed regulations under the 2016 Act. With regard to regulation, the intention of the 2016 Act was to create a consistent set of requirements that would apply across all regulated services, rather than each type of service having its own set of regulations and NMS. The benefit of this approach is that it moves away from focusing on minimum standards to an emphasis on achieving continual improvement.

The National Minimum Standards (NMS) for fostering services will, therefore, no longer apply. Instead, statutory guidance has been developed alongside the regulations to give further detail to regulated service providers about how they may comply with the requirements set out in the regulations. This guidance has been developed by Welsh Government and the cost has already been incurred.

Under Phase 2 of implementation of the 2016 Act, requirements were placed upon providers of care homes (including care homes for children), domiciliary care, residential family centres and secure accommodation. The key regulations were the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 ('the 2017 Regulations'). The 2017 Regulations provide the model for the regulations being made under Phase 3 for fostering, adoption, adult placements and advocacy services, with bespoke changes being made to each of the Phase 3 regulations as required to fit the particular characteristics of each service.

A significant difference affecting the 2017 Regulations and the fostering regulations to be made in 2018/2019 will be the fact that fostering services providers do not

¹ 21 services are registered at present

directly provide care and support to children in foster placements on a day to day basis. Daily care and support is provided to such children by foster parents, who will have been assessed and approved by the fostering agency or local authority, but who are not employees of the agency or authority. This means that for example, some of the requirements on care homes for children will need to be modified for fostering providers. Another difference is that fostering services providers also provide support and training to foster parents.

Local authority fostering services providers

In respect of local authority fostering services providers, we have identified two options:

- **Option 1:** as far as possible, replicate in regulations the requirements placed on fostering providers under the Fostering Service (Wales) Regulations 2003 and the National Minimum Standards under the Care Standards Act 2000.
- **Option 2:** place a new set of requirements on local authority providers which follow, so far as practicable and appropriate, the requirements being placed on independent service providers under section 27 of the 2016 Act (requirements on service providers), in line with the preferred option for regulated service providers above.

The requirements placed upon responsible individuals of regulated services under section 28 of the 2016 Act will not be relevant for local authority providers, as these are not a regulated service under the 2016 Act. Instead, the regulations place a requirement upon local authority providers to appoint a fostering services manager, setting out the requirements of that role. This role already exists and therefore the requirement does not carry any additional costs.

Preferred option: Option 2 is the preferred option.

The rationale for this is that it would not be desirable to have different regulatory frameworks for fostering services provided by independent fostering services providers and local authority providers, given that the outcomes both sectors are seeking to achieve for looked after children are the same and that the nature of fostering itself is the same. It is the same children that are being placed by local authorities, whether with their own fostering service or via an independent provider. Also, some of the improvements which the 2016 Act sought to drive in relation to regulated services, with their associated benefits, are also pertinent to local authority fostering services, and we want to ensure that any new requirements upon local authority providers are equally robust.

It is, however, accepted that there will be some key differences between the regulatory regime for independent providers and local authority fostering services. The main difference is that it would be inappropriate to try to replicate the responsible individual (RI) role within local authorities, given the different accountability structures within local authorities and the policy decision, taken when the 2016 Act was being developed, not to make local authority fostering services a regulated service.

Requirements on service providers – general

For ***independent service providers***, the general requirements would include those relating to the statement of purpose, monitoring and improvement, the responsible individual, financial sustainability, policies and procedures, and the duty of candour.

For ***local authority providers***, the general requirements include requirements relating to the statement of purpose, monitoring and improvement, the local authority fostering manager, policies and procedures, and the duty of candour.

The main differences from the requirements in the 2003 Regulations are:

- *Statement of purpose*

These requirements will be placed upon ***independent service providers and local authority providers***.

Providers would be required to provide the service in accordance with the statement of purpose, keep the statement under review and revise it where appropriate.

Under the 2003 Regulations, providers have to provide a copy of the statement of purpose to the Welsh Government, and make it available upon request for inspection by staff, foster parents / prospective foster parents, children in placement and their parents. They must also notify the Welsh Government of any revision within 28 days.

The new regulations would impose a requirement to notify these persons of any revision to be made at least 28 days before it is to take effect. For ***independent service providers***, the placing authority will also have to be notified.

Costs: The requirement to notify in advance should have no additional cost for providers.

Risks: No risks have been identified.

- *Responsible Individual*

These requirements will be placed upon ***independent service providers***. Requirements relating to the responsible individual (RI) would include the need for the RI to be supported and appropriately trained, action to take when the RI fails to meet requirements placed upon them by the regulations, and what to do when the RI is unable to fulfil their duties. There would also be similar requirements on providers who are individuals and therefore also act as RI.

The role of the RI across the services regulated under the 2016 Act is much greater and attracts a higher level of accountability as compared to the equivalent role in the 2003 Regulations. Discussion of this role and its regulatory implications can be found below.

- *Local authority manager*

These requirements will be placed upon **local authority providers**. The existing requirement for a local authority to appoint one of its officers to manage the fostering service will remain. The manager would need to meet the general requirements set out in relation to fitness of staff at the service, and the local authority provider must ensure that the manager is supported to carry out their duties effectively, and undertakes appropriate training. The local authority provider must also take such action as is necessary in the event that the manager has not complied with a requirement, and put suitable arrangements in place when the manager is absent. Discussion of this role and its regulatory implications can be found below.

- *Policies and procedures*

These requirements will be placed upon **independent service providers** and **local authority providers**.

Providers will have to have policies and procedures in place covering:

- safeguarding
- appropriate use of control and restraint
- bullying
- absence
- medication and access to health services
- supporting and developing staff
- staff discipline
- complaints
- whistleblowing
- support for foster parents on how to help children manage their money.

In addition, **independent service providers** will have to have a policy and procedures in relation to placement and commencement of service. This will not be a requirement on **local authority providers** because they are the placing authority and will manage the placement in line with their duties under the Care Planning, Placement and Case Review (Wales) Regulations 2015.

The 2003 Regulations specify that providers must have in place policies and procedures in relation to safeguarding, acceptable measures of control, restraint and discipline, dealing with allegations of abuse and neglect, and what to do if a child is absent from a foster parent's home without permission.

Costs: There should be no significant additional costs in drawing up and implementing this longer list of policies and procedures, most of which are good practice which providers will already be doing. The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete the annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information as might be expected in a more complex policy or procedure, such as

safeguarding. Other policies or procedures are likely to be simpler. It is therefore estimated that the requirements above will entail a cost of up to £392 per policy for each setting (variable depending on the salary of the person producing the policy/procedure). The actual additional cost for an individual provider will depend on the provider and the policies and procedures they currently have in place. Additional commentary on key policies is provided under the relevant sections below.

Risks/Benefits: There are no identified risks. Benefits include improved accountability at senior level within the service and better support for staff through access to a more comprehensive range of policies.

- *Duty of candour*

These requirements would be placed upon ***independent service providers*** and ***local authority providers***.

The duty of candour would require providers to act in an open and transparent way with children in placement, their parents, foster parents and prospective foster parents, the authority where the child is placed (i.e. the area authority), and (for ***independent service providers***) the placing authority. This is a new requirement.

Costs: There should be no additional costs associated with this duty. Providers should already be acting in an open and transparent way with those to whom they provide services.

Risks: No risks have been identified.

Requirements on service providers as to the steps to be taken before providing care and support - suitability of the service

These requirements will be placed upon only ***independent service providers***. Providers would be required to determine that a placement with a foster parent is suitable to meet the child's needs. The determination would be drawn up in consultation with the child, their parents and the placing authority, and would need to take into account the child's Part 6 care and support plan under the 2014 Act, any other relevant assessments, any risks and various other relevant factors.

These requirements replicate the duty to secure welfare under the 2003 Regulations, but within the context of the framework for care and support set out in the 2014 Act.

This will not apply to ***local authority providers*** because they will be the placing authority for the child in line with their duties under the Care Planning, Placement and Case Review (Wales) Regulations 2015.

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

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements would require the providers to prepare a written guide to the service in a language and format suitable for children (of all ages and levels of understanding) and adults. It will need to be reviewed at least annually and updated as required. The guide will include a summary of relevant policies and procedures, as well as information on how to make complaints and raise concerns. The provider will also have to ensure that children receive support to understand the information provided.

These requirements go beyond the 2003 Regulations which require the fostering provider to prepare a children's guide only.

Costs: There may be some additional costs for providers in adapting the written guide for different audiences. It is, however, good practice to produce versions of the guide for children of different ages, and all fostering providers will already be producing information for foster parents, so the additional costs are likely to be minimal.

Risks/Benefits: No risks have been identified. The benefit would be to support improved accessibility of information to service users and other interested parties.

Requirements on service providers as to the standard of care and support to be provided

The following requirements would be placed upon ***independent service providers*** and ***local authority providers***:

- *Standards of care and support to children*

Providers would be required to ensure that foster parents give care and support in accordance with the child's Part 6 care and support plan, and in a way that maintains, protects and promotes the safety and well-being of the child.

- *Information for children*

There would be similar requirements regarding the information children need to make and participate in day to day decisions about the way care and support is provided to them.

This is a new requirement, in line with the principle underpinning the 2014 Act and the 2016 Act that the new legislation will promote greater choice and control by children and adults who are receiving care and support.

- *Language and communication*

Providers would be required to take reasonable steps to meet the language needs of children, and ensure that children are provided with access to the communication aids and equipment they need.

This is a new requirement on the face of the regulations, although the importance of taking into account the language needs of children was already referred to in the National Minimum Standards (NMS 7 on valuing diversity, and NMS 8 on matching). The communication aids and equipment may be provided by the NHS, social services or via other means. There is no expectation that they will be provided by the fostering service: the duty is to ensure that the child is able to access these.

- *Respect and sensitivity*

There would be a new requirement around ensuring that children in placement are treated with respect and sensitivity.

- *Duty to promote contact*

The duty to promote contact in the 2003 Regulations would be retained. Contact arrangements would be in accordance with the child's Part 6 care and support plan and any relevant court order.

- *Compliance with foster care agreement*

There would be a new requirement for providers to monitor the foster parents' compliance with the foster care agreement. This is already implicit in the 2003 Regulations, where the agreement itself must contain information about the foster parents' compliance.

There would be additional requirements placed upon ***independent service providers*** in relation to:

- *Suitability of the placement*

There would also be additional requirements relating to the initial and ongoing suitability of the placement. These include ensuring that the foster parents are able to give care and support in accordance with the child's Part 6 care and support plan, and a requirement on service providers to give immediate notice to the placing authority if the placement no longer meets the child's needs.

These requirements reflect the emphasis in the 2014 Act on person-centred care and support, and are designed to complement the requirements upon placing authorities under the Care Planning, Placement and Case Review (Wales) Regulations 2015.

Costs: There will be no additional costs to providers in implementing these requirements.

Risks/Benefits: No risks have been identified. The purpose of these requirements (and therefore benefit) is to mitigate the risk of placement breakdown and to ensure that a child's care and support needs are met.

Requirements on service providers – safeguarding

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The regulations would require service providers to put arrangements in place to ensure children are safe and protected from abuse, neglect and improper treatment. This includes what a provider must do when an allegation is made or evidence comes to light. In keeping with the approach taken in the 2016 Act, the new regulations will be more explicit about the overarching requirements – e.g. to put arrangements in place, and to ensure that safeguarding policies and procedures are operated effectively – but the detail will be similar to the 2003 Regulations. The regulations and guidance will reflect current best practice around safeguarding.

The requirements in respect of the use of control and restraint by foster parents, and the prohibition of corporal punishment, would be similar to those in the 2003 Regulations. However, there will be additional requirements for foster parents to be trained in any methods of control and restraint to be used, to make a record of any incident where control or restraint is used, and to notify the service provider of any such incident within 24 hours. The regulations will also specify what constitutes control and restraint in this context.

The requirement to have a procedure for when a child goes absent without permission would be retained. Also there would be a regulation requiring providers to have a policy on the prevention of bullying and procedures for dealing with it. This is currently covered in the NMS.

There would be an additional requirement making it clear that no child is to be deprived of their liberty in foster care without lawful authority. A parent of a child who is not competent may provide authority. 16 and 17 year olds without capacity may be subject to applications to the Court of Protection and to the High Court in exercise of the High Court's inherent jurisdiction.

Costs: No significant additional costs to providers in implementing these requirements have been identified, as providers are already required to provide support, training and information for foster parents under existing regulations.

Risks/Benefit: No risks have been identified. Putting these requirements in place will benefit service users through embodying best practice around safeguarding.

Requirements on service providers – access to health, education and other services

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements in the 2003 Regulations with regard to health and education would be maintained. The consultation suggested some changes which have been incorporated, each with a view to strengthening the current provisions. There are: including an explicit reference to a child's physical, mental and emotional health and development; requiring the provider to ensure that foster parents provide a child with access to optical services; and ensuring that children are supported to engage in play and recreational activities appropriate to their age, and to participate freely in cultural life and the arts.

Costs: There will be no additional costs to providers in implementing these requirements.

Risks: No risks have been identified.

Requirements on service providers – staffing

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements in the 2003 Regulations with respect to staffing would be maintained. These cover the fitness of staff, support and development of staff, and the need for a disciplinary procedure. The new regulations will place a greater emphasis on staffing requirements meeting children's care and support needs and personal outcomes, in line with the ethos of the 2014 Act and the 2016 Act.

The fitness requirement will be extended to volunteers as well as paid employees.

The regulations will reflect the new DBS arrangements, including allowing for the use of the update service.

There will be a new requirement to ensure that all employees and volunteers are provided with information about the service, and made aware of any codes of practice about the standards of conduct required of social workers published by Social Care Wales under the 2016 Act.

In addition, ***independent service providers*** will be required to adhere to the code of practice on the standards of conduct and practice expected of person employing social care workers, also under the 2016 Act.

Costs: No additional costs have been identified.

Risks: No risks have been identified.

Requirements on service providers – premises, facilities and equipment

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements in the 2003 Regulations with respect to premises will be retained. These apply to the premises from which the fostering service is operated. The new regulations will also place requirements on providers with respect to the premises, facilities and equipment used by foster parents in the provision of care and support. Service providers will have to put arrangements in place to ensure that these are suitable, safe and properly maintained, and ensure that foster parents are properly trained in the use of equipment. These requirements (except for equipment) are currently covered in the NMS (Standard 6).

Costs: No significant additional costs have been identified. Training foster carers in the use of equipment should already be good practice, in line with current requirements with respect of health and safety.

Risks: No risks have been identified.

Requirements on service providers – other requirements

The following miscellaneous requirements will be placed upon ***independent service providers*** and ***local authority providers***.

- *Records*

The requirement to keep records of relating to children, employees and accidents for 15 years will be retained. Some amendments would be made to the relevant schedule, to reflect more up-to-date practice. There will be a specific requirement for a child's records to be returned to the placing authority at the end of a placement. The provider would also be required to keep a record of (i) all complaints and action taken, (ii) safeguarding referrals and the outcome, and (iii) incidences of the use of control and restraint. This strengthens the current requirements in the 2003 Regulations, which provides that these are matters to be monitored by the registered person.

- *Conflicts of interest*

There would be a requirement to have effective arrangements in place to identify, record and manage potential conflicts of interest.

- *Complaints*

Providers would be required to have in place a policy and procedures for dealing with complaints, including those made by children in foster placements, their parents and foster parents. These largely replicate existing requirements, except for some clarification and tightening up of procedures in the light of good practice that has developed since the original regulations in 2003.

- *Whistleblowing*

Providers would be required to put effective whistleblowing policies and procedures in place. This is a new requirement, reflecting the development of whistleblowing policy and practice since the 2003 Regulations were drawn up.

In addition, there will also be requirements placed upon ***independent service providers*** in respect of:

- ***Notifications***

The notification requirements would broadly remain the same as in the 2003 Regulations, with the following changes:

- the provider would no longer need to notify the Welsh Ministers of a serious illness of a child placed with foster parents (except infectious diseases)
- references to child prostitution have been removed, as this is covered by child sexual exploitation
- the references to exploitation have been expanded to include child criminal exploitation as well as child sexual exploitation.

Costs: No additional costs have been identified in respect of any of the above requirements. The changes simply update and tighten up procedures in the light of existing good practice.

Risks: No risks have been identified. All the changes to the existing regulations reflect good practice and are designed to mitigate risks to children and other beneficiaries of the service.

Support for foster carers

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements on providers in relation to support, training and information for foster parents in the 2003 Regulations would be retained. However, there will be a new requirement to ensure that prospective foster parents also receive such training, information and advice as may be necessary. In line with the emphasis in the 2016 Act on continuous improvement, there will also be a new requirement to monitor and review the information, training, advice and support provided to foster parents under this regulation.

There will be a new regulation requiring providers to ensure that foster parents are appropriately supervised. At present this is dealt with under the NMS (Standard 22), and is not therefore a new requirement.

The policies and procedures which the service provider must ensure that foster parents are familiar with will be expanded to cover some areas currently covered in the NMS only.

The regulations will place a new requirement on providers to develop a policy and procedures to enable foster parents to provide support and assistance to children on how to manage their money. This includes ensuring that there is adequate oversight and monitoring of savings by the provider, and a requirement that foster parents pass

on all records of savings to the provider when a placement comes to an end. Supporting individuals to manage their money is a common requirement across regulated services under the 2016 Act, and in the case of looked after children the need for further provision on the use of savings was highlighted by a recent investigation by the Public Services Ombudsman for Wales. There are no requirements in relation to managing money or savings in the 2003 Regulations or NMS.

Costs: No significant additional cost pressures have been identified. Providers will already be providing information, advice and training to prospective foster parents, and it is very much in their interests to invest in recruitment and training to ensure fostered children are properly safeguarded. As indicated above, the cost of developing a procedure is not likely to exceed £392 per provider.

Risks/Benefits: No risks have been identified. The benefit is that investment in supporting foster carers will help mitigate the risks of placement instability and breakdown.

Requirements on responsible individuals

These requirements will be placed upon *independent service providers*.

In the 2003 Regulations, where the fostering agency is an organisation, the 'responsible individual' is defined as 'an individual ... who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the fostering agency'. In the case of a fostering agency carried on by an individual, that person will also be the responsible individual. Under the current system the responsible individual must satisfy requirements as to fitness to perform that role, must from time to time carry out such training as is appropriate to ensure that he or she has the experience and skills necessary for carrying on the fostering agency, and must notify the Welsh Government if they commit a criminal offence.

Section 21 of the 2016 Act expands on the requirements as to who is eligible to be a responsible individual (RI).²

The new requirements would place greater responsibility on the RI within the service. The key additions to the RI role are set out below:

- *Visits*

There would be a requirement on the RI to visit the premises from which the service is provided, and meet with members of staff and children in placement at least every

² The Regulation and Inspection of Social Care (Wales) Act 2016, section 21 states that to be eligible to be a responsible individual the individual must (a) where the service provider is an individual, be the service provider; (b) where the service provider is a partnership, be one of the partners; (c) where the service provider is a body corporate other than a local authority — (i) be a director or similar officer of the body, (ii) in the case of a public limited company, be a director or company secretary, or (iii) in the case of a body corporate whose affairs are managed by its members, be a member of the body; (d) where the service provider is an unincorporated body, be a member of the body;

three months. It is not expected that RIs would meet every child, but put arrangements in place to meet a representative sample.

- *Oversight of adequacy of resources*

The RI would be required to report to the service provider, on a quarterly basis, on the adequacy of the resources available to provide the service in accordance with the requirements in the regulations.

- *Other reports to the service provider*

The RI would also be required to report on any concerns about or significant changes to the management or provision of the service, or any concerns that the service is not being provided in accordance with the statement of purpose.

- *Engagement with children and others*

The RI would have responsibility for ensuring suitable arrangements are in place for obtaining the views of children in placement, their parents, foster parents, the placing authority, and staff employed at the service, on the quality of care and support provided and how it could be improved. This is currently a duty on the service provider only.

- *Compliance*

The RI would be responsible for ensuring that there are systems in place to record incidents and complaints, for the keeping of records, and that the policies and procedures are kept up to date. The RI would also have to prepare the statement of compliance to be included in the annual return under section 10(2)(b) of the 2016 Act.

- *Quality of care review*

The RI would have to ensure suitable arrangements are in place for monitoring, reviewing and improving the quality of care and support at least every six months. This is currently an annual requirement of the service provider.

- *Notifications*

The RI would also be required to make the following notifications:

- the appointment of a manager
- the expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence
- the unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence
- the unexpected absence of the appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence

- return from absence of the appointed manager
 - interim arrangements where the manager is absent for longer than 28 days
 - someone other than the appointed manager is proposing to manage or is managing the service
 - the appointed manager ceases, or proposes to cease, managing the service.
- *Duty of candour*

The RI must act in an open and transparent way with children in placement, their parents, foster parents and the placing authority.

Placing greater responsibilities on the RI will support the policy intention of ensuring accountability for service quality and compliance is held at the most appropriate level within an organisation. By placing specific duties on the RI, the regulator can ensure that the provider takes an active interest in the services provided. Whilst managers and service providers will retain accountability for their own role, the statutory role of RI ensures that a clear chain of accountability is established, which includes the corporate responsibility of the board, the responsible individual and the service manager.

Costs: It is not anticipated that there will be significantly greater costs to providers in placing these requirement upon RIs. Many RIs are already very involved in their services and many will be undertaking the duties set out under this option already.

There are, however, some additional requirements which may result in some additional costs. These are:

- *Visits*

Using the ONS data from the Annual Survey of Hours and Earnings, which states that the gross hourly earnings for managers and directors in Social Services in 2017 was £19.29³, it is estimated that, assuming RIs spend most of their working day (8 hours) at a service during their visit, this would give a total cost, including on-costs, of £201 per visit. It is required that visits should take place at least every 3 months which would mean an annual cost of around £804 for each of the services. Similar would apply in relation to each visit to a child on placement; £201 for full day or £100 per half day.

- *Quarterly reporting on the adequacy of resources*

To comply with this requirement, the responsible individual should have systems and processes in place that provide information about the service and any areas that may need closer observation/consideration and/or improvement.

Service providers should already have governance systems in place to monitor the running of the service. This requirement ensures the responsible individual takes greater ownership of the governance of the service and is proactive in reporting

³ This figure is then uprated by 30% to include on-costs.

concerns to the service provider (this would not apply if the service provider is an individual). There may be a small increase in staff time to undertake this more formal reporting, however the cost should be negligible as there should already be systems in place.

- *Quality of care review every 6 months*

It is existing practice for providers to undertake an annual quality of care review. This duty would be placed on the responsible individual with the intention that it should be a responsive and on-going process rather than a one-off annual requirement.

The responsible individual must put suitable arrangements in place to establish and maintain a system for monitoring and improving the quality of the service. To complete this quality review the RI must take into account:

- the outcome of engagement with children in placement, parents, foster parents, placing authorities and staff employed by the service
- aggregated data on notifications, safeguarding matters, whistleblowing concerns and complaints
- any action taken in relation to complaints
- the outcome of any audit of the accuracy and completeness of records.

Where this requirement corresponds to the date on which the service provider's annual return is due, much of the information from the quality of care review can be used to complete the relevant section of the annual return in order to avoid unnecessary duplication.

Costs to service providers in submitting the quality of care review report are anticipated to be comparable to the submission of the annual report. There may be some additional initial costs in moving to six monthly reports, but the quality of care review process should become embedded in the ongoing quality assurance process the provider has in place.

The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete an annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information to the quality of care review but as the quality of care review draws from existing monitoring information this should not take as long to complete. A reasonable estimation for this would be more like 2 working days, therefore incurring a cost of around £196 for each service, every six months. As providers are currently required to undertake similar reviews on an annual basis, the additional cost (of moving to six-monthly) should only be £196 per annum. However, this figure will vary depending on the salary of the person undertaking the review and may vary according to the size of the provider.

Risks: Consideration was given to the risks regarding the increased RI role during Phase 2 of implementation of the 2016 Act. The same considerations are relevant to the new requirement with respect to the RIs of fostering services, as a common approach is being taken to RIs across all regulated services under the 2016 Act.

The relevant section from the RIA on the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 reads as follows:

The impact of the duties on RIs will, therefore, vary depending on the organisational model. During the consultation we became aware of risks regarding the duties as they relate to registered charities and RIs of larger organisations.

We were advised that, because trustees of charities (unincorporated bodies) are unpaid volunteers, they may not necessarily be willing, suitable or have the relevant expertise and understanding of the care and support service to take on the responsibility of the RI role. We were also advised that the option of paid officers/senior managers within the charity (which is where they suggest that the RI role should be placed) joining the board is not possible.

Larger organisations providing a number of regulated services in Wales have also identified challenges with the requirement for the RI to be a director. Their concerns focus on the duties being placed on RIs – including the requirement to visit the service – and the extent to which these duties can be delegated. They advised that the directors of larger organisations are too removed from the service and the provision of care and support services and may not be suitably experienced or qualified to carry out the duties of the RI effectively. Similarly, they advised that the number of services these organisations provide would make it impossible for the directors to carry out this role. Furthermore, they suggested that this may deter future investment in Wales. There is therefore a risk here in terms of the RI role being carried out properly, consistent with the policy intent.

This risk will be mitigated by applying a wide interpretation to the term ‘or similar officer’ so that this could include the Chief Executive or a very senior level employee. This would provide a pragmatic solution for both charities and larger organisations without overly compromising the policy intent. The RIs would still be designated as part of the registration of the service and therefore the service regulator will have the opportunity to test their suitability for this role. The regulator would ensure a consistency of approach and an appropriate level of seniority within the organisation by applying the following criteria:

- authority to hire and fire managers and any other staff working in care services;
- authority to set pay rates for all staff working directly within the care services;
- authority to decide on investment decisions for the care services;
- oversight of the health and safety within the relevant care services;
- accountability for determining assurance arrangements and setting any benchmarks.

The proposed approach set out in this advice, coupled with the amendments to the RI duties as set out in the draft regulations, is intended to provide a workable solution without compromising the policy intent.

This will ensure that the application and interpretation of section 21 of the 2016 Act by the service regulator is consistent, equitable across different types of organisations and consistent with the policy intent.

Benefits: the benefits of the requirements will be around securing better oversight of, and therefore greater accountability for, quality of service at senior level within the provider organisation, so driving service improvement.

Duties of local authority managers

The following requirements will be placed upon **local authority providers** in respect of local authority managers:

- *oversight of adequacy of resources*
- *other reports to the local authority provider*
- *engagement with children and others*
- *duty to ensure there are systems in place to record complaints*
- *duty to ensure there are systems in place for keeping of records*
- *duty to ensure policies and procedures are up to date*
- *quality of care review*
- *support for raising concerns*

These requirements are the same as those placed upon the responsible individual (RI) of an independent service provider. Local authority managers will already be undertaking most of these duties already.

Offences

These requirements will be placed upon **independent service providers**.

Section 45 of the 2016 Act is a regulation-making power which allows the Welsh Ministers to provide that it is an offence for a service provider to fail to comply with a specified provision of the regulations made under section 27 of the 2016 Act (duties on service providers). Section 46 is a regulation-making power which allows the Welsh Ministers to provide that it is an offence for a responsible individual to fail to comply with a specified provision made under section 28 (duties on responsible individuals). Breaches of these requirements can be dealt with via a criminal prosecution.

The offences under sections 45 and 46 are intended to ensure that there is a proportionate approach to the creation of offences to enable CIW to take criminal action when it is appropriate to do so – both when a breach is sufficiently serious and when there is enough evidence to meet the threshold to commence legal proceedings.

During Phase 1 of implementation of the 2016 Act, consideration was given as to whether to specify that breach of all the requirements in regulations under section 27 and 28 should be categorised as offences. This would have broadly replicated the approach taken under the Care Standards Act 2000. It was decided that, for

regulated services under the 2016 Act, the regulations would specify that breach of only the key requirements in regulations made under section 27 and 28 would be offences.

The regulations would therefore specify which requirements made under section 27 and 28 would give rise to offences if breached.

The **benefits, costs** and **risks** associated with this option were set out in the RIA⁴ for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.

Service providers who are liquidated

These requirements will apply to ***independent service providers***.

Section 30(1) of the 2016 Act contains a power for Welsh Ministers to place requirements upon an appointed person. Section 30(2) states that an 'appointed person' means a person appointed as:

- (a) a receiver or administrative receiver of the property of a service provider who is a body corporate or a partnership;
- (b) a liquidator, provisional liquidator or administrator of a service provider who is a body corporate or a partnership;
- (c) a trustee in bankruptcy of a service provider who is an individual or a partnership.

The regulations would require an appointed person to give the Welsh Ministers notice, without delay, of when liquidators have been appointed and the reasons for it; and to inform the Welsh Ministers within 28 days of the appointment, of their intentions regarding the future operation of the service.

These are in line with the requirements already placed upon care homes, domiciliary care providers and other services regulated under the 2016 Act. An analysis of the **benefits, costs** and **risks** of this option are set out in the RIA for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (See footnote below).

Death of service provider who is an individual

These requirements apply to ***independent service providers*** who are individuals.

Section 31 of the 2016 Act gives the Welsh Ministers the power to make regulations placing requirements on a personal representative of an individual service provider who has died to notify the Welsh Ministers of the provider's death.

⁴ <http://www.assembly.wales/laid%20documents/sub-ld11204-em/sub-ld11204-em-e.pdf>

The regulations would also state that, where a service provider who is an individual has died, the personal representatives of the individual must, without delay, give written notification of the death to the Welsh Ministers, and within 28 days of the death, notify the Welsh Ministers of their intentions regarding the future operation of the service.

The regulation would also state that the personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer period (not exceeding one year) as the Welsh Ministers may agree.

These provisions are in line with the requirements already placed in relation to individual providers of care homes, domiciliary care providers and other services regulated under the 2016 Act. An analysis of the **benefits, costs and risks** of this option are set out in the RIA⁵ for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.

Competition Assessment

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

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way.

Post implementation review

⁵ <http://www.assembly.wales/laid%20documents/sub-ld11204-em/sub-ld11204-em-e.pdf>

As set out in the RIA for the Act the Welsh Government has two clear aims for the regulation and inspection of social care, the Act and as such these regulations. They are to:

- secure the well-being of citizens
- improve the quality of social care.

The Act makes provision for a number of key reporting mechanisms which will offer a set of clear evidence to inform the post implementation review and establish how successful the Act has been in achieving both of these aims. The reporting mechanisms include:

- annual returns from service providers
- annual reports from local authorities and the review of those reports as undertaken in the Annual Review of Performance and Evaluation of Performance by the service regulator
- the annual report from the Welsh Ministers in their role as the service regulator
- the annual report of the workforce regulator.

CIW will monitor the implementation of these Regulations following their coming-into-force date of 29 April 2019.

Agenda Item 5.2

SL(5)293 – The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

Background and Purpose

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

These Regulations impose requirements on service providers and responsible individuals in respect of advocacy services. For example, the Regulations require service providers to ensure there are effective arrangements in place for monitoring, reviewing and improving the quality of the advocacy provided and to have policies in relation to, for example, safeguarding and staff discipline.

Procedure

Affirmative.

Technical Scrutiny

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

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

If a responsible individual is unable to fulfil their duties, regulation 6(4)(c) requires service providers to ensure there are arrangements in place for the regulated advocacy service to comply with Part 3 to 15 of the Regulations.

However, there are also important requirements in Part 2 of the Regulations. It is unclear why regulation 6(4)(c) does not require compliance with Part 2 of the Regulations.

The same issue arises in respect of regulation 7(3)(c).

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

Regulation 10 places a duty of candour on service providers – service providers must act in an open and transparent way with:

- individuals (i.e. persons for whom the service provider is providing or has provided advocacy, or for whom the service provider may provide advocacy), and
- any representatives of those individuals.

However, there is no duty to act in an open and transparent way with service commissioners (i.e. local authorities which are responsible for making arrangements with a service provider for the provision of assistance to a child or person under section 178(1) of the Social Services and Well-being (Wales) Act 2014).



We ask why there is no such duty.

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

Regulation 15 requires service providers to prepare a written guide to the advocacy service. The guide must then be given to "commissioning authorities" (see regulation 15(2)(d)).

However, there is no definition of "commissioning authorities".

The lack of clarity is of particular concern given that breach of the duty in regulation 15(2)(d) is a criminal offence, and absolute clarity is required when creating criminal offences.

Merits Scrutiny

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

Implications arising from exiting the European Union

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

Government Response

*1. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation
If a responsible individual is unable to fulfil their duties, regulation 6(4)(c) requires service providers to ensure there are arrangements in place for the regulated advocacy service to comply with Part 3 to 15 of the Regulations.*

However, there are also important requirements in Part 2 of the Regulations. It is unclear why regulation 6(4)(c) does not require compliance with Part 2 of the Regulations.

The same issue arises in respect of regulation 7(3)(c).

Government response

Although many of the duties in Part 2 are of a more general overarching nature, and are therefore of more limited application in the context of interim arrangements during the temporary absence of a responsible individual (or individual provider), it is acknowledged that there may be occasions when the duties under part 2 will be of relevance and that the references in regulations 6(4)(c) and 7(3)(c) should refer to parts 2 to 15 of the Regulations. An amendment will be made at the next available opportunity.

*2. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation
Regulation 10 places a duty of candour on service providers – service providers must act in an open and transparent way with:*

-individuals (i.e. persons for whom the service provider is providing or has provided advocacy, or for whom the service provider may provide advocacy), and

-any representatives of those individuals.

However, there is no duty to act in an open and transparent way with service commissioners (i.e. local authorities which are responsible for making arrangements with a service provider for the provision of assistance to a child or person under section 178(1) of the Social Services and Well-being (Wales) Act 2014).

We ask why there is no such duty.

Government response



Specific consideration was given to this issue in the drafting of the regulations and to the fact that for other types of regulated service the duty of candour does apply to a service provider's relationship with service commissioners. However for an advocacy service provider, the service commissioner is also the body against whom the child or young person wishes to make representations. In providing advocacy for a child or young person it is important that the advocacy service provider's prime function is to represent the views of that person to the commissioning local authority. A duty to be open and transparent with the commissioning local authority might conflict with the child or young person's instructions and conflict with this duty. For this reason service commissioners were specifically excluded from the scope of this duty for this particular type of service.

3. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation Regulation 15 requires service providers to prepare a written guide to the advocacy service. The guide must then be given to "commissioning authorities" (see regulation 15(2)(d)).

However, there is no definition of "commissioning authorities".

The lack of clarity is of particular concern given that breach of the duty in regulation 15(2)(d) is a criminal offence, and absolute clarity is required when creating criminal offences.

Government response

Although in the context, this is a term which is likely to be understood because in the overwhelming majority of cases services will be commissioned by local authorities, and although in our view, to the extent that there is uncertainty, a court is overwhelmingly likely to interpret the phrase in the same way, it is accepted that the clarity of the provision would be improved if the phrase "commissioning authorities" was replaced with the phrase "service commissioners". The phrase "service commissioner" is defined in regulation 2. An amendment will be made at the next available opportunity.

Legal Advisers

Constitutional and Legislative Affairs Committee

7 January 2019



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

DRAFT WELSH STATUTORY
INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

The Regulations are divided into 18 Parts dealing with different aspects of the requirements. Regulation 2 in Part 1 defines the sorts of advocacy service which fall to be regulated under the Regulation and Inspection of Social Care (Wales) Act 2016.

Part 2 sets out the general requirements on service providers. This includes requirements in relation to the statement of purpose, the arrangements for monitoring and improvement, the support to be provided to the responsible individual, the steps to be taken to ensure financial sustainability and the policies and procedures which must be in place.

Regulation 11 in Part 3 requires providers to determine that their service is suitable to meet the individual’s needs before taking on an individual.

Part 4 requires service providers to prepare a plan and keep it under review for the period that they are providing a service to an individual.

Part 5 requires providers to give each person who uses the service a written guide and to local authorities who commission services. Part 6 sets requirements on services providers about the standard of the services which they must provide.

Part 7 requires service providers to ensure the individuals are safe and protected from abuse, neglect and improper treatment. Part 8 requires service providers to employ staff who are fit and prescribes what fitness means for these purposes.

Part 9 requires providers to have premises which are fit for the purpose and that facilities and equipment used meet the same standard. Part 10 sets a number of other requirements that service providers maintain the prescribed records, notify the regulator of prescribed events, manage conflicts of interest, have complaints procedures and a whistleblowing policy.

Parts 11 to 15 set the requirements which apply to responsible individuals. These include the duty to appoint a manager for the service, to supervise the management of the service, to ensure compliance with regulatory requirements and to monitor, review and improve the quality of the service.

Part 16 sets out those regulations whose breach amounts to an offence and which therefore create criminal liability for service providers and for responsible individuals.

Part 17 sets out specific requirements which apply when the service provider is insolvent or when a service provider who is an individual has died. In these circumstances, the regulations in this Part place specific notification duties on the appointed person (in the case of insolvency) or the personal representatives (in the case of the death of a service provider who is an individual). Regulation 58 enables the personal representatives to act in the capacity of the service provider and the Act is modified so that in these circumstances the personal representatives are not required to register and one of the personal representatives can be designated as the responsible individual in respect of a place where the service is provided.

Part 18 (regulation 59) specifies the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual, despite the eligibility requirements of section 21(2) of the Act not being met in respect of the individual. This regulation is made under section 21(5) of the Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to

the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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

DRAFT WELSH STATUTORY
INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

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

Made ***

Coming into force ***

CONTENTS

PART 1

General

1. Title, commencement, application and interpretation
2. Definitions and exceptions

PART 2

General requirements on service providers

3. Requirements in relation to the provision of the service
4. Requirements in relation to the statement of purpose
5. Requirements in relation to monitoring and improvement
6. Requirements in relation to the responsible individual
7. Requirements in relation to the responsible individual where the service provider is an individual
8. Requirements in relation to the financial sustainability of the service
9. Requirements to provide the service in accordance with policies and procedures

10. Duty of candour

PART 3

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

11. Suitability of the service

PART 4

Requirements on service providers as to the steps to be taken on commencement of provision of advocacy

12. Advocacy plan
13. Review of advocacy plan
14. Records of advocacy plans

PART 5

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

15. Information about the service

PART 6

Requirements on service providers as to the standard of advocacy to be provided

16. Standards of advocacy – overarching requirements
17. Language and communication
18. Respect and sensitivity
19. Confidentiality

PART 7

Requirements on service providers – safeguarding

20. Safeguarding – overarching requirement
21. Safeguarding policies and procedures
22. Interpretation of Part 7

PART 8

Requirements on service providers as to staffing

23. Staffing – overarching requirements
24. Fitness of staff
25. Supporting and developing staff
26. Compliance with employer's code of practice
27. Information for staff
28. Disciplinary procedures

PART 9

Requirements on service providers as to premises

29. Overarching requirement
30. Premises

PART 10

Other requirements on service providers

31. Records
32. Notifications
33. Conflicts of interest

- 34. Complaints policy and procedure
- 35. Whistleblowing

PART 11

Requirements on responsible individuals for ensuring effective management of the service

- 36. Supervision of management of the service
- 37. Duty to appoint a manager
- 38. Fitness requirements for appointment of manager
- 39. Restrictions on appointing manager for more than one service
- 40. Duty to report the appointment of manager to service provider
- 41. Duty to report appointment of manager to the workforce and service regulators
- 42. Arrangements when manager is absent
- 43. Visits

PART 12

Requirements on responsible individuals for ensuring effective oversight of the service

- 44. Oversight of adequacy of resources
- 45. Other reports to the service provider
- 46. Engagement with individuals and others

PART 13

Requirements on responsible individuals for ensuring the compliance of the service

- 47. Duty to ensure there are systems in place to record incidents and complaints
- 48. Duty to ensure there are systems in place for keeping of records
- 49. Duty to ensure policies and procedures are up to date

PART 14

Requirements on responsible individuals for monitoring, reviewing and improving the quality of the service

- 50. Quality of care review
- 51. Statement of compliance with the requirements as to standards of advocacy

PART 15

Other requirements on responsible individuals

- 52. Support for staff raising concerns
- 53. Duty of candour
- 54. Notifications

PART 16

Offences

- 55. Offences – service providers

56. Offences – responsible individuals

PART 17

Service providers who are liquidated etc. or who have died

57. Appointment of liquidators etc.

58. Death of service provider

PART 18

Regulations under section 21(5) of the Act

59. Designation of responsible individual by Welsh Ministers

—

SCHEDULE 1

PART 1 – Information and documents to be available in respect of persons working in the service

PART 2 – Interpretation of Part 1

SCHEDULE 2 — Records to be kept

SCHEDULE 3 — Notifications by the service provider

In exercise of the powers conferred by sections 2(3), 21(5), 27, 28, 30, 31, 45, 46, 186(1) and 187(1) of, and paragraph 7(1) of Schedule 1 to, the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾ the Welsh Ministers make the following Regulations.

The Welsh Ministers, as required by sections 27(4)(a) and 28(4) of that Act, have consulted such persons as they think appropriate and published a statement about the consultation as required by section 27(4)(b) of that Act. The Welsh Ministers have laid the statement before the National Assembly for Wales as required by section 27(5) of that Act. The Welsh Ministers have also carried out a consultation in accordance with the requirement in paragraph 7(5) of Schedule 1 to that Act.

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

(1) 2016 anaw 2; see the definition of “prescribed” in section 189 of the Act.

PART 1

General

Title, commencement and interpretation

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

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

(3) In these Regulations—

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

“advocacy” (“*eiriolaeth*”) means assistance given to help a person represent their views;

“advocacy plan” (“*cynllun eirioli*”) means the plan prepared by the service provider in relation to an individual in accordance with regulation 12;

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

“DBS” (“*GDG*”) or “the Disclosure and Barring Service” (“*y Gwasanaeth Datgelu a Gwahardd*”) mean the body established by section 87(1) of the Protection of Freedoms Act 2012⁽¹⁾;

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

“individual” (“*unigolyn*”), except where the context otherwise requires, means a person for whom the service provider is providing, or has provided advocacy, or for whom the service provider may provide advocacy;

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

“service” (“*gwasanaeth*”) means an advocacy service as defined in regulation 2 which is provided in relation to a specified area;

“service commissioner” (“*comisiynydd y gwasanaeth*”) means a local authority which is responsible for making arrangements with a service provider for the provision of assistance to a child or person under section 178(1) of the 2014 Act⁽²⁾;

“service provider” (“*darparwr gwasanaeth*”) means an advocacy service provider who is registered under section 7 of the Act;

(1) 2012 c. 9.

(2) “The 2014 Act” is defined in section 189 of the Act as the Social Services and Well-Being (Wales) Act 2014 (anaw 4).

“service regulator” (*“rheoleiddiwr gwasanaethau”*) means the Welsh Ministers in exercise of their regulatory functions(1);

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

“statement of purpose” (*“datganiad o ddiben”*) means the statement of purpose for the service which a service provider must keep under review and revise in accordance with regulation 4(2).

Definition and exceptions

2.—(1) For the purpose of paragraph 7(1) of Schedule 1 to the Act, an advocacy service is—

- (a) a service carried on to provide advocacy for children who make or intend to make representations which fall within section 174 of the 2014 Act(3); or
- (b) a service carried on to provide advocacy for persons who make or intend to make representations which fall within section 176 of the 2014 Act(4),

where the purpose of the advocacy is to represent the views of the children or persons or to assist them to represent their views in relation to their needs for care and support(5).

(2) But a service referred to in paragraph (1) is not an advocacy service—

- (a) if it is provided by a person in the course of a legal activity within the meaning of the Legal Services Act 2007(6) by a person who is—

-
- (1) “Regulatory functions” are defined in section 3(1)(b) of the Act.
 - (2) The contents of the statement of purpose are prescribed in regulation 4 of, and Schedule 2 to, the Regulated Services (Registration) (Wales) Regulations 2017 (S.I. 2017/1098 (W. 278)).
 - (3) Section 174 of the 2014 Act requires a local authority to establish a procedure for considering representations (including complaints) made to the authority in relation to a range of its social services functions in so far as they are exercisable in relation to a child.
 - (4) Section 176 of the 2014 Act requires a local authority to establish a procedure for considering representations (including complaints) about the discharge of its functions under Parts 3 to 7 of the 2014 Act in relation to children or young persons who have previously been looked after and related other young persons.
 - (5) Paragraph 7(3) of Schedule 1 to the 2016 Act requires that a service can only be specified as an advocacy service for the purposes of the 2016 Act if it is a service which is carried on (whether or not for profit) for the purpose of representing the views of individuals or assisting individuals to represent those views, in respect of matters relating to those individuals needs for care and support (including matters relating to assessing whether those needs exist).
 - (6) 2007 c. 29.

- (i) an authorised person for the purposes of that Act, or
 - (ii) a European lawyer (within the meaning of the European Communities (Services of Lawyers) Order 1978⁽¹⁾);
 - (b) if the assistance is provided by a Welsh family proceedings officer in the course of discharging functions in relation to family proceedings;
 - (c) if the assistance is provided by the Children's Commissioner for Wales or by a member of staff of the Children's Commissioner for Wales;
 - (d) if it is provided by a person who has not provided and does not intend to provide advocacy to more than 4 persons within any 12 month period;
 - (e) to the extent that it is provided by a relative or friend of the person on whose behalf representations are made or are intended to be made.
- (3) In this regulation—
- (a) the following words and phrases have the meanings ascribed to them—
 - (i) “relative” means a parent or other person with parental responsibility, brother, sister, uncle or aunt (whether by marriage or civil partnership), grandparent, step-parent, foster parent or prospective adopter with whom the child is placed;
 - (ii) “family proceedings” has the meaning given by section 12 of the Criminal Justice and Court Services Act 2000⁽²⁾;
 - (iii) “Welsh family proceedings officer” has the same meaning as in section 35(4) of the Children Act 2004⁽³⁾;
 - (iv) “sibling group” includes both brothers and sisters and half-brothers and half-sisters; and
 - (b) in determining whether a person has provided or intends to provide an advocacy service to more than 4 persons for the purpose of paragraph (2)(d), provision of advocacy to a sibling group is counted as provision of advocacy to a single person.

⁽¹⁾ S.I. 1978/1910.
⁽²⁾ 2000 c. 43.
⁽³⁾ 2004 c. 31.

PART 2

General requirements on service providers

Requirements in relation to the provision of the service

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

Requirements in relation to the statement of purpose

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

(2) The service provider must—

- (a) keep the statement of purpose under review, and
- (b) where appropriate, revise the statement of purpose.

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

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

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

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

- (a) the service regulator,
- (b) the individuals,
- (c) service commissioners, and
- (d) any representative, unless it is not appropriate to do so or would be inconsistent with the well-being of an individual.

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

Requirements in relation to monitoring and improvement

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

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

- (a) individuals,
- (b) any representatives, unless this is not appropriate or would be inconsistent with the individual's well-being,
- (c) service commissioners, and
- (d) staff,

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

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

- (a) take into account the views of those persons consulted in accordance with paragraph (2), and
- (b) have regard to the quality of service report prepared by the responsible individual in accordance with regulation 50(4).

Requirements in relation to the responsible individual

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

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

- (a) is supported to carry out their duties effectively; and
- (b) undertakes appropriate training.

(3) In the event that the service provider has reason to believe that the responsible individual has not complied with a requirement imposed by the regulations 36 to 54, the provider must—

- (a) take such action as is necessary to ensure that the requirement is complied with; and
- (b) notify the service regulator.

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

- (a) the effective management of the service,
- (b) the effective oversight of the service,
- (c) the compliance of the service with the requirements of the regulations in Parts 3 to 15, and
- (d) monitoring, reviewing and improving the quality of the advocacy provided.

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

- (a) notify the service regulator; and
- (b) inform the service regulator of the interim arrangements made to comply with paragraph (4).

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

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

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

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

- (a) the effective management of the service,
- (b) the effective oversight of the service,
- (c) the compliance of the service with the requirements of the regulations in Parts 3 to 15, and
- (d) monitoring, reviewing and improving the quality of the advocacy provided by the service.

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

- (a) notify the service regulator; and
- (b) inform the service regulator of the interim arrangements made to comply with paragraph (3).

Requirements in relation to the financial sustainability of the service

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

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

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

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

Requirements to provide the service in accordance with policies and procedures

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

Commencement of the service (see Part 3, regulation 11)

Confidentiality (see Part 6, regulation 19)

Safeguarding (see Part 7, regulation 21)

Staff support and development (see Part 8, regulation 25)

Staff discipline (see Part 8, regulation 28)

Complaints (see Part 10, regulation 34)

Whistleblowing (see Part 10, regulation 35).

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

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

- (a) appropriate to the needs of individuals for whom advocacy is provided,
- (b) consistent with the statement of purpose, and
- (c) kept up-to-date.

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

Duty of candour

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

- (a) individuals,
- (b) any representatives of those individuals.

PART 3

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

Suitability of the service

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

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

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

- (a) the individual's views, wishes and feelings,
- (b) any risks to the individual's well-being,
- (c) any reasonable adjustments which the service provider could make to enable the individual's advocacy needs to be met, and
- (d) the service provider's policy and procedures on commencement of the service.

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

- (a) the individual is an adult or a child aged 16 or over and the individual does not wish the representative to be involved; or
- (b) involving the representative would not be consistent with the individual's well-being.

PART 4

Requirements on service providers as to the steps to be taken on commencement of provision of advocacy

Advocacy plan

12.—(1) If the service provider determines that the service is suitable to meet the needs of the individual it must, as soon as reasonably practicable, prepare a plan setting out—

- (a) the steps which are to be taken to assist the individual to make representations; and
- (b) any steps to be taken to mitigate identified risks to the individual's well-being.

(2) When preparing the advocacy plan the service provider must involve the individual and any representative unless—

- (a) the individual is an adult or a child aged 16 or over and the individual does not want the representative to be involved; or
- (b) involving the representative would not be consistent with the individual's well-being.

Review of advocacy plan

13.—(1) The advocacy plan must be reviewed as and when agreed between the service provider and the individual.

(2) A review of an advocacy plan must include a review of the extent to which the individual has been

able to represent the individual's views or have those views represented.

(3) When carrying out a review under this regulation, the service provider must involve the individual and any representative. But the service provider is not required to involve a representative if—

- (a) the individual is an adult or a child aged 16 or over and the individual does not wish the representative to be involved; or
- (b) involving the representative would not be consistent with the individual's well-being.

(4) Following the completion of any review required by this regulation, the service provider must consider whether the advocacy plan should be revised and revise the plan as necessary.

Records of advocacy plans

14. The service provider must—

- (a) keep a record of—
 - (i) the advocacy plan and any revised plan, and
 - (ii) the outcome of any review, and
- (b) give a copy of the advocacy plan and any revised plan to—
 - (i) the individual,
 - (ii) any representative, unless this is not appropriate or would be inconsistent with the individual's well-being.

PART 5

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

Information about the service

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

(2) The guide must be—

- (a) dated, reviewed at least annually and updated as necessary;
- (b) in an appropriate language, style, presentation and format, having regard to the statement of purpose for the service;
- (c) given to all individuals who are receiving advocacy;
- (d) given to commissioning authorities; and
- (e) made available to others on request, unless this is not appropriate or would be

inconsistent with the well-being of an individual.

(3) The guide must contain information about how to raise a concern or make a complaint.

(4) The service provider must ensure that all individuals receive such support as is necessary to enable them to understand the information contained in the guide.

PART 6

Requirements on service providers as to the standard of advocacy to be provided

Service standards

16.—(1) The service provider must ensure that advocacy is provided in a way which—

- (a) enables individuals to represent their views and to have those views represented; and
- (b) protects, promotes and maintains the safety and well-being of individuals.

(2) The service provider must ensure that advocacy is provided to each individual in accordance with the individual's advocacy plan.

(3) The service provider must ensure that the advocacy is provided in a way which—

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

(4) If, as a result of a change in the individual's circumstances, the service provider is no longer able to meet those needs, even after making any reasonable adjustments, the provider must immediately give written notification of this to the individual, any representative and the service commissioner.

(5) The service provider must consider whether an individual has needs for legal or other specialist advice or assistance and take all reasonable steps to obtain that advice or assistance.

Language and communication

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

Respect and sensitivity

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

- (2) This includes, but is not limited to—
- (a) respecting the individual’s privacy and dignity;
 - (b) promoting the individual’s autonomy and independence;
 - (c) having regard to any relevant protected characteristics (as defined in section 4 of the Equality Act 2010⁽¹⁾) of the individual.

Confidentiality

19.—(1) The service provider must respect the individual’s rights to confidentiality.

(2) The service provider must have in place a policy about the right of individuals to confidentiality, which also includes the circumstances when an individual’s right to confidentiality may be over-ridden, and must operate the service in accordance with the policy.

PART 7

Requirements on service providers – safeguarding

Safeguarding - overarching requirement

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

Safeguarding policies and procedures

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

- (a) the prevention of abuse, neglect and improper treatment, and
- (b) responding to any allegation or evidence of abuse, neglect or improper treatment.

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

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

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

- (a) act in accordance with its safeguarding policies and procedures;

(1) 2010 c. 15.

- (b) take immediate action to ensure the safety of all individuals for whom advocacy services are provided;
- (c) make appropriate referrals to other agencies; and
- (d) keep a record of any evidence or the substance of any allegation, any action taken and any referrals made.

Interpretation of Part 7

22. In this Part—

“abuse” (“*camdriniaeth*”) means physical, sexual, psychological, emotional or financial abuse and, in relation to a child, any other harm and for the purposes of this definition—

- (a) “financial abuse” includes—
 - (i) having money or other property stolen;
 - (ii) being defrauded;
 - (iii) being put under pressure in relation to money or other property;
 - (iv) having money or other property misused;
- (b) “harm” has the same meaning as in section 197(1) of the 2014 Act;

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

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

PART 8

Requirements on service providers as to staffing

Staffing - overarching requirements

23. The service provider must ensure that at all times a sufficient number of suitably qualified, trained, skilled, competent and experienced staff are deployed to work at the service, having regard to the statement of purpose for the service.

Fitness of staff

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

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

(1) 2005 c. 9.

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

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

- (a) the person is of suitable integrity and good character;
- (b) the person has the qualifications, skills, competence and experience necessary for the work that person is to perform;
- (c) the person is able by reason of their health, after reasonable adjustments are made, of properly performing the tasks which are intrinsic to the work for which that person is employed or engaged;
- (d) the person has provided full and satisfactory information or documentation, as the case may be, in respect of each of the matters specified in Part 1 of Schedule 1 and this information or documentation is available at the service for inspection by the service regulator;
- (e) where the person is employed by the service provider to manage the service, after 1 September 2022 the person is registered as a social care manager with SCW⁽¹⁾.

(3) An appropriate DBS certificate must be applied for by, or on behalf of the service provider, for the purpose of assessing the suitability of a person for the post referred to in paragraph (1). But this requirement does not apply if the person working at the service is registered with the Disclosure and Barring Service update service (referred to in this regulation as “the DBS update service”).

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

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

(6) Where a person appointed to a post referred to in paragraph (1) is not registered with the DBS update

(1) See section 67(3) of the Act for the definition of Social Care Wales as “SCW”.

service, the service provider must apply for a new DBS certificate in respect of that person within three years of the issue of the certificate applied for in accordance with paragraph (3) and thereafter further such applications must be made at least every three years.

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

- (a) take necessary and proportionate action to ensure that the relevant requirements are complied with;
- (b) where appropriate, inform—
 - (i) the relevant regulatory or professional body;
 - (ii) the Disclosure and Barring Service.

Supporting and developing staff

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

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

- (a) receives an induction appropriate to their role;
- (b) is made aware of their own responsibilities and those of other staff;
- (c) receives appropriate supervision and appraisal;
- (d) receives core training appropriate to the work to be performed by them;
- (e) receives specialist training as appropriate;
- (f) receives support and assistance to obtain such further training as is appropriate to the work they perform.

(3) The service provider must ensure that any person employed to work at the service is supported to maintain their registration with the appropriate regulatory or occupational body.

Compliance with employer's code of practice

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

Information for staff

27.—(1) The service provider must ensure that all persons working at the service (including any person

allowed to work as a volunteer) are provided with information about the service and the way it is provided.

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

Disciplinary procedures

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

(2) The disciplinary procedure must include—

- (a) provision for the suspension, and the taking of action short of suspension, of an employee, in the interests of the safety or well-being of individuals;
- (b) provision that a failure on the part of an employee to report an incident of abuse, or suspected abuse, to an appropriate person, is grounds on which disciplinary proceedings may be instituted.

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

- (a) the service provider,
- (b) the responsible individual,
- (c) an officer of the service regulator,
- (d) an officer of the local authority for the area in which the service is provided,
- (e) in the case of an incident of abuse or suspected abuse of a child, an officer of the National Society for the Prevention of Cruelty to Children, or
- (f) a police officer.

PART 9

Requirements on service providers as to premises

Overarching requirement

29. The service provider must ensure that the premises, facilities and equipment are suitable for the service, having regard to the statement of purpose for the service.

Premises

30. The service provider must ensure that the premises used for the operation of the service have adequate facilities for the secure storage of records.

PART 10

Other requirements on service providers

Records

31.—(1) The service provider must keep and maintain the records specified in Schedule 2 in respect of each place at, from or in relation to which the service is provided.

(2) The service provider must—

- (a) ensure that records relating to individuals are accurate and up to date;
- (b) keep all records securely;
- (c) make arrangements for the records to continue to be kept securely in the event the service closes;
- (d) make the records available to the service regulator on request;
- (e) retain records relating to adults for three years from the date of the last entry;
- (f) retain records relating to children for fifteen years from the date of the last entry;
- (g) ensure that individuals who use the service—
 - (i) can have access to their records; and
 - (ii) are made aware they can access their records.

Notifications

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

(2) The notifications required by paragraph (1) must include details of the event.

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

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

Conflicts of interest

33. The service provider must have effective arrangements in place to identify, record and manage conflicts of interest.

Complaints policy and procedure

34.—(1) The service provider must have a complaints policy in place and ensure that the service is operated in accordance with that policy.

(2) The service provider must have effective arrangements in place for dealing with complaints including arrangements for—

- (a) identifying and investigating complaints;
- (b) giving an appropriate response to a person who makes a complaint, if it is reasonably practicable to contact that person;
- (c) ensuring that appropriate action is taken following an investigation;
- (d) keeping records relating to the matters in subparagraphs (a) to (c).

(3) The service provider must provide a summary of complaints, responses and subsequent action to the service regulator within 28 days of being requested to do so.

(4) The service provider must—

- (a) analyse information relating to complaints and concerns; and
- (b) having regard to that analysis, identify any areas for improvement.

Whistleblowing

35.—(1) The service provider must have arrangements in place to ensure that all persons working at the service (including any person allowed to work as a volunteer) are able to raise concerns about matters that may adversely affect the health, safety or well-being of individuals for whom the service is provided.

(2) These arrangements must include—

- (a) having a whistleblowing policy in place and acting in accordance with that policy; and
- (b) establishing arrangements to enable and support people working at the service to raise such concerns.

(3) The provider must ensure that the arrangements required under this regulation are operated effectively.

(4) When a concern is raised, the service provider must ensure that—

- (a) the concern is investigated;
- (b) appropriate steps are taken following an investigation;
- (c) a record is kept of both the above.

PART 11

Requirements on responsible individuals for ensuring effective management of the service

Supervision of management of the service

36. The responsible individual must supervise the management of the service, which includes the specific requirements set out in this Part.

Duty to appoint a manager

37.—(1) The responsible individual must appoint a person to manage the service. But this requirement does not apply if the conditions in paragraph (2) or (3) apply.

(2) The conditions are—

- (a) the service provider is an individual;
- (b) the service provider proposes to manage the service;
- (c) the service provider is fit to manage the service;
- (d) subject to paragraph (6), the service provider is registered as a social care manager with SCW; and
- (e) the service regulator agrees to the service provider managing the service.

(3) The conditions are—

- (a) the service provider is a partnership, body corporate or unincorporated body;
- (b) the service provider proposes that the individual designated as the responsible individual for the service is to be appointed to manage the service;
- (c) that individual is fit to manage the service;
- (d) subject to paragraph (6), that individual is registered as a social care manager with SCW; and
- (e) the service regulator agrees to that individual managing the service.

(4) For the purposes of paragraph (2)(c), the service provider is not fit to manage the service unless the requirements of regulation 24(2) (fitness of staff) are met in respect of the service provider.

(5) The duty in paragraph (1) is not discharged if the person appointed to manage the service is absent for a period of more than three months.

(6) The condition in paragraphs (2)(d) and (3)(d) only applies after 1 September 2022.

Fitness requirements for appointment of manager

38.—(1) The responsible individual must not appoint a person to manage the service unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to manage the service unless the requirements of regulation 24(2) (fitness of staff) are met in respect of that person.

Restrictions on appointing manager for more than one service

39.—(1) The responsible individual must not appoint a person to manage more than one service, unless paragraph (2) applies.

(2) This paragraph applies if—

- (a) the service provider has applied to the service regulator for permission to appoint a manager for more than one service; and
- (b) the service regulator is satisfied that the proposed management arrangements—
 - (i) will not have an adverse impact on the service provider's ability to meet the requirements of regulation 16(1); and
 - (ii) will provide reliable and effective oversight of each service.

Duty to report the appointment of manager to service provider

40. On the appointment of a manager in accordance with regulation 37(1), the responsible individual must give notice to the service provider of—

- (a) the name of the person appointed, and
- (b) the date on which the appointment is to take effect.

Duty to report appointment of manager to the workforce and service regulators

41.—(1) On the appointment of a manager in accordance with regulation 37(1), the responsible individual must give notice to SCW and to the service regulator of—

- (a) the name, date of birth and SCW registration number of the person appointed, and
- (b) the date on which the appointment is to take effect.

(2) In a case where the service provider is an individual and the service regulator has agreed to the service provider managing the service, the service provider must give notice to SCW of—

- (a) the name, date of birth and SCW registration number of the service provider, and
- (b) the date from which the service provider is to manage the service.

Arrangements when manager is absent

42.—(1) The responsible individual must put suitable arrangements in place to ensure that the service is managed effectively at any time when there is no manager or when the manager is not present at the service.

(2) If there is no manager or the manager is not present at the service for a period of more than 28 days, the responsible individual must—

- (a) notify the service provider and the service regulator; and
- (b) inform them of the arrangements which have been put in place for the effective management of the service.

Visits

43.—(1) The responsible individual must—

- (a) visit the premises from which the service is provided;
- (b) meet with members of staff who are employed to provide the service in relation to each place in respect of which the responsible individual is designated; and
- (c) meet with individuals for whom advocacy is being provided in relation to each such place.

(2) The frequency of such visits and meetings is to be determined by the responsible individual having regard to the statement of purpose but must be at least every three months.

PART 12

Requirements on responsible individuals for ensuring effective oversight of the service

Oversight of adequacy of resources

44.—(1) The responsible individual must report to the service provider on the adequacy of the resources available to provide the service in accordance with the requirements on service providers in Parts 3 to 15.

(2) Such reports must be made on a quarterly basis.

(3) But this requirement does not apply where the service provider is an individual.

Other reports to the service provider

45.—(1) The responsible individual must, without delay, report to the service provider—

- (a) any concerns about the management or provision of the service;
- (b) any significant changes to the way the service is managed or provided;
- (c) any concerns that the service is not being provided in accordance with the statement of purpose for the service.

(2) But this requirement does not apply where the service provider is an individual.

Engagement with individuals and others

46.—(1) The responsible individual must put suitable arrangements in place for obtaining the views of—

- (a) individuals,
- (b) any representatives of those individuals,
- (c) service commissioners, and
- (d) staff employed at the service,

on the quality of advocacy provided and how this can be improved.

(2) The responsible individual must report the views obtained to the service provider so that these views can be taken into account by the service provider when making any decisions on plans for improvement of the quality of advocacy provided.

PART 13

Requirements on responsible individuals for ensuring the compliance of the service

Duty to ensure there are systems in place to record incidents and complaints

47. The responsible individual must ensure that there are effective systems in place to record incidents, complaints and matters on which notifications must be made in accordance with regulations 32 and 54.

Duty to ensure there are systems in place for keeping of records

48. The responsible individual must ensure that there are effective systems in place in relation to the keeping of records, which include systems for ensuring the accuracy and completeness of records which are required to be kept by regulation 31.

Duty to ensure policies and procedures are up to date

49. The responsible individual must put suitable arrangements in place to ensure that the service provider's policies and procedures are kept up to date, having regard to the statement of purpose.

PART 14

Requirements on responsible individuals for monitoring, reviewing and improving the quality of the service

Quality of service review

50.—(1) The responsible individual must put suitable arrangements in place to establish and maintain a system for monitoring, reviewing and improving the quality of the service.

(2) The system established under paragraph (1) must make provision for the quality of the service to be reviewed as often as required but at least every six months.

(3) As part of any review undertaken, the responsible individual must make arrangements for—

- (a) considering the outcome of the engagement with individuals and others, as required by regulation 46 (engagement with individuals and others);
- (b) analysing the aggregated data on incidents, notifiable incidents, safeguarding matters, whistleblowing, concerns and complaints;
- (c) reviewing any action taken in relation to complaints;
- (d) considering the outcome of any audit of the accuracy and completeness of records.

(4) On completion of a review of the quality of service in accordance with this regulation, the responsible individual must prepare a report to the service provider which must include—

- (a) an assessment of the standard of advocacy provided, and
- (b) recommendations for the improvement of the service.

(5) But the requirement in paragraph (4) does not apply where the service provider is an individual.

Statement of compliance with the requirements as to standards of advocacy

51.—(1) The responsible individual must prepare the statement required to be included in the annual return

under section 10(2)(b) of the Act, in so far as it relates to the place or places in respect of which the responsible individual has been designated.

(2) When preparing the statement, the responsible individual must have regard to the assessment of the standard of advocacy which is contained in a report prepared in accordance with regulation 50(4).

PART 15

Other requirements on responsible individuals

Support for staff raising concerns

52. The responsible individual must ensure that the provider's whistleblowing policy is being complied with and that the arrangements to enable and support people working at the service to raise such concerns are being operated effectively.

Duty of candour

53. The responsible individual must act in an open and transparent way with—

- (a) individuals,
- (b) any representatives of those individuals.

Notifications

54.—(1) The responsible individual must notify the service regulator of the events specified in Schedule 4.

(2) The notifications required by paragraph (1) must include details of the event.

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

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

PART 16

Offences

Offences – service providers

55.—(1) It is an offence for a service provider to fail to comply with a requirement of any of the provisions specified in paragraph (2)(1).

(1) For penalties upon conviction for an offence under this regulation, see section 51(1) of the Act.

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations 4(3), 4(5), 8(3), 9(1), 9(3), 15(1), 15(2), 15(3), 24(1), 27(1), 31(1), 31(2), 32(1) and 32(3).

(3) A service provider commits an offence if the provider fails to comply with a requirement of any of the provisions specified in paragraph (4) and such failure results in—

- (a) avoidable harm (whether of a physical or psychological nature) to an individual,
- (b) an individual being exposed to a significant risk of such harm occurring, or
- (c) in a case of theft, misuse or misappropriation of money or property, any loss by an individual of the money or property concerned.

(4) The provisions specified for the purposes of paragraph (3) are the provisions of regulations 3, 4(1), 11(1), 11(3) and 12(1).

Offences – responsible individuals

56.—(1) It is an offence for the responsible individual to fail to comply with a requirement of any of the provisions specified in paragraph (2)(1).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations 37(1), 38(1), 41(1), 41(2), 43(1), 43(2), 44(1), 44(2), 45(1), 50(4), 51(1), 54(1) and 54(3).

PART 17

Service providers who are liquidated etc. or who have died

Appointment of liquidators etc.

57. An appointed person(2) must—

- (a) without delay, give written notification to the service regulator of their appointment and the reasons for their appointment;
- (b) within 28 days of their appointment, notify the service regulator of their intentions regarding the future operation of the service.

(1) For penalties upon conviction for an offence under this regulation, see section 51(1) of the Act.

(2) “Appointed person” has the same meaning as in section 30 of the Act.

Death of service provider

58.—(1) Where a service provider who is an individual has died, the personal representatives of the individual must—

- (a) without delay, give written notification of the death to the service regulator;
- (b) within 28 days of the death, notify the service regulator of their intentions regarding the future operation of the service.

(2) The personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer period (not exceeding one year) as the service regulator may agree.

(3) Where the personal representatives are acting in the capacity of the service provider in accordance with paragraph (2), Part 1 of the Act applies with the following modifications—

- (a) section 5 (requirement to register) does not apply;
- (b) in section 21(2) (responsible individuals) after paragraph (a) insert—
 - “(aa) where the personal representatives of a service provider who has died are acting in the capacity of the service provider, be one of the personal representatives;”.

PART 18

Regulations under section 21(5) of the Act

Designation of responsible individual by Welsh Ministers

59. The Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual, despite the requirements of section 21(2) of the Act not being met in respect of the individual, in the following circumstances—

- (a) the service provider is an individual who has died and the personal representatives of the service provider have notified the service regulator that they do not intend to make an application under section 11(1)(c) of the Act;
- (b) the service provider is an individual and they have notified the service regulator—
 - (i) that they are no longer able to comply with their duties as a responsible individual, and
 - (ii) the reasons for this being the case;

- (c) the service provider is a corporate body or partnership and they have notified the service regulator—
 - (i) that the individual designated by the service provider as the responsible individual is no longer able to comply with their duties as a responsible individual,
 - (ii) the reasons for this being the case, and
 - (iii) that there is no other individual who is eligible to be a responsible individual and who is able to comply with the duties of a responsible individual.

Name

Minister for Children, Older People and Social Care,
under authority of the Cabinet for Health and Social
Services, one of the Welsh Ministers

Date

PART 1

Information and documents to be available in respect of persons working in regulated services

1. Proof of identity including a recent photograph.

2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997⁽¹⁾, a copy of a valid criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request).

3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of a valid enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children (within the meaning of section 113BA(2) of that Act) or suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act).

4. Two written references, including a reference from the last employer, if any.

5. Where a person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable, verification of the reason why the employment or position ended.

6. Documentary evidence of any relevant qualification.

7. Where relevant, documentary evidence of registration with SCW.

8. A full employment history, together with a satisfactory written explanation of any gaps in employment.

9. Evidence of satisfactory linguistic ability for the purposes of providing advocacy to those individuals for whom the worker is to provide it.

10. Details of registration with or membership of any professional body.

(1) 1997 c. 50.

PART 2

Interpretation of Part 1

11. For the purposes of paragraphs 2 and 3 of Part 1 of this Schedule—

- (a) if the person to whom the certificate relates is not registered with the DBS update service, a certificate is only valid if—
 - (i) it has been issued in response to an application by the service provider in accordance with regulation 24(3) or (6); and
 - (ii) no more than three years have elapsed since the certificate was issued;
- (b) if the person to whom the certificate relates is registered with the DBS update service, the certificate is valid regardless of when it was issued.

SCHEDULE 2 Regulation 31

Records to be kept

1. In respect of each individual, records of—

- (a) advocacy plans and revised advocacy plans,
- (b) correspondence, reports and records in relation to the matters for which advocacy is provided and the outcome.

2. A record of any charges by the service provider to individuals for the provision of advocacy and any additional services.

3. A record of all complaints made by individuals or their representatives or by persons working at the service about the operation of the service, and the action taken by the service provider in respect of any such complaint.

4. A record of all persons working at the service, which must include the following matters—

- (a) the person's full name, address, date of birth, qualifications and experience,
- (b) a copy of the person's birth certificate and passport (if any),
- (c) a copy of each reference obtained in respect of the person,
- (d) the dates on which the person commences and ceases to be so employed,
- (e) the position the person holds at the service, the work the person performs and the number of hours for which the person is employed each week,
- (f) records of disciplinary action and any other records in relation to the person's employment,
- (g) a record of the date of a DBS certificate and whether there was any action taken as a result of the content of the certificate.

SCHEDULE 3 Regulation 32

Notifications by the service provider

1. Any revision to the statement of purpose, 28 days prior to the revised statement of purpose coming into effect.

2. Service provider (individual or organisation) changes their name.

3. Where the service provider is a company, any change in the directors of the company.

4. Where the service provider is an individual, the appointment of a trustee in bankruptcy in relation to that individual.

5. Where the service provider is a body corporate or partnership, the appointment of a receiver, manager, liquidator or provisional liquidator in relation to that company or partnership.

6. Where the service provider is a partnership, death of one of the partners.

7. Where the service provider is a partnership, any change in the partners.

8. Expected absence of the responsible individual for 28 days or more, 7 days prior to commencement of the absence.

9. The unexpected absence of the responsible individual, no later than 7 days after the commencement of the absence.

10. Unexpected absence of the responsible individual for 28 days or more, where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.

11. Return from absence of the responsible individual.

12. The responsible individual ceases, or proposes to cease, being the responsible individual for the service.

13. Any abuse or allegation of abuse in relation to an individual that involves the service provider and/or a member of staff.

14. Service provider, responsible individual or appointed manager convicted of a criminal offence.

15. Any allegation of misconduct by a member of staff.

16. Any incident reported to the police.

17. Any events which prevent, or could prevent, the provider from continuing to provide the service safely.

18. Any proposal to change the address of the principal office, 28 days prior to the change taking place.

19. Any referral to the DBS pursuant to the Safeguarding Vulnerable Groups Act 2006⁽¹⁾.

20. Where the service provider, responsible individual or appointed manager is charged with any offence specified in the Schedule to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009⁽²⁾, notice of the offence charged and the place of charge.

21. Incident of child sexual or criminal exploitation or suspected child sexual or criminal exploitation.

(1) 2006 c. 47.
(2) S.I. 2009/37.

SCHEDULE 4 Regulation 54

Notifications by the responsible individual

- 1.** The appointment of a manager (see regulation 41).
- 2.** The expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence.
- 3.** The unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence.
- 4.** The unexpected absence of appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.
- 5.** Return from absence of appointed manager.
- 6.** Interim arrangements where the manager is absent for longer than 28 days.
- 7.** Someone other than the appointed manager is proposing to manage or is managing the service.
- 8.** The appointed manager ceases, or proposes to cease, managing the service.

Explanatory Memorandum to the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

I am satisfied that the benefits justify the likely costs.

Huw Irranca-Davies
Minister for Children, Older People and Social Care

10 December 2018

PART 1

1. Description

In 2011 the Welsh Government published the white paper *Sustainable Social Services: A Framework for Action*. This set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last Assembly term, the Welsh Government made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 (“The 2014 Act”) and the Regulation and Inspection of Social Care (Wales) Act 2016 (“The 2016 Act”).

The 2016 Act was passed by the National Assembly for Wales on 24 November 2015 and received Royal Assent on 18 January 2016. It reforms the regulation and inspection regime for specified services. These services are listed in Section 2, and include ‘an advocacy service’ to be specified in regulations to be made by the Welsh Ministers. The 2016 Act provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of statutory guidance and the issuing of codes of practice.

This Explanatory Memorandum relates to Regulations that will come into force on 29 April 2019. They are about the specification of advocacy services to be regulated and the standards against which they will be regulated.

Statutory guidance to accompany the Regulations (under section 29 of the 2016 Act), published for consultation at the same time, has been revised and is published in draft on the Welsh Government website, to aid scrutiny of the Regulations. The statutory guidance will be finalised and published in spring 2019.

<https://gov.wales/topics/health/socialcare/regulation/?skip=1&lang=en>

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

No specific matters have been identified.

3. Legislative background

The powers enabling these Regulations to be made are contained in Sections 27 and 28, and Schedule 1 of the 2016 Act.

These Regulations are being laid before the National Assembly under the affirmative procedure.

Regulations about advocacy services, registered service providers and responsible individuals

Section 2 of the 2016 Act lists the types of service to be regulated under the Act. Subsection 2 refers to Schedule 1 which makes further provision about the meaning of the terms used and allows the Welsh Ministers to specify an 'advocacy service' for the purposes of Section 2.

Section 27 of the 2016 Act allows the Welsh Ministers to make regulations setting out the requirements imposed upon a registered service provider in relation to a regulated service. Section 28 of the 2016 Act allows the Welsh Ministers to make regulations setting out the specific responsibilities of the responsible individual for the service in respect of the service for which they are registered.

4. Purpose & intended effect of the legislation

These Regulations:

- Define advocacy services for the purposes of the 2016 Act which fall within the regulation and inspection regime it establishes. This will be limited to those services which must statutorily be provided by local authorities under the 2014 Act for looked after children, care leavers and children in need of care and support.
- Set the standards against which advocacy services will be regulated and inspected under the 2016 Act. These are drafted to be applicable to all people in receipt of advocacy services so as to support extension of regulation to all services when market stability allows.

5. Consultation

A 12- week consultation on these regulations ran between 23 May and 16 August 2018. Further details on the consultation process are set out in the Regulatory Impact Assessment below.

Section 27(4) of the 2016 Act provides that "Before making regulations under this section the Welsh Ministers must – (a) consult any persons they think appropriate, and (b) publish a statement about the consultation." To discharge this requirement, a summary of the responses, together with the Welsh Government's analysis and conclusions is being laid with this Explanatory Memorandum and can be found at:

<https://beta.gov.wales/advocacy-services-regulations>

Section 27(5) of the 2016 Act provides that "The Welsh Ministers must lay a copy of a statement published under subsection (4)(b) before the National Assembly for Wales". Therefore a copy of the summary of responses can also be found at:

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

PART 2 - REGULATORY IMPACT ASSESSMENT

Advocacy

The 2016 Act creates a new system of regulation and inspection for advocacy services in Wales. This is supported by a requirement for service providers to register with Care Inspectorate Wales (CIW). The Act also sets out the high level information required when submitting an application to register a service. Additionally, the Act states that a person must specify the regulated service the person wants to provide, the places at, from or in relation to which the service is to be provided and the person designated as responsible individual. If a provider wishes to vary their registration, the application to do so must contain details of the variation sought by the provider.

These Regulations set out:

- the meaning of an advocacy service for the purposes of the Act.
- requirements upon a service provider in relation to a registered advocacy service;
- requirements on a responsible individual in relation to an advocacy service in respect of which the individual is designated.

In drafting the Regulations our approach has been, as far as is appropriate, to achieve consistency with the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, and to reflect the views of the Technical Group on Advocacy which was established to consider the development of standards for Independent Advocacy providers; the development of Regulations and statutory guidance under the 2016 Act; and the National Standards and Outcomes Framework and the Code on Advocacy under Part 10 of the Social Services and Well-being (Wales) Act 2014.

Definition

Currently advocacy services are not regulated. Advocacy services are varied; provided on the basis of a combination of statutory entitlements and services offered on a paid or voluntary basis; and without a clear and consistent understanding of the market place in which advocacy is offered and provided. It is not possible, therefore, to establish certainty as to what effect a broad definition of 'advocacy service', for the purposes of the 2016 Act would have on the provision and availability of advocacy in Wales.

The approach taken therefore, would allow eventually for the extension of the regulatory framework to providers of advocacy for adults and those children who do not fall within the scope of section 178 of the 2014 Act at the point where there is clearer evidence of the impact the 2016 Act will impose on service providers. Any such extension would require amendment of these Regulations and would be subject to resolution of the National Assembly for Wales in accordance with Section 187 of the Regulation and Inspection of Social Care (Wales) Act 2016.

A Technical Group of advocacy providers and stakeholders was established with the aim, amongst other things, of advising on the development of regulations and statutory

guidance under the 2016 Act. The Group agreed that the opportunity for transitional arrangements should be explored as part of implementation. It was agreed that providers of children's statutory advocacy, because of their historic experience of delivering with local government, were more likely to be in a strong position to respond to the registration and inspection requirements. There are currently two service providers in Wales who will be affected in the short term. Longer term timelines can be considered for other advocacy service providers subject to there being a clear expectation that providers be working towards registration. The Group reflected the importance of ensuring that the drive for greater access to good quality advocacy services should reflect realistic expectations and not undermine and unsettle stability.

This Regulatory Impact Assessment does not present a 'do nothing' option as the National Assembly for Wales has determined, by passing the 2016 Act, that an advocacy service, as defined by Regulations to be made under Schedule 1 of the 2016 Act, should be subject to a regulation and inspection regime. These Regulations are intended to give effect to that intention.

i) Options

Option one – Replicate the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

Under the 2016 Act the following are listed in Section 2 as regulated services:

- A care home service;
- A secure accommodation service;
- A residential family centre service;
- An adoption service;
- A fostering service;
- An adult placement service;
- An advocacy service;
- A domiciliary support service.

Under this option the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 would apply to regulated advocacy services in the same way that they do to other regulated services¹ without modification.

Option two – Modify the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

Advocacy services, however defined, are of a clearly different nature to services which provide accommodation or domiciliary support and so it is necessary to consider which of the provisions should apply, which should not, and what modifications may be appropriate so that advocacy services may become a regulated service.

An exercise was undertaken, with the assistance of the Technical Group on Advocacy, to identify appropriate adaptations and modifications. The provisions of the Regulated

¹ Those services regulated under phase 2: Care Home Services, Secure Accommodation Services, Residential Family Care Services and Domiciliary Support Services.

Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 that are applicable to regulated advocacy services are listed below with some commentary.

General requirements on service providers – the bulk of this would be applicable to regulated advocacy services with the proviso that a regulated advocacy service must have in place a policy dealing with confidentiality issues. This reflects the particular circumstances in which information may be shared between an advocate and a service user and the fact that such sharing will often prefigure the provision of other services offering care and support. There is a need to protect both the confidentiality of the service user and the professionalism of the provider with a clear explanation of what the limits of confidentiality are in the interests of both.

Requirements on service providers as to the steps to be taken before agreeing to provide care and support – the requirements in Part 4 of the 2017 Regulations will apply to advocacy services, with the deletion of ‘admission’ in Regulation 14 (2). It is not our intention that an advocacy service provider should undertake its own assessment of an individual’s care and support needs. We do, however, require that an advocacy provider should make an initial assessment of its ability to meet the individual’s needs for advocacy.

Requirements on service providers as to the steps to be taken on commencement of the provision of care and support – provisions in respect of advocacy plans and reviews of advocacy plans are less extensive than those relating to personal plans in the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 reflecting the distinction whereby day to day care and support is not supplied by an advocacy service.

Requirements on service providers as to the information to be provided to individuals on commencement of the provision of care and support – this replicates Part 6 with modifications reflecting the application of this provision to regulated advocacy services.

Requirements on service providers as to the standard of care and support to be provided – these provisions are effectively replicated with modifications reflecting their application to advocacy services. Less focus is placed on continuity of care and greater focus on confidentiality as a result of this consideration.

Requirements on service providers – safeguarding – these provisions apply to regulated advocacy service providers other than those provisions more suitable to regulated social care service providers who provide accommodation, such as those requiring a service provider to have a policy supporting individuals to manage their money or to prohibit the use of corporal punishment. The overarching requirement and the requirement to have policies and procedures in place for the prevention of abuse, neglect and improper treatment remain.

Requirements on service providers as to premises - will only be applicable in respect of the overarching requirement and the secure storage of records. This reflects consultation feedback on the nature and use of premises used by advocacy service providers.

Other requirements on service providers – provisions relating to notifications and records which apply explicitly to care homes do not apply. Notifications with respect to children admitted into, or discharged from, a place at which accommodation is provided to children are not required in respect of advocacy. Notification with respect to the death of a child accommodated in a secure children's home do not apply. Provisions regarding conflicts of interest are modified to remove reference to financial interests and care homes. Notifications in respect of child exploitation are replicated and have been expanded to ensure that criminal exploitation is treated in the same way as sexual exploitation. Requirements relating to a complaints policy and procedures and whistleblowing provisions are retained.

Requirements on responsible individuals for monitoring, reviewing and improving the quality of the regulated service – these are modified to reflect the applicability of provisions to advocacy services.

Offences - we intend that the regulations specify that the failure by service providers or responsible individuals to meet certain requirements is an offence, as in Part 21 of the 2017 Regulations. Where failures relate to the same or similar requirements under these regulations similar offences are created.

Requirements on responsible individuals for ensuring effective oversight of the service; Requirements on responsible individuals for ensuring compliance of the service; and Regulations under Section 21(5) of the Act – these provisions are all replicated for advocacy services.

Preferred Option: For the reasons set out under 'Benefits/Risks' below, option two is the preferred option.

ii) Costs

Options one and two

Costs to CIW

The cost to CIW of providing a regulation and inspection regime under the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 is addressed in the Regulatory Impact Assessment² which accompanied those Regulations. The marginal cost to CIW of extending this regime to advocacy services is estimated as likely to be small under either option.

Costs to service providers

Provisions under the following Parts of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 apply to advocacy services. Under option one they are applied unmodified; modifications relevant to option two are noted in the text where appropriate.

² <http://www.assembly.wales/laid%20documents/sub-ld11277-em/sub-ld11277-em-e.pdf>

There is clearly an interaction between the definition of an advocacy service for the purposes of these Regulations and the extent to which service providers meet, or are in a position to meet, the standards that are set out in the Regulations, even though the sector is currently unregulated. For this reason, the costs identified below are presented in a cost per provider format.

General requirements on service providers

Requirements on service providers as to the steps to be taken before agreeing to provide care and support – Provisions requiring a statement of purpose and the production of a series of policies and procedures would incur a small cost to service providers depending on the provider and the current policies and procedures they have in place. The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete the annual report (now entitled “annual return” so as to distinguish this from the local authorities’ annual reports). The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information in relation to a service as a SOP. It is therefore estimated that a statement of purpose will take a similar amount of time to complete.

The cost of producing a statement of purpose for each place at, from, or in relation to which a service is to be provided, as required in the Regulations under this option is £392. However, this figure will vary depending on the salary of the person producing the statement of purpose. As this figure is an estimate for a small service provider, it may also vary for a larger provider.

In relation to the series of policies and procedures required, the providers of existing advocacy services which we propose to include in these Regulations already have many of these in place as a matter of good practice. We expect additional costs, therefore, to be minimal.

Requirements on service providers as to the steps to be taken on commencement of the provision of care and support

Engagement with the sector has indicated that the providers of existing advocacy services which we propose to include in the scope of these Regulations already plan, review (if necessary) and record the services they are contracted to provide to an individual. As a result, additional costs arising for service providers under this option are expected to be minimal.

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

Provisions requiring providers to prepare a written guide to the service and a service agreement which must be shared with each individual would incur a cost to service providers. The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete the annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of

information in relation to a service as a written guide. It is therefore estimated that the written guide to the service will take a similar amount of time to complete.

The approximate cost of £392³ for each setting can also be applied to the cost of producing a standard service agreement, as required in the Regulations under option 1. However, this figure will vary depending on the salary of the person producing a service agreement. As this figure is an estimate for a small service provider, it may also vary for a larger provider. It will also vary according to the provider and the documentation they currently have in place.

A service agreement is not required under option 2 as it is not considered appropriate to the nature of advocacy interventions and the level of service which the individual can expect is addressed in the proposal to produce an advocacy plan.

Requirements on service providers as to the standard of care and support to be provided

The requirement to provide information in an appropriate language, style, presentation and format having regard to the individual's needs would incur a cost to service providers. The degree to which there will be a cost will be dependent on the requirements of the individual, the provider and the documentation they have in place.

Requirements on service providers – safeguarding

The requirement to have policies and procedures in place for the prevention of abuse, neglect and improper treatment and for responding to any allegation or evidence would incur a small cost to service providers. The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete the annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information as might be expected in these policies and procedures. It is therefore estimated that the requirement in Part 7 to have safeguarding policies and procedures in place will entail a similar cost of £392⁴ for each setting. However, this figure will vary depending on the salary of the person producing the policy. As this figure is an estimate for a small service provider, it may also vary for a larger provider. The actual additional cost for an individual provider will depend on the provider and the policies and procedures they currently have in place. The providers which we propose to register in the short term have indicated that they have such policies in place currently.

Requirements on service providers as to staffing

The requirement to undertake Disclosure and Barring Service (DBS) checks would incur a cost in staff time for service providers. The degree to which there will be a cost will be dependent on the provider and the arrangements they currently have in place.

³[http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20\(wales\)%20bill/pri-ld10106-em-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20(wales)%20bill/pri-ld10106-em-e.pdf)

⁴[http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20\(wales\)%20bill/pri-ld10106-em-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20(wales)%20bill/pri-ld10106-em-e.pdf)

Requirements on service providers as to premises, facilities and equipment

The bulk of provisions within this Part of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 are not applicable to advocacy services and we have removed those relating to facilities and equipment and some of those relating to premises. It is expected that the need for providers to have adequate facilities for the secure storage of records is likely to incur a small cost to service providers. The degree to which there will be an additional cost will be dependent on the provider and the arrangements they currently have in place

Other requirements on service providers

The requirement to keep and maintain specified records and make the required notifications will incur a cost to service providers. The degree to which there will be a cost will be dependent on the provider and the arrangements they currently have in place, including those required under contractual arrangements with service commissioners.

Requirements on responsible individuals

The requirements on Responsible Individuals (RIs) relate to the oversight of the service, ensuring the management is supervised, making reports on the quality of the service, adequacy of resources and other matters. The Responsible Individual must also make visits to the service in person and ensure the service is complying with other requirements, such as making notifications, recording incidents and complaints.

Although the Responsible Individual is not a paid employee, unless they are also the manager under s37 of the regulations, some additional costs may be incurred by providers. Using the ONS data from the Annual Survey of Hours and Earnings, which states that the gross hourly earnings for managers and directors in Social Services in 2017 was £19.29⁵, it is estimated that, assuming RIs spend most of their working day (8 hours) at a service during their visit, this would give a total cost, including on-costs, of £201 per visit. For quarterly visits, this gives an annual cost of approximately £800.

The regulations will also incur costs for service providers in terms of the requirement for Responsible Individuals to undertake quality of service reviews every six months. The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete an annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information to the quality of service review but as the quality of service review draws from existing monitoring information this should not take as long to complete. A reasonable estimation for this would be more like 2 working days, therefore incurring a cost of around £196 for each setting, every six months (£392 annually). However, this figure will vary depending on the salary of the person undertaking the review and may vary according to the size of the provider.

⁵ This figure is then uprated by 30% to include on-costs.

Combining the costs identified above gives an estimated annual cost of approximately £2,370 per provider. However, as explained, the cost per provider will depend upon the arrangements that are currently in place and the size of the provider.

iii) Benefits/Risks

Option one

The benefits of option one are that providers of advocacy services would be registered by CIW and regulated in accordance with standards which would apply, as far as appropriate, to all providers of regulated services. This would provide for clarity and consistency in the way services providing care and support are regulated but the risk is that this would not recognise the specific context in which advocacy services are provided and the related challenges.

Option two

The benefits of option two are that providers of advocacy services would be registered by CIW and regulated in accordance with standards which would apply, as far as appropriate, to all providers of regulated services *with relevant modifications to reflect the specific circumstances of advocacy services*. This would provide for clarity and consistency in the way services providing care and support are regulated while also recognising the specific context in which advocacy services are provided and the related challenges.

Option two would ensure that the information and documentation provided will give CIW the ability to make a full and informed decision as to whether an applicant is fit to manage a service. This enhances CIWs ability to ensure poor providers are not registered and as such protects people using the services. This option has been developed with the Technical Group on Advocacy and as a result of responses to consultation on Phase 1 and Phase 3 of the implementation of the 2016 Act which indicated concern amongst stakeholders that requiring advocacy services to register will deter market entry and result in additional costs.

This provides for a more graduated approach which sets high standards for the delivery of advocacy services and respects the phase 1 Act implementation consultation response which indicated that a phased implementation would limit the risk of unknown consequences. It recognises the long history of the children's sector in delivering advocacy support for looked after and other specified children and that they are well placed to lead by example.

iv) Consultation

The consultation, which ran from 24 May to 16 August 2018, sought views on the draft Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, which in summary:

- define ‘advocacy services’, for the purpose of the 2016 Act, which fall within the regulation and inspection regime it establishes.
- place requirements on service providers and responsible individuals of regulated advocacy services under the 2016 Act

It also invited views on:

- draft statutory guidance for service providers and responsible individuals of regulated advocacy services on meeting service standards
- the potential inclusion of providers of other types of advocacy – including those for adults - within the registration and inspection regime, when evidence of its effect on market stability suggests that the market is sufficiently stable to accommodate this.

19 responses were received to the consultation.

Three consultation sessions across 2 national events were held as part of the consultation process. The first event was held on 16 July in Glyndwr University, Wrexham and the second was held on 19 July in the SWALEC Stadium, Cardiff.

The sessions aimed to encourage stakeholders to respond and to enable those attending to:

- gain an overview of the draft legislative framework and key changes it will effect;
- check their understanding of the proposals and seek clarity, if needed;
- consider potential implications for their role and organisation

Overall the uptake of places for the events was positive, with approximately 90 attendees in total in Cardiff and 40 delegates in Wrexham. A range of public, private, voluntary and third sector organisations were represented, including a number of service providers.

The majority of consultation responses received were positive and no significant concerns were raised over additional burdens arising from the new regulations.

The following minor changes were made to the legislation as a result of further consideration of engagement and consultation responses:

- References to ‘personal plan’ have been amended to ‘advocacy plan’ which clarifies the purposes of the plan referred to.
- Reference to ‘outcomes’ the individual wishes to achieve when considering the suitability of the service have been removed as this recognises that part of the purpose of the service is to assist the individual to determine desired outcomes.
- We have made clear that the duty of candour required of service providers does not override the confidentiality of the individual.

- Transitional arrangements have been introduced in recognition that, as a newly regulated service, the establishment and achievement of the relevant professional qualifications will take some time.
- The requirement for any premises which are used for the provision of the service to have adequate facilities for the supervision of staff has been removed.
- Criminal Exploitation has been added to the list of events which must be notified to the service regulator

v) Competition Assessment

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

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted. We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way.

vi) Post implementation review

As set out in the RIA for the Act the Welsh Government has two clear aims for the regulation and inspection of social care, the Act and as such these regulations. They are:

- To secure the well-being of citizens; and
- To improve the quality of social care.

The Act makes provision for a number of key reporting mechanisms which will offer a set of clear evidence to inform the post implementation review and establish how successful the Act has been in achieving both of these aims. The reporting mechanisms include:

- Annual returns from service providers.
- Annual reports from local authorities and the review of those reports as undertaken in the Annual Review of Performance and Evaluation of Performance by the service regulator.
- The annual report from the Welsh Ministers in their role as the service regulator.
- The annual report of the workforce regulator.

CIW will monitor the implementation of these Regulations following their coming-into-force date of 29 April 2019.

SL(5)296 – The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

Background and Purpose

Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) introduced a new system of regulation of care and support services in Wales, replacing the system established under the Care Standards Act 2000.

The 2016 Act also introduced a new concept of a “regulated service”. A “fostering service” is a regulated service, defined in the 2016 Act as meaning any service provided in Wales by a person other than a local authority which consists of or includes the placement of children with foster parents or exercising functions in connection with such a placement.

These Regulations impose requirements on service providers and responsible individuals in respect of fostering services. For example, the Regulations require service providers to ensure that fostering services are carried out with sufficient care, competence and skill and to take reasonable steps to ensure the service is financially stable.

Procedure

Affirmative.

Technical Scrutiny

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

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

The Regulations refer to “prospective foster parent” in six places. However, it is unclear what is meant by “prospective foster parent” and who is captured by the term.

The lack of clarity is of particular concern given that the term “prospective parent” applies in relation to criminal offences. For example, it is a criminal offence if a service provider fails to give a guide about the service to, among others, any prospective foster parents (see regulation 12(2)(c)(ii)).

We repeat a concern we have raised previously that absolute clarity is required when creating criminal offences.

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

The Regulations require service providers to give various notifications. For example, service providers must notify the police of any “allegation that a child placed with foster parents has committed a serious offence” (see regulation 40(5) and paragraph 40 of Schedule 3). It is a criminal offence for a service provider to fail to do so.

However, it is unclear what amounts to an “allegation” and what “amounts to a “serious offence”.

Again, we repeat our concern that absolute clarity is required when creating criminal offences.

3. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

In the definition of “datganiad o ddiben” in the Welsh text, there is reference to “Reoliadau Cofrestru 2018”. However, the reference should be to “Reoliadau Cofrestru 2017”.

We note that, given the context, this error is unlikely to raise significant confusion in practice.

Merits Scrutiny

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

Implications arising from exiting the European Union

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

Government Response

1. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation – use of words “prospective foster parent”

Government response

The term “prospective foster parent” has been in use in legislation relating to the provision of fostering services without being specifically defined since 2003. To date, no concerns have been raised by providers or users of fostering services as to what is meant by those words.

The Fostering Services (Wales) Regulations 2003 (“the 2003 Regulations”) first used the words “prospective foster parent”, without providing a definition for that term. Providers and users of fostering services have not raised any queries as to what is meant by the words “prospective foster parent” under the 2003 Regulations, and it is therefore considered that they are content that these words have the plain English meaning, namely a person who proposes to become a foster parent in the future, but who has not yet been approved as such. The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (“the 2019 Regulations”) continue to use the same terminology, on the basis that it is well-known and well-used within the sector, both in Wales and England.

The words “prospective foster parent” are also used in the context of criminal offences in the 2003 Regulations. Regulation 3 of the 2003 Regulations requires providers to make copies of the statement of purpose available to prospective foster parents, and a failure to do so is an offence under regulation 48. Providers have therefore been fulfilling this requirement for many years and have never queried what the nature and extent of their obligations are in these circumstances. Regulations 4(4)(d) and 12(2)(c)(ii) of the 2019 Regulations impose a similar requirement on providers, in that they require fostering service providers to give notice of any changes to the statement of purpose and a copy of the written guide to the service to prospective foster parents. Again, a failure to do so is an offence. Both local authority and independent fostering service providers engaged fully in the consultation taken in relation to these Regulations, and no concerns were raised by them that the obligations being placed on them in connection to prospective foster parents were in any way unclear.



The Local Authority Fostering Services (Wales) Regulations 2018 make reference to the words “prospective foster parents”, and also require fostering service providers to give notice of any changes to the statement of purpose and a copy of the written guide to the service to prospective foster parents.

The Fostering Panels (Establishment and Functions) (Wales) Regulations 2018 also refer to “prospective foster parents”.

2. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation – notification of any allegation that a child placed with foster parents has committed a serious offence (regulation 40(5) and paragraph 40 of Schedule 3)

Government response

This notification requirement has been in place since 2003, and to date, no concerns have been raised by providers as to the nature and extent of this obligation.

Paragraphs 27 and 40 of Schedule 3 to the 2019 Regulations require fostering service providers to notify the local authority which placed the foster child and police if there is any allegation that a child placed with foster parents has committed a serious offence. Identical notification obligations were first imposed under regulation 43 of and Schedule 8 to the 2003 Regulations, and this is therefore a requirement which has been undertaken by providers of fostering services for many years. Providers have never raised any queries as to what is meant by these words, and it is therefore considered that they are content that the plain English meaning applies here, namely any alleged offence which is important and deserving of attention.

Paragraphs 27 and 40 of Schedule 3 to these Regulations replicate the notification requirements imposed under regulation 60 of and paragraphs 29 and 39 of Schedule 3 to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017. The 2017 Regulations have been in force since 2 April 2018, and no providers to date have raised any concerns that they are unclear as to the nature and extent of their obligations under paragraphs 29 and 39 of Schedule 3 of those Regulations.

3. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

In the definition of “datganiad o ddiben” in the Welsh text, there is reference to “Reoliadau Cofrestru 2018”. However, the reference should be to “Reoliadau Cofrestru 2017”.

Government response

We acknowledge this point and an amendment will be made at the next available

Legal Advisers

Constitutional and Legislative Affairs Committee

7 January 2019



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

DRAFT WELSH STATUTORY
INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) introduced a new system of regulation of care and support services in Wales, replacing that established under the Care Standards Act 2000.

The 2016 Act also introduced a new concept of a “regulated service” which is defined in section 2 of that Act. A person who wants to provide a regulated service must make an application for registration to the Welsh Ministers (in the exercise of their regulatory functions) specifying the regulated service that the person wants to provide.

Section 2(1)(e) of the 2016 Act provides that a fostering service is a regulated service, which is defined in Schedule 1 to that Act as meaning any service provided in Wales by a person other than a local authority which consists of or includes the placement of children with foster parents or exercising functions in connection with such a placement. Section 3(1)(c) of the 2016 Act defines “a service provider” as person registered under section 7 of that Act to provide a regulated service.

Section 27 of the 2016 Act provides that regulations may impose requirements on a service provider in relation to a regulated service. Section 28 of that Act further provides that regulations may impose

requirements on responsible individuals designated by a regulated service provider.

Section 30 of the 2016 Act enables the Welsh Ministers to make regulations about service providers who are liquidated, with section 31 of that Act allowing regulations to be made about providers who have died.

The Welsh Ministers may also make regulations to provide that it is an offence for a service provider (section 45 of the 2016 Act) and for a responsible individual (section 46 of that Act) to fail to comply with specified provisions.

Part 1 of these Regulations contains definitions of certain terms used in the Regulations.

Part 2 sets out the general requirements which apply to service providers of a regulated fostering service as to the way in which the service is provided, including requirements in relation to the statement of purpose, the financial sustainability of the service and the duty of candour. Under section 6 of the 2016 Act, a person who wants to provide a regulated fostering service must make an application for registration to the Welsh Ministers in which a person is designated as the responsible individual, and Part 2 also gives details of requirements in relation to the designation of the responsible individual.

Part 3 describes the requirements which must be met by service providers as to the steps which must be taken before a child may be placed with foster parents. Part 4 sets out the requirements on service providers as to the information to be contained in a written guide to be provided to children and foster parents on commencement of a placement.

Part 5 of these Regulations sets out the requirements which must be met in relation to the standard of care and support to be provided. These include requirements relating to meeting the language and communication needs of a child and treating children with respect and sensitivity. The service provider is also required to ensure foster parents comply with the requirements set out in the foster care agreement as prescribed in the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018 (S.I. 2018/XXXX) (W.), and to promote contact between a fostered child and the child's parents, relatives and friends.

Part 6 requires the service provider to put arrangements in place to ensure children they place with foster parents are safe and protected from abuse. As well as requiring policies and procedures to be in place in relation to safeguarding and the appropriate use of control and restraint, the regulations in this Part place specific requirements as to the action to be taken

in the event of an allegation or evidence of abuse. This Part also requires the service provider to put certain procedures in place, including those in relation to bullying and those which apply when a child who has been placed with foster parents goes absent without permission.

Part 7 sets out requirements on service providers to put arrangements in place to ensure children access health, education and other services.

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

Other requirements contained in Part 8 include requirements relating to supporting and developing staff, providing information to staff and the operation of a suitable disciplinary procedure. To ensure that employees report incidents of abuse to an appropriate person, the regulations in this Part require the provider's disciplinary procedure to provide that a failure to report would itself be grounds for disciplinary proceedings. This Part also restricts certain persons from being employed by the service provider in specified key roles.

Part 9 requires service providers to ensure that premises, facilities and equipment to be used in relation to fostering services are suitable and safe.

Part 10 sets out the requirement to keep records in respect of fostering services, and Schedule 2 lists the specific records which must be kept. Part 10 also deals with the making of notifications to the Welsh Ministers and other bodies, and Schedule 3 lists the specific notifications which are required to be made. This Part further imposes requirements on service providers in relation to having a complaints policy in place, together with procedures to deal with any whistleblowing concerns which may be raised by members of staff and volunteers.

Part 11 outlines the support and other assistance to be given to foster parents. This Part also requires service providers to supervise foster parents and to ensure that foster parents are familiar with and act in accordance with key policies and procedures.

Part 12 sets out requirements on responsible individuals for ensuring the effective management of the service. The responsible individual has a general

duty to supervise the management of the service and specific duties to appoint a fit person to manage the service. The responsible individual must also put arrangements in place for the management of the service when the manager is absent. This Part also sets out details of the visits which must be undertaken by responsible individuals.

Part 13 contains requirements on responsible individuals for ensuring the effective oversight of the service. By placing these requirements on the responsible individual, the regulations in this Part ensure that a person of an appropriately senior level in the organisation is accountable for service quality and compliance. The responsible individual is also required to make reports to the service provider on the adequacy of resources and on other matters. The responsible individual must also make arrangements for engagement with children and others so that their views on the quality of care and support provided can be taken into account by the provider.

Part 14 sets out the duty of the responsible individual for ensuring the service is compliant with the relevant requirements, including those for keeping records and recording incidents and complaints. The responsible individual must also ensure that the policies and procedures of the service provider are kept up to date.

Part 15 imposes requirements on the responsible individual for monitoring and reviewing the quality of the service, and for making a report to the service provider.

Part 16 requires the responsible individual to make the notifications outlined in Schedule 4 to the Welsh Ministers, and to ensure the provider's whistleblowing policy is being complied with. This Part also imposes a duty of candour on the responsible individual.

Part 17 provides that a failure of a service provider to comply with the requirements of specified provisions in these Regulations is an offence. In relation to certain other requirements, this Part provides that a failure to comply is an offence if the failure to comply results in a child being exposed to avoidable harm, or significant risk of such harm, or suffering a loss of money or property as a result of theft, misuse or misappropriation.

Part 17 also provides that it is an offence for the responsible individual to fail to comply with the requirements of specified provisions in these Regulations.

Part 18 specifies the responsibilities on the "appointed person" in the event of the insolvency of the service provider. This Part also sets out steps to be taken by the personal representatives of the deceased in the event of the death of a service provider who is

an individual. It enables the personal representatives to act as the provider and modifies the 2016 Act so that in these circumstances, the personal representatives are not required to register as provider, and one of the personal representatives can be designated as the responsible individual.

Part 19 sets out the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual, despite the requirements of section 21(2) of the 2016 Act not being met in respect of the individual.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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

DRAFT WELSH STATUTORY
INSTRUMENTS

2019 No. (W.)

SOCIAL CARE, WALES

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

Made

Coming into force

29 April 2019

CONTENTS

PART 1

General

1. Title and commencement
2. Interpretation

PART 2

General requirements on service providers

3. Requirements in relation to the provision of the service
4. Requirements in relation to the statement of purpose
5. Requirements in relation to monitoring and improvement
6. Requirements in relation to the responsible individual
7. Requirements in relation to the responsible individual where the provider is an individual
8. Requirements in relation to the financial sustainability of the service

9. Requirements to provide the service in accordance with policies and procedures
10. Duty of candour

PART 3

Requirements on service providers as to the steps to be taken before providing care and support

11. Suitability of the service

PART 4

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

12. Information about the service

PART 5

Requirements on service providers as to the standard of care and support to be provided

13. Standards of care and support to children – overarching requirements
14. Continuing suitability of the placement
15. Information for children
16. Language and communication
17. Respect and sensitivity
18. Compliance with foster care agreement
19. Duty to promote contact

PART 6

Requirements on service providers - safeguarding

20. Safeguarding – overarching requirements
21. Safeguarding policies and procedures
22. The appropriate use of control and restraint
23. Prohibition on the use of corporal punishment
24. Deprivation of liberty
25. Policy and procedures on bullying
26. Procedure when child is absent without permission

PART 7

Requirements on service providers to ensure access to health, education and other services

- 27. Access to health services
- 28. Education, employment and leisure activities

PART 8

Staffing

- 29. Staffing - overarching requirements
- 30. Fitness of staff
- 31. Supporting and developing staff
- 32. Compliance with employer's code of practice
- 33. Information for staff
- 34. Disciplinary procedures
- 35. Restrictions on employment

PART 9

Premises, facilities and equipment

- 36. Premises, facilities and equipment - service providers
- 37. Adequacy of facilities
- 38. Premises, facilities and equipment - foster parents

PART 10

Other requirements on service providers

- 39. Records with respect to fostering services
- 40. Notifications
- 41. Conflicts of interest
- 42. Complaints policy and procedures
- 43. Whistleblowing

PART 11

Support and oversight of foster parents

- 44. Support, training and information for foster parents
- 45. Policies and procedures to foster parents
- 46. Supervision
- 47. Effective working relationships

- 48. Supporting children to manage their money

PART 12

Requirements on responsible individuals for ensuring the effective management of the service

- 49. Supervision of the management of the service
- 50. Duty to appoint a manager
- 51. Fitness requirements for appointment of a manager
- 52. Restrictions on appointing a manager for more than one service
- 53. Duty to report the appointment of manager to service provider
- 54. Duty to report the appointment of manager to SCW and the Welsh Ministers
- 55. Arrangements when manager is absent
- 56. Visits

PART 13

Requirements on responsible individuals for ensuring effective oversight of the service

- 57. Oversight of adequacy of resources
- 58. Other reports to the service provider
- 59. Engagement with children and others

PART 14

Requirements on responsible individuals for ensuring the compliance of the service

- 60. Duty to ensure there are systems in place to record incidents and complaints
- 61. Duty to ensure there are systems in place for keeping of records
- 62. Duty to ensure policies and procedures are up to date

PART 15

Requirements on responsible individuals for monitoring, reviewing and improving the quality of the service

- 63. Quality of care review
- 64. Statement of compliance with the requirements as to standards of care and support

PART 16

Other requirements on responsible individuals

- 65. Support for staff raising concerns
- 66. Duty of candour
- 67. Notifications

PART 17

Offences

- 68. Offences - service providers
- 69. Offences – responsible individuals

PART 18

Service providers who are liquidated etc. or have died

- 70. Appointment of liquidators etc.
- 71. Death of service provider

PART 19

Regulations under section 21(5) of the 2016 Act

- 72. Designation of responsible individual by Welsh Ministers

SCHEDULE 1

Part 1 - Information and documentation to be available in respect of persons working in fostering services

Part 2 – Interpretation of Part 1

SCHEDULE 2 – Records to be kept by service providers

SCHEDULE 3 – Notifications by the service provider

Part 1 – Notifications to the Welsh Ministers

Part 2 – Notifications to the placing authority

Part 3 – Notifications to the local authority in whose area the foster home is situated

Part 4 – Notifications to the Local Health Board in whose area the child is placed

Part 5 - Notifications to the police

SCHEDULE 4 – Notifications by the responsible individual

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 21(5), 27, 28, 30, 31, 45, 46 and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾ (“the 2016 Act”).

The Welsh Ministers have consulted such persons as they think appropriate, as required by sections 27(4)(a) and 28(4) of the 2016 Act, and published a statement about the consultation as required by section 27(4)(b) of that Act. The Welsh Ministers have also laid the statement before the National Assembly for Wales as required by section 27(5) of that Act.

A draft of these Regulations was laid before the National Assembly for Wales under section 187(2)(f), (g), (j) and (k) of the 2016 Act and has been approved by a resolution of the National Assembly for Wales.

PART 1

General

Title and commencement

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

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

Interpretation

2. In these Regulations—

“the 2016 Act” (“*Deddf 2016*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the Care Planning, Placement and Case Review (Wales) Regulations 2015⁽²⁾;

“the 2017 Registration Regulations” (“*Rheoliadau Cofrestru 2017*”) means the Regulated Services (Registration) (Wales) Regulations 2017⁽³⁾;

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

(2) S.I. 2015/1818 (W. 261).

(3) S.I. 2017/1098 (W. 278).

“the 2018 Regulations” (“*Rheoliadau 2018*”) means the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018(1);

“abuse” (“*camdriniaeth*”, “*cam-drin*”) means physical, sexual, psychological, emotional or financial abuse, and “financial abuse” (“*camdriniaeth ariannol*”) includes—

- (a) having money or other property stolen,
- (b) being defrauded,
- (c) being put under pressure in relation to money or other property, or
- (d) having money or other property misused;

“area authority” (“*awdurdod ardal*”) means the local authority or local authority in England for the area in which the child is placed, or is to be placed, where this is different from the placing authority;

“care and support plan” (“*cynllun gofal a chymorth*”) means a plan for the child made under section 83 of the 2014 Act(2);

“child who is looked after by a local authority” (“*plentyn sy’n derbyn gofal gan awdurdod lleol*”) has the same meaning as in section 74 of the 2014 Act;

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

“the Disclosure and Barring Service” (“*y Gwasanaeth Datgelu a Gwahardd*”) and “DBS” (“*GDG*”) mean the body formed by section 87(1) of the Protection of Freedoms Act 2012(3);

“employee” (“*cyflogai*”) has the same meaning as in section 230(1) of the Employment Rights Act 1996(4);

“foster care agreement” (“*cytundeb gofal maeth*”) means the written agreement covering the matters specified in Schedule 3 to the 2018 Regulations;

“foster parent” (“*rhiant maeth*”) means a person who has been approved as a foster parent in accordance with the 2018 Regulations, and includes a person with whom a child is placed under regulation 26 of the 2015 Regulations (temporary approval of a relative, friend or other person connected with a child) or regulation 28 of

-
- (1) **S.I. 2018/XXXX (W. X).** These Regulations are made under section 93 of the Social Services and Well-being (Wales) Act 2014 (anaw 4) and make provision for securing that a child is not placed with a local authority foster parent unless that person is approved as a local authority foster parent by such local authority or a regulated service provider.
 - (2) “The 2014 Act” is defined in section 189 of the 2016 Act as the Social Services and Well-being (Wales) Act 2014.
 - (3) 2012 c. 9.
 - (4) 1996 c. 18.

those Regulations (temporary approval of a particular prospective adopter as a foster parent);
“general practitioner” (“*ymarferydd cyffredinol*”) means a registered medical practitioner⁽¹⁾ who—

- (a) provides primary medical services under Part 4 of the National Health Service (Wales) Act 2006⁽²⁾, or
- (b) provides services which correspond to services provided under Part 4 of the National Health Service (Wales) Act 2006, otherwise than in pursuance of that Act;

“improper treatment” (“*triniaeth amhriodol*”) means discrimination or unlawful restraint, including inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005⁽³⁾;

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

- (a) a county council in England,
- (b) a district council for an area in England for which there is no county council,
- (c) a London borough council, or
- (d) the Common Council of the City of London;

“neglect” (“*esgeulustod*”) has the same meaning as in section 197(1) of the 2014 Act;

“parent” (“*rhiant*”), in relation to a child, includes any person who has parental responsibility for the child;

“personal outcomes” (“*canlyniadau personol*”) means—

- (a) the outcomes that the child wishes to achieve, or
- (b) the outcomes that any persons with parental responsibility wish to achieve in relation to the child;

“placement” (“*lleoliad*”) means the placement of a child with a foster parent under section 81(5), (6)(a) and (b) of the 2014 Act;

“placing authority” (“*awdurdod lleoli*”) means, in relation to a child who is looked after by a local authority or local authority in England, that local authority;

(1) The definition of a “registered medical practitioner” in Schedule 1 to the Interpretation Act 1978 (c. 30) was substituted by S.I. 2002/3135, Schedule 1, paragraph 10 with effect from 16 November 2009.

(2) 2006 c. 42.

(3) 2005 c. 9.

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

“responsible individual” (*“unigolyn cyfrifol”*) means an individual designated by a service provider when making an application to register under section 6 of the 2016 Act;

“social worker” (*“gweithiwr cymdeithasol”*) means a person who is registered as a social worker in the register maintained by SCW⁽²⁾ under section 80 of the 2016 Act, in Part 16 of the register maintained by the Health and Care Professions Council under article 5 of the Health and Social Work Professions Order 2001⁽³⁾ or in a corresponding register maintained under the law of Scotland or Northern Ireland;

“staff” (*“staff”*) includes—

- (a) persons employed by the service provider to work at the service as an employee or a worker, and
- (b) persons engaged by the service provider under a contract for services,

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

“statement of purpose” (*“datganiad o ddiben”*) means the document containing the information which must be provided in accordance with regulation 3(c) of and Schedule 2 to the 2017 Registration Regulations for the place in relation to which the service is provided⁽⁴⁾;

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

PART 2

General requirements on service providers

Requirements in relation to the provision of the service

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

(1) 2010 c. 15, section 20.

(2) See section 67(3) of the 2016 Act for the definition of Social Care Wales as “SCW”.

(3) S.I. 2002/254.

(4) Regulation 3(c) of the 2017 Registration Regulations requires a person who wants to provide a fostering service to provide a statement of purpose for each place in relation to which the service is to be provided.

Requirements in relation to the statement of purpose

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

(2) The service provider must—

- (a) keep the statement of purpose under review, and
- (b) where appropriate, revise the statement of purpose.

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

(4) The persons who must be given notice of any revision to the statement of purpose in accordance with paragraph (3) are—

- (a) the Welsh Ministers,
- (b) any child placed with a foster parent by the service provider, unless it would not be appropriate to do so having regard to the child's age and understanding,
- (c) the parents of any such child,
- (d) foster parents and prospective foster parents,
- (e) persons working for the purposes of the fostering service,
- (f) the placing authority.

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

Requirements in relation to monitoring and improvement

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

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

- (a) any child placed with a foster parent by the service provider,
- (b) the parents of any such child, unless this is inappropriate or inconsistent with the child's well-being,
- (c) foster parents,
- (d) persons working for the purposes of the fostering service,
- (e) the placing authority, and
- (f) in the case of a child who is placed with an area authority, that area authority,

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

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

- (a) take into account the views of those consulted in accordance with paragraph (2), and
- (b) have regard to the report prepared by the responsible individual in accordance with regulation 63(4) (quality of care review).

Requirements in relation to the responsible individual

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

(2) A service provider to whom this regulation applies must ensure that the person who is designated as the responsible individual⁽¹⁾—

- (a) is supported to carry out their duties effectively, and
- (b) undertakes appropriate training.

(3) In the event that the service provider has reason to believe that the responsible individual has not complied with a requirement imposed by the regulations in Parts 12 to 16, the provider must—

- (a) take such action as is necessary to ensure that the requirement is complied with, and
- (b) inform the Welsh Ministers.

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

- (a) the effective management of the service,
- (b) the effective oversight of the service,
- (c) the compliance of the service with the requirements of these Regulations, and
- (d) monitoring, reviewing and improving the quality of the service.

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

- (a) notify the Welsh Ministers, and
- (b) inform the Welsh Ministers of the interim arrangements.

(1) Section 6 of the 2016 Act requires a person who wants to provide a regulated service to make an application for registration to the Welsh Ministers designating an individual as the responsible individual.

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

7.—(1) This regulation applies where the provider of a service is an individual.

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

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

- (a) the effective management of the service,
- (b) the effective oversight of the service,
- (c) the compliance of the service with the requirements of these Regulations, and
- (d) monitoring, reviewing and improving the quality of the service.

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

- (a) notify the Welsh Ministers, and
- (b) inform the Welsh Ministers of the interim arrangements.

Requirements in relation to the financial sustainability of the service

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

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

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

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

Requirements to provide the service in accordance with policies and procedures

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

- (a) placement and commencement of the service (see regulation 11 (suitability of the service)),
- (b) safeguarding (see regulation 21),
- (c) appropriate use of control or restraint (see regulation 22),
- (d) bullying (see regulation 25),
- (e) absence (see regulation 26),

- (f) medication (see regulation 27 (access to health services)),
- (g) supporting and developing staff (see regulation 31),
- (h) staff discipline (see regulation 34),
- (i) complaints (see regulation 42),
- (j) whistleblowing (see regulation 43),
- (k) support for foster parents on how to help children manage their money (see regulation 48).

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

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

- (a) appropriate to the needs of children for whom care and support is provided,
- (b) consistent with the statement of purpose, and
- (c) kept up to date.

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

(5) The service provider must ensure that the content of the policies and procedures which are required to be in place under paragraph (1)(a), (b), (c), (d) and (i) takes into account the needs of any other children who may be affected by the placement being made.

Duty of candour

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

- (a) any child placed by the service provider,
- (b) the parents of any such child,
- (c) foster parents and prospective foster parents,
- (d) the placing authority,
- (e) in the case of a child who is placed with an area authority, that area authority.

PART 3

Requirements on service providers as to the steps to be taken before providing care and support

Suitability of the service

11.—(1) The service provider must not agree to place a child with a foster parent unless the provider has determined that there is a suitable placement which can meet the child's needs for care and support and enable the child to achieve their personal outcomes.

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

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

- (a) the child's care and support plan,
- (b) any health or other relevant assessments,
- (c) the child's views, wishes and feelings,
- (d) any risks to the child's well-being,
- (e) any risks to the well-being of any other child who may be affected by the placement to be made,
- (f) the child's religious persuasion, racial origin, cultural and linguistic background, sexual orientation and gender identity,
- (g) any reasonable adjustments which the service provider could make to enable the child's care and support needs to be met,
- (h) the service provider's policy and procedures on placements and commencement of the service.

(4) In making the determination in paragraph (1), the service provider must involve—

- (a) the child, where practicable,
- (b) the child's parents, unless this is inappropriate or inconsistent with the child's well-being,
- (c) the placing authority.

PART 4

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

Information about the service

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

(2) The guide must be—

- (a) dated, reviewed at least annually and updated as necessary,
- (b) in a language, style, presentation and format which is appropriate for both children (of all ages and understanding) and adults,
- (c) given to—
 - (i) any child placed by the service provider,
 - (ii) any foster parents and prospective foster parents,
 - (iii) the placing authority, and
- (d) made available to others on request, unless this is not appropriate or would be inconsistent with the well-being of the child.

(3) The guide must contain the following—

- (a) a summary of the policies and procedures which the service provider must put in place under regulation 9(1)(a), (b), (c), (d), (e), (f), (i) and (k),
- (b) information about how to make a complaint,
- (c) information about the availability of advocacy services for children who are looked after by a local authority,
- (d) information about the role and contact details for the Children's Commissioner for Wales.

(4) The service provider must ensure that children receive such support as is necessary to enable them to understand the information contained in the guide.

PART 5

Requirements on service providers as to the standard of care and support to be provided

Standards of care and support – overarching requirements

13. The service provider must ensure that foster parents give care and support to a child placed with them—

- (a) in accordance with the child's care and support plan, and
- (b) in a way which maintains, protects and promotes the safety and well-being of the child.

Continuing suitability of the placement

14. If, as a result of a change in the child's assessed needs, the placement made by the service provider is no longer suitable to meet the child's needs for care and support, even after any reasonable adjustments have been made, the service provider must immediately give written notice of this to the placing authority.

Information for children

15.—(1) The service provider must put arrangements in place to ensure that children have the information they need to make and participate in day to day decisions about the way care and support is provided to them and how they are supported to achieve their personal outcomes.

(2) Information provided must be available in an appropriate language, style, presentation and format for children of all ages.

(3) The service provider must put arrangements in place to ensure that children receive such support as is necessary to enable them to understand the information provided.

Language and communication

16.—(1) The service provider must take reasonable steps to meet the language needs of children.

(2) The service provider must ensure that children are provided with access to such aids and equipment as may be necessary to facilitate their communication with others.

Respect and sensitivity

17.—(1) The service provider must put arrangements in place to ensure that children placed by the provider are treated with respect and sensitivity.

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

- (a) respecting the child's privacy and dignity,
- (b) respecting the child's right to confidentiality,
- (c) promoting the child's autonomy and independence, and
- (d) having regard to any relevant protected characteristics (as defined in section 4 of the Equality Act 2010) of the child.

Compliance with foster care agreement

18. The service provider must monitor the foster parents' compliance with the requirements of the foster care agreement.

Duty to promote contact

19. The service provider must ensure foster parents promote contact between a child placed with them and the child's parents, relatives and friends, in accordance with the child's care and support plan and any court order relating to contact.

PART 6

Requirements on service providers – safeguarding

Safeguarding – overarching requirements

20. The service provider must put arrangements in place to ensure that children placed by it are safe and are protected from abuse, neglect and improper treatment.

Safeguarding policies and procedures

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

- (a) for the prevention of abuse, neglect and improper treatment, and
- (b) for responding to any allegation or evidence of abuse, neglect or improper treatment.

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

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

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

- (a) act in accordance with its safeguarding policies and procedures,
- (b) take immediate action to ensure the safety of all children for whom care and support is provided,
- (c) make appropriate referrals to other agencies, and
- (d) keep a record of any evidence or the substance of any allegation, any action taken and any referrals made.

The appropriate use of control and restraint

22.—(1) The service provider must have a policy and procedures in place on the use of control or restraint.

(2) The policy and procedures must prohibit care and support being provided in a way which includes acts intended to control or restrain a child unless those acts—

- (a) are necessary to prevent a risk of harm posed to the child or other persons or likely serious damage to property, and
- (b) are a proportionate response to such a risk.

(3) The policy and procedures must require foster parents to be trained in any methods of control or restraint to be used.

(4) The policy and procedures must require foster parents to—

- (a) make a record of any incident in which control or restraint is used, and
- (b) notify the service provider of any such incident within 24 hours.

(5) The service provider must ensure that any control or restraint used by foster parents is carried out in accordance with these policies and procedures.

(6) For the purposes of this regulation, a person controls or restrains a child if that person—

- (a) uses, or threatens to use, force to secure the doing of an act which the child resists, or
- (b) restricts the child's liberty of movement, whether or not the child resists, including by the use of physical, mechanical or chemical means.

(7) For the purposes of this regulation, “harm” has the same meaning as in section 22(10) of the 2016 Act.

Prohibition on the use of corporal punishment

23. The service provider must ensure that foster parents do not use any form of corporal punishment at any time against any child.

Deprivation of liberty

24. A child must not be deprived of their liberty for the purpose of receiving care and support without lawful authority.

Policy and procedures on bullying

25. The service provider must have in place a policy on the prevention of bullying and procedures for dealing with an allegation of bullying.

Procedure when child is absent without permission

26. The service provider must ensure that there is a procedure to be followed when any child who has been placed with foster parents by the provider is absent without permission.

PART 7

Requirements on service providers to ensure access to health, education and other services

Access to health services

27.—(1) The service provider must ensure that foster parents promote the physical, mental and emotional health and development of children placed with them.

(2) In particular, the service provider must put arrangements in place to ensure that foster parents—

- (a) register each child with a general practitioner,
- (b) provide each child with access to such medical, dental, optical, nursing, psychological and psychiatric advice, treatment and services as the child may require,
- (c) support each child to obtain such individual support, aids and equipment which the child may require as a result of any particular health needs or disability they may have, and
- (d) provide each child with guidance, support and advice on health, personal care and health promotion issues appropriate to the child's needs and wishes.

(3) The service provider must have a policy and procedures in place in relation to the administration of medicines by foster parents.

Education, employment and leisure activities

28.—(1) The service provider must ensure that the educational attainment of children placed with foster parents is promoted.

(2) In particular the service provider must—

- (a) establish a procedure for monitoring the educational attainment, progress and school attendance of children placed with foster parents,
- (b) in relation to school aged children placed with foster parents, ensure foster parents promote the children's regular attendance at school and participation in school activities, and
- (c) provide foster parents with such information and assistance, including equipment, as may be necessary to meet the educational needs of children placed with them.

(3) The service provider must ensure that foster parents promote the leisure interests of children placed with them and support them to engage in play and recreational activities appropriate to their age and to participate freely in cultural life and the arts⁽¹⁾.

(4) Where any child placed with foster parents has attained the age where they are no longer required to receive compulsory full-time education, the service provider must assist with the making of, and give effect to, arrangements made for the child in respect of their education, training and employment.

PART 8

Staffing

Staffing - overarching requirements

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

- (a) the statement of purpose for the service,
- (b) the care and support needs of children,
- (c) the need to support children to achieve their personal outcomes,

(1) Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 (nawm 2) requires the Welsh Ministers, when exercising any of their functions, to have due regard to the requirements of Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 ("the Convention"). Article 31 of Part 1 of the Convention recognises a child's right to play.

- (d) the need to safeguard and promote the health and welfare of children, and
- (e) the requirements of these Regulations.

Fitness of staff

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

- (a) employ a person under a contract of employment to work at the service unless that person is fit to do so,
- (b) allow a volunteer to work at the service unless that person is fit to do so, or
- (c) allow any other person to work at the service in a position in which they may in the course of their duties have regular contact with children who are receiving care and support unless that person is fit to do so.

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

- (a) the person is of suitable integrity and good character,
- (b) the person has the qualifications, skills, competence and experience necessary for the work they are to perform,
- (c) the person is able by reason of their health, after reasonable adjustments are made, of properly performing the tasks which are intrinsic to their role,
- (d) the person has provided full and satisfactory information or documentation, as the case may be, in respect of each of the matters required under paragraphs 1 to 9 of Schedule 1, and this information or documentation is available at the service for inspection by the Welsh Ministers, and
- (e) where the person is employed by the service provider to manage the service, from 1 April 2022, the person is registered as a social care manager⁽¹⁾ with SCW.

(3) An appropriate DBS certificate must be applied for by, or on behalf of, the service provider, for the purpose of assessing the suitability of a person for the post referred to in paragraph (1). But this requirement does not apply if the person working at the service is registered with the Disclosure and Barring Service update service (referred to in this regulation as the DBS update service).

(4) Where a person being considered for a post referred to in paragraph (1) is registered with the DBS update service, the service provider must check the

(1) See section 79(1)(b) of the 2016 Act for the definition of a “social care manager”.

person's DBS certificate status for the purpose of assessing the suitability of that person for that post.

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

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

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

- (a) take necessary and proportionate action to safeguard children, and
- (b) where appropriate, inform—
 - (i) SCW,
 - (ii) the Disclosure and Barring Service.

Supporting and developing staff

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

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

- (a) receives an induction appropriate to their role,
- (b) is made aware of their own responsibilities and those of other staff,
- (c) receives appropriate supervision and appraisal,
- (d) receives core training appropriate to the work to be performed by them,
- (e) receives specialist training as appropriate, and
- (f) receives support and assistance to obtain such further training as is appropriate to the work they perform.

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

Compliance with employer's code of practice

32. The service provider must adhere to the code of practice on the standards of conduct and practice expected of persons employing or seeking to employ

social care workers, which is required to be published by SCW under section 112(1)(b) of the 2016 Act.

Information for staff

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

(2) The service provider must ensure that there are suitable arrangements in place to make staff aware of any codes of practice about the standards of conduct expected of social care workers which are required to be published by SCW under section 112(1)(a) of the 2016 Act.

Disciplinary procedures

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

(2) The disciplinary procedure must include—

- (a) provision for the suspension, and the taking of action short of suspension, of employees in the interests of the safety or well-being of children receiving care and support from the service, and
- (b) provision that a failure on the part of an employee to report an incident of abuse, or suspected abuse, to an appropriate person, is grounds on which disciplinary proceedings may be instituted.

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

- (a) an officer of the Welsh Ministers,
- (b) the service provider,
- (c) the responsible individual,
- (d) an officer of the local authority,
- (e) in the case of an incident of abuse or suspected abuse of a child, an officer of the National Society for the Prevention of Cruelty to Children, or
- (f) a police officer,

as the case may be.

Restrictions on employment

35.—(1) The service provider must not employ to work for the purposes of the fostering service in a position to which paragraph (2) applies, a person who is—

- (a) a foster parent approved by the fostering service, or

- (b) a member of the household of such a foster parent.

(2) This paragraph applies to any management, social work or other professional position, unless in the case of a position which is not a management or a social work position, the work is undertaken on an occasional basis, as a volunteer, or for no more than 5 hours in any week.

PART 9

Premises, facilities and equipment

Premises, facilities and equipment - service providers

36. The service provider must ensure that the premises, facilities and equipment used for the operation of the service are suitable, having regard to the statement of purpose for the service.

Adequacy of facilities

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

- (a) the supervision of staff, and
- (b) the secure storage of records.

Premises, facilities and equipment - foster parents

38.—(1) The service provider must have arrangements in place to ensure that the premises, facilities and equipment used by foster parents for the provision of care and support to children are—

- (a) suitable and safe for the purpose for which they are intended to be used,
- (b) used in a safe way,
- (c) properly maintained, and
- (d) kept clean to a standard which is appropriate for the purpose for which they are being used.

(2) The service provider must ensure that foster parents are properly trained on how to operate any equipment that they may use when providing care and support to a child.

PART 10

Other requirements on service providers

Records with respect to fostering services

39.—(1) The service provider must maintain the records specified in Schedule 2 for 15 years.

(2) The service provider must—

- (a) ensure that the records specified in Schedule 2 are accurate and up to date,
- (b) keep the records securely,
- (c) ensure the records are delivered to the placing authority when the service ceases to be provided in respect of the child to whom the records relate,
- (d) make suitable arrangements for the records to continue to be kept securely in the event the service closes,
- (e) make the records available to the Welsh Ministers on request,
- (f) ensure that children who use the service—
 - (i) are made aware of their right to access their records, and
 - (ii) have such access to their records as is permitted by law.

Notifications

40.—(1) The service provider must notify the Welsh Ministers of the events specified in Part 1 of Schedule 3.

(2) The service provider must notify the placing authority of the events specified in Part 2 of Schedule 3.

(3) The service provider must notify the area authority of the events specified in Part 3 of Schedule 3.

(4) The service provider must notify the Local Health Board in whose area the child is placed of the events specified in Part 4 of Schedule 3.

(5) The service provider must notify the police of the events specified in Part 5 of Schedule 3.

(6) The notifications required by paragraph (1) must include details of the event.

(7) Notifications must be made in such manner and in such form as may be required by the Welsh Ministers.

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

Conflicts of interest

41. The service provider must have effective arrangements in place to identify, record and manage potential conflicts of interest.

Complaints policy and procedures

42.—(1) The service provider must have a complaints policy in place and ensure that the service is operated in accordance with that policy.

(2) The complaints policy must include procedures for considering complaints made to the service provider by or on behalf of children placed by the provider about—

- (a) the provider,
- (b) foster parents, and
- (c) any other matter considered by the provider to be relevant.

(3) The complaints policy must include procedures for considering complaints made to the service provider by or on behalf of any other children who may be affected by the placement made about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(4) The complaints policy must include procedures for considering complaints made to the service provider by foster parents about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(5) The complaints policy must include procedures for considering complaints made to the service provider by the parents of any child placed by the provider about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(6) The service provider must have effective arrangements in place for dealing with complaints including arrangements for—

- (a) identifying and investigating complaints,
- (b) giving an appropriate response to a person who makes a complaint, if it is reasonably practicable to contact that person,
- (c) ensuring that appropriate action is taken following an investigation, and
- (d) keeping records relating to the matters in subparagraphs (a) to (c).

(7) The service provider must provide a summary of complaints, responses and any subsequent action taken to the Welsh Ministers within 28 days of being requested to do so.

(8) The service provider must—

- (a) analyse information relating to complaints and concerns, and
- (b) having regard to that analysis, identify any areas for improvement.

Whistleblowing

43.—(1) The service provider must put arrangements in place to ensure that all persons working at the service (including any person allowed to work as a volunteer) are able to raise concerns about the service.

(2) These arrangements must include—

- (a) having a whistleblowing policy in place and acting in accordance with that policy, and
- (b) establishing arrangements to enable and support people working at the service to raise such concerns.

(3) The service provider must ensure that the arrangements required under this regulation are operated effectively.

(4) When a concern is raised, the service provider must ensure that—

- (a) the concern is investigated,
- (b) appropriate steps are taken following an investigation, and
- (c) a record is kept relating to the matters in sub-paragraphs (a) and (b).

PART 11

Support and oversight of foster parents

Support, training and information for foster parents

44.—(1) The service provider must ensure that foster parents have the information they need to provide care and support to a child placed with them in accordance with the child's care and support plan.

(2) The service provider must ensure foster parents receive such training, advice and support, including support outside office hours, as appears necessary in the interests of children placed with the foster parents and to enable them to provide care and support to children in accordance with each child's care and support plan.

(3) The service provider must ensure prospective foster parents receive such training, information and advice as is considered necessary.

(4) The service provider must monitor and review the information, training, advice and support provided to foster parents and prospective foster parents and make any improvements which may be necessary.

Policies and procedures to foster parents

45. The service provider must ensure that foster parents are familiar with and act in accordance with the policies and procedures established under regulations 11, 21, 22, 25, 26, 27, 42 and 48.

Supervision

46. The service provider must ensure that foster parents are appropriately supervised.

Effective working relationships

47. The service provider must—

- (a) maintain good professional relationships with foster parents, and
- (b) encourage and assist foster parents to maintain good personal relationships with children placed with them.

Supporting children to manage their money

48.—(1) The service provider must have a policy and procedures in place to enable foster parents to provide support and assistance to children on how to manage their money.

(2) The policy and procedures which are required by this regulation to be in place must set out the steps which are to be taken by foster parents to enable and support children to manage their own money and to protect children from financial abuse.

(3) The policy and procedures must ensure that there is adequate oversight and monitoring by the service provider of savings which are made by foster parents on behalf of children.

(4) Where a child's money is held by the foster parents for any purpose, the policy and procedures required by this regulation must provide that the money is held in an account in the child's name or in an account which enables clear demarcation of the child's money.

(5) The policy and procedures must ensure that foster parents pass on all records of savings (including expenditure from savings) to the service provider when the placement of the child to whom the records relate comes to an end.

PART 12

Requirements on responsible individuals for ensuring the effective management of the service

Supervision of management of the service

49. The responsible individual must supervise the management of the service.

Duty to appoint a manager

50.—(1) The responsible individual must appoint a person to manage the service. But this requirement does not apply if the conditions in paragraph (2) or (3) apply.

(2) Where the service provider is an individual, the conditions are—

- (a) the service provider proposes to manage the service,
- (b) the service provider is fit to manage the service,
- (c) subject to paragraph (6), the service provider is registered as a manager with SCW, and
- (d) the Welsh Ministers agree to the service provider managing the service.

(3) Where the service provider is a partnership, body corporate or unincorporated body, the conditions are—

- (a) the service provider proposes that the individual designated as the responsible individual for the service is to be appointed to manage the service,
- (b) that individual is fit to manage the service,
- (c) subject to paragraph (6), that individual is registered as a manager with SCW, and
- (d) the Welsh Ministers agree to that individual managing the service.

(4) For the purposes of paragraph (2)(b), the service provider is not fit to manage the service unless the requirements of regulation 30(2) (fitness of staff) are met in respect of the service provider.

(5) The duty in paragraph (1) is not discharged if the person appointed to manage the service is absent for a period of more than three months.

(6) The condition in paragraphs (2)(c) and (3)(c) applies only from 1 April 2022.

Fitness requirements for appointment of manager

51.—(1) The responsible individual must not appoint a person to manage the service unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to manage the service unless the requirements of regulation 30(2) (fitness of staff) are met in respect of that person.

Restrictions on appointing a manager for more than one service

52.—(1) The responsible individual must not appoint a person to manage more than one service, unless paragraph (2) applies.

(2) This paragraph applies if—

- (a) the service provider has applied to the Welsh Ministers for permission to appoint a manager for more than one service, and
- (b) the Welsh Ministers are satisfied that the proposed management arrangements—
 - (i) will not have an adverse impact on the care and support provided to children, and
 - (ii) will provide reliable and effective oversight of each service.

Duty to report the appointment of manager to service provider

53. On the appointment of a manager in accordance with regulation 50(1), the responsible individual must give notice to the service provider of—

- (a) the name of the person appointed, and
- (b) the date on which the appointment is to take effect.

Duty to report the appointment of manager to SCW and the Welsh Ministers

54.—(1) On the appointment of a manager in accordance with regulation 50(1), the responsible individual must give notice to SCW and the Welsh Ministers of—

- (a) the name, date of birth and SCW registration number of the person appointed, and
- (b) the date on which the appointment is to take effect.

(2) Where a service provider who is an individual is to manage the service, that individual must give notice to SCW of—

- (a) their name, date of birth and SCW registration number, and
- (b) the date from which they will manage the service.

Arrangements when manager is absent

55.—(1) The responsible individual must put suitable arrangements in place to ensure that the service is managed effectively at any time when there is no manager or when the manager is absent from the service.

(2) If there is no manager or the manager is absent for a period of more than 28 days, the responsible individual must—

- (a) notify the service provider and the Welsh Ministers, and
- (b) inform them of the arrangements which have been put in place for the effective management of the service.

Visits

56.—(1) The responsible individual must—

- (a) visit the premises from which the service is provided,
- (b) meet with members of staff who are employed by the service provider from each place in respect of which the responsible individual is designated, and
- (c) meet with children who have been placed by the service provider and their foster parents.

(2) The frequency of such visits and meetings is to be determined by the responsible individual, having regard to the statement of purpose, but these must take place at least every three months.

PART 13

Requirements on responsible individuals for ensuring effective oversight of the service

Oversight of adequacy of resources

57.—(1) The responsible individual must report to the service provider on the adequacy of the resources available to provide the service in accordance with the requirements of these Regulations.

(2) Such reports must be made on a quarterly basis.

(3) The requirement in paragraph (1) does not apply where the service provider is an individual.

Other reports to the service provider

58.—(1) The responsible individual must, without delay, report to the service provider—

- (a) any concerns about the management or provision of the service,

- (b) any significant changes to the way in which the service is managed or provided, and
- (c) any concerns that the service is not being provided in accordance with the statement of purpose for the service.

(2) The requirement in paragraph (1) does not apply where the service provider is an individual.

Engagement with children and others

59.—(1) The responsible individual must put suitable arrangements in place for obtaining the views of—

- (a) any child placed by the service provider,
- (b) the parents of any such child, unless this is inappropriate or inconsistent with the child's well-being,
- (c) foster parents,
- (d) the placing authority, and
- (e) staff employed at the service,

on the quality of care and support provided to children and how this can be improved.

(2) The responsible individual must report the views obtained to the service provider so that these views can be taken into account by the provider when making any decisions on plans for improving the quality of care and support provided by the service.

PART 14

Requirements on responsible individuals for ensuring the compliance of the service

Duty to ensure there are systems in place to record incidents and complaints

60. The responsible individual must ensure that there are effective systems in place to record incidents, complaints and matters on which notifications must be made under regulations 40 and 67.

Duty to ensure there are systems in place for keeping of records

61. The responsible individual must ensure that there are effective systems in place in relation to the keeping of records, which include systems for ensuring the accuracy and completeness of records which must be kept under regulation 39.

Duty to ensure policies and procedures are up to date

62. The responsible individual must put suitable arrangements in place to ensure that the service provider's policies and procedures are kept up to date, having regard to the statement of purpose.

PART 15

Requirements on responsible individuals for monitoring, reviewing and improving the quality of the service

Quality of care review

63.—(1) The responsible individual must put suitable arrangements in place to establish and maintain a system for monitoring, reviewing and improving the quality of the service.

(2) The system established under paragraph (1) must make provision for the quality of the service to be reviewed as often as required, but at least every six months.

(3) As part of any review undertaken, the responsible individual must make suitable arrangements for—

- (a) considering the outcome of the engagement with children and others, as required by regulation 59 (engagement with children and others),
- (b) analysing aggregated data on notifications, safeguarding matters, whistleblowing concerns and complaints,
- (c) reviewing any action taken in relation to complaints, and
- (d) considering the outcome of any audit of the accuracy and completeness of records.

(4) On completion of a review of the quality of the service in accordance with this regulation, the responsible individual must prepare a report to the service provider which must include—

- (a) an assessment of the standard of care and support provided, and
- (b) recommendations for the improvement of the service.

(5) The requirement in paragraph (4) does not apply where the service provider is an individual.

Statement of compliance with the requirements as to standards of care and support

64.—(1) The responsible individual must prepare the statement required to be included in the annual return under section 10(2)(b) of the 2016 Act.

(2) When preparing the statement, the responsible individual must have regard to the assessment of the standard of care and support which is included in the report prepared in accordance with regulation 63(4).

PART 16

Other requirements on responsible individuals

Support for staff raising concerns

65. The responsible individual must ensure that the provider's whistleblowing policy is being complied with and that the arrangements to enable and support people working at the service to raise such concerns are being operated effectively.

Duty of candour

66. The responsible individual must act in an open and transparent way with—

- (a) any child who is placed by the service provider,
- (b) the parents of any such child,
- (c) foster parents and prospective foster parents,
- (d) the placing authority.

Notifications

67.—(1) The responsible individual must notify the Welsh Ministers of the events specified in Schedule 4.

(2) The notifications required by paragraph (1) must include details of the event.

(3) Notifications must be made in such manner and in such form as may be required by the Welsh Ministers.

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

PART 17

Offences

Offences - service providers

68.—(1) It is an offence for a service provider to fail to comply with a requirement of any of the provisions specified in paragraph (2)(1).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations—

- (a) 4(3) (requirements in relation to the statement of purpose),
- (b) 4(4) (requirements in relation to the statement of purpose),
- (c) 8(3) (requirements in relation to financial sustainability of the service),
- (d) 9(1) (requirement to provide the service in accordance with policies and procedures),
- (e) 12(1) (information about the service),
- (f) 12(2) (information about the service),
- (g) 12(3) (information about the service),
- (h) 25 (policy and procedures on bullying),
- (i) 26 (procedure when child is absent without permission),
- (j) 30(1) (fitness of staff),
- (k) 33(1) (information for staff),
- (l) 39(1) (records with respect to fostering services),
- (m) 39(2) (records with respect to fostering services),
- (n) 40(1) (notifications),
- (o) 40(2) (notifications),
- (p) 40(3) (notifications),
- (q) 40(4) (notifications),
- (r) 40(5) (notifications),
- (s) 40(8) (notifications).

(3) A service provider commits an offence if the provider fails to comply with a requirement of any of the provisions specified in paragraph (4) and such failure results in—

- (a) avoidable harm (whether of a physical or psychological nature) to a child,
- (b) a child being exposed to a significant risk of such harm occurring, or

(1) For penalties upon conviction for an offence under this regulation, see section 51(1) of the 2016 Act.

- (c) in a case of theft, misuse or misappropriation of money or property, any loss by a child of the money or property concerned.

(4) The provisions specified for the purposes of paragraph (3) are the provisions of regulations—

- (a) 3 (requirements in relation to the provision of the service),
- (b) 4(1) (requirements in relation to the statement of purpose),
- (c) 9(5) (requirement to provide the service in accordance with policies and procedures),
- (d) 11(1) (suitability of the service),
- (e) 11(3) (suitability of the service),
- (f) 13 (standards of care and support – overarching requirements),
- (g) 20 (safeguarding),
- (h) 27(3) (access to health services),
- (i) 29 (staffing – overarching requirements).

Offences – responsible individuals

69.—(1) It is an offence for the responsible individual to fail to comply with a requirement of any of the provisions specified in paragraph (2)(1).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations—

- (a) 50(1) (duty to appoint a manager),
- (b) 51(1) (fitness requirements for appointment of manager),
- (c) 54(1) (duty to report the appointment of manager to SCW and the Welsh Ministers),
- (d) 54(2) (duty to report the appointment of manager to SCW and the Welsh Ministers),
- (e) 56(1) (visits),
- (f) 56(2) (visits),
- (g) 57(1) (oversight of adequacy of resources),
- (h) 57(2) (oversight of adequacy of resources),
- (i) 58(1) (other reports to the service provider),
- (j) 63(4) (quality of care review),
- (k) 64(1) (statement of compliance with the requirements as to standards of care and support),
- (l) 67(1) (notifications), and
- (m) 67(4) (notifications).

(1) For penalties upon conviction for an offence under this regulation, see section 51(1) of the 2016 Act.

PART 18

Service providers who are liquidated etc. or have died

Appointment of liquidators etc.

70. An appointed person⁽¹⁾ must—

- (a) without delay, give written notice to the Welsh Ministers of their appointment and the reasons for their appointment;
- (b) within 28 days of their appointment, inform the Welsh Ministers of their intentions regarding the future operation of the service.

Death of service provider

71.—(1) Where a service provider who is an individual has died, the personal representatives of the individual must—

- (a) without delay, give written notice of the death to the Welsh Ministers, and
- (b) within 28 days of the death, notify the Welsh Ministers of their intentions regarding the future operation of the service.

(2) The personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer period (not exceeding one year) as the Welsh Ministers may agree.

(3) Where the personal representatives are acting in the capacity of the service provider in accordance with paragraph (2), Part 1 of the 2016 Act applies with the following modifications—

- (a) section 5 (requirement to register) does not apply;
- (b) section 21(2) (responsible individuals) is to be read as if after paragraph (a), there is inserted—

“(aa) where the personal representatives of a service provider who has died are acting in the capacity of the service provider, be one of the personal representatives;”.

(4) In this regulation, “the service” means the fostering service which the individual provider who

(1) “Appointed person” has the same meaning as in section 30 of the 2016 Act.

has died was registered to provide at the time of their death.

PART 19

Regulations under section 21(5) of the 2016 Act

Designation of responsible individual by Welsh Ministers

72. The Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual, despite the requirements of section 21(2) of the 2016 Act not being met in respect of the individual, in the following circumstances—

- (a) the service provider is an individual who has died and the personal representatives of the provider have informed the Welsh Ministers that they do not intend to make an application under section 11(1)(c) of the 2016 Act;
- (b) the service provider is an individual and they have informed the Welsh Ministers—
 - (i) that they are no longer able to comply with their duties as a responsible individual, and
 - (ii) the reasons for this being the case;
- (c) the service provider is a corporate body or partnership and they have informed the Welsh Ministers—
 - (i) that the individual designated by the service provider as the responsible individual is no longer able to comply with their duties as a responsible individual,
 - (ii) the reasons for this being the case, and
 - (iii) that there is no other individual who is eligible to be a responsible individual and who is able to comply with the duties of a responsible individual.

Name

Minister for Children, Older People and Social Care
under authority of the Cabinet Secretary for Health and
Social Services, one of the Welsh Ministers

Date

SCHEDULE 1

Regulation 30(2) and (3)

PART 1

Information and documentation to be available in respect of persons working in fostering services

1. Proof of identity including a recent photograph.

2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997⁽¹⁾, a copy of a valid criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006⁽²⁾ (provision of barring information on request).

3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of a valid enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children (within the meaning of section 113BA(2) of that Act) or suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act).

4. Two written references, including a reference from the last employer, if any.

5. Where a person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable verification of the reason why the employment or position ended.

6. Documentary evidence of any relevant qualification.

7. Where relevant, documentary evidence of registration with SCW.

8. A full employment history, together with a satisfactory written explanation of any gaps in employment.

9. Details of registration with or membership of any professional body.

(1) 1997 c. 50.

(2) 2006 c. 47. Sections 30 to 32 of the Safeguarding Vulnerable Groups Act 2006 as originally enacted are to be replaced by new sections 30A and 30B as a result of substitutions made by section 72(1) of the Protection of Freedoms Act 2012. Section 72(1) is to be commenced on a day to be appointed.

PART 2

Interpretation of Part 1

10. For the purposes of paragraphs 2 and 3 of Part 1 of this Schedule—

- (a) if the person to whom the certificate relates is not registered with the DBS update service, a certificate is only valid if—
 - (i) it has been issued in response to an application by the service provider in accordance with regulation 30(3) or (6), and
 - (ii) no more than three years have elapsed since the certificate was issued;
- (b) if the person to whom the certificate relates is registered with the DBS update service, the certificate is valid regardless of when it was issued.

SCHEDULE 2

Regulations 2 and 39

Records to be kept by service providers

1. A record showing in respect of each child placed with foster parents—

- (a) the date of the child's placement;
- (b) the child's care and support plan;
- (c) the foster care agreement in respect of the child;
- (d) the name and address of the foster parents;
- (e) the date on which the child ceased to be placed there;
- (f) the child's address prior to placement;
- (g) the child's address on leaving the placement;
- (h) the child's local authority;
- (i) the statutory provision under which the child is or was provided with foster care.

2. A record of all persons working for the service provider, which must include in respect of a person falling within regulation 30(1) the following matters—

- (a) full name and home address;
- (b) date of birth;
- (c) sex;
- (d) qualifications relevant to, and experience of, work involving children;
- (e) copy of birth certificate and passport (if any) in respect of the person;
- (f) copy of each reference obtained in respect of the person;
- (g) whether the person is employed by the service provider under a contract of service, a contract for services, or otherwise than under a contract, or is employed by someone other than the service provider;
- (h) whether the person works full-time or part-time, and, if part-time, the average number of hours worked per week;
- (i) the dates on which the person commences and ceases to be so employed;
- (j) the position the person holds in the service;
- (k) records of disciplinary action and any other records in relation to the person's employment; and
- (l) a record of the date of the person's latest DBS certificate and whether there was any action

taken as a result of the content of the certificate.

3. A record of all serious accidents and injuries occurring to children whilst placed with foster parents.

4. A record of all complaints made under the complaints policy put in place by the service provider, and the action taken by the service provider in respect of any such complaints.

5. Date and circumstances of any safeguarding referrals, and the outcome.

6. Date and circumstances of any incident of control or restraint used by foster parents on a child.

SCHEDULE 3 Regulation 40

Notifications by the service provider

PART 1

Notifications to the Welsh Ministers

1. Any revision to the statement of purpose, 28 days prior to the revised statement of purpose coming into effect.

2. Service provider (individual or organisation) changes their name.

3. Where the service provider is a company, any change in the directors of the company.

4. Where the service provider is an individual, the appointment of a trustee in bankruptcy in relation to that individual.

5. Where the service provider is a body corporate or partnership, the appointment of a receiver, receiver manager, liquidator or provisional liquidator in relation to that company or partnership.

6. Where the service provider is a partnership, death of one of the partners.

7. Where the service provider is a partnership, any change in the partners.

8. Expected absence of the responsible individual for 28 days or more, 7 days prior to the commencement of the absence.

9. Unexpected absence of the responsible individual, no later than 7 days after the commencement of the absence.

10. Unexpected absence of the responsible individual for 28 days or more, where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.

11. Return from absence of the responsible individual.

12. The responsible individual ceases, or proposes to cease, being the responsible individual for the service.

13. Any abuse or allegation of abuse in relation to a child that involves the service provider, a member of staff, a volunteer and/or a foster parent.

14. Service provider, responsible individual or appointed manager convicted of criminal offence.

15. Any allegation of misconduct by a member of staff.

16. Serious accident or injury of a child placed with foster parents.

17. Any incident which is reported to the police relating to a child placed with foster parents.

18. Death of a child placed with foster parents.

19. Any referral to the Disclosure and Barring Service pursuant to the Safeguarding Vulnerable Groups Act 2006.

20. Instigation and outcome of any child protection enquiry involving a child placed with foster parents.

21. Any incident of child sexual or criminal exploitation or any suspected child sexual or criminal exploitation.

22. Any proposed change to the address of the principal office, 28 days prior to the change taking place.

PART 2

Notifications to the placing authority

23. Death of a child placed with foster parents.

24. Any referral to the Disclosure and Barring Service pursuant to the Safeguarding Vulnerable Groups Act 2006.

25. Serious accident or injury of a child placed with foster parents.

26. Outbreak at the home of foster parents of any infectious disease which in the opinion of a general practitioner attending the home is sufficiently serious to be so notified.

27. Allegation that a child placed with foster parents has committed a serious offence.

28. Any incident which is reported to the police relating to a child placed with foster parents.

29. Any incident of a child placed with foster parents being absent without permission.

30. Any serious complaint or allegation about any foster parents approved by the service provider.

31. Instigation and outcome of any child protection enquiry involving a child placed with foster parents.

32. Any incident of child sexual or criminal exploitation or any suspected child sexual or criminal exploitation.

PART 3

Notifications to the area authority in whose area
the foster home is situated

33. Death of a child placed with foster parents.

34. Outbreak at the home of foster parents of any infectious disease which in the opinion of a general practitioner attending the home is sufficiently serious to be so notified.

35. Any incident of child sexual or criminal exploitation or any suspected child sexual or criminal exploitation.

36. Instigation and outcome of any child protection enquiry involving a child placed with foster parents.

37. Any incident which is reported to the police relating to a child placed with foster parents.

PART 4

Notifications to the Local Health Board in
whose area the child is placed

38. The death of a child placed with foster parents.

39. Outbreak at the home of foster parents of any infectious disease which in the opinion of a general practitioner attending the home is sufficiently serious to be so notified.

PART 5

Notifications to the police

40. Allegation that a child placed with foster parents has committed a serious offence.

41. Any incident of child sexual or criminal exploitation or any suspected child sexual or criminal exploitation.

SCHEDULE 4

Regulation 67(1)

Notifications by the responsible individual

- 1.** The appointment of a manager (see regulation 50(1)).
- 2.** The expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence.
- 3.** The unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence.
- 4.** The unexpected absence of appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.
- 5.** Return from absence of appointed manager.
- 6.** Interim arrangements where the manager is absent for longer than 28 days.
- 7.** Someone other than the appointed manager is proposing to manage or is managing the service.
- 8.** The appointed manager ceases, or proposes to cease, managing the service.

Explanatory Memorandum to:

The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and The Local Authority Fostering Services (Wales) Regulations 2018

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019
- The Local Authority Fostering Services (Wales) Regulations 2018.

I am satisfied that the benefits justify the likely costs.

Huw Irranca-Davies
Minister for Children, Older People and Social Care

11 December 2018

PART 1

1. Description

In 2011 the Welsh Government published the white paper *Sustainable Social Services: A Framework for Action*, which set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last assembly term, the Welsh Government made two pieces of primary legislation: the *Social Services and Well-being (Wales) Act 2014* ('the 2014 Act') and the *Regulation and Inspection of Social Care (Wales) Act 2016* ('the 2016 Act').

The 2014 Act provides the legal framework for improving the well-being of people who need care and support, and carers who need support. Part 6 of the Act sets out social services functions in relation to looked after and accommodated children, including those who are placed in foster care. It also enables the Welsh Ministers to put in place regulations and issue codes of practice.

The 2016 Act reforms the regulation and inspection regime for social care in Wales, and provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It also enables the Welsh Ministers to put in place regulations, publish guidance and issue codes of practice.

This Explanatory Memorandum relates to *The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019* and *The Local Authority Fostering Services (Wales) Regulations 2018*, which will come into force on 29 April 2019. These Regulations impose requirements on independent fostering service providers, and upon local authority fostering service providers, respectively.

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

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

3. Legislative background

The powers enabling *The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019* to be made are contained in a number of sections within the 2016 Act. They are, as follows:

- Section 21(5) - the circumstances in which the Welsh Ministers (instead of service providers) may designate a responsible individual
- Section 27 – Regulations about regulated services
- Section 28 – Regulations about responsible individuals
- Section 30 – Regulations about service providers who are liquidated etc.

- Section 31 – Regulations about service providers who have died
- Section 45 – Regulations which provide for offences in the event of failure by a service provider to comply with specified requirements in regulations under section 27
- Section 46 – Regulations which provide for offences in the event of failure by a responsible individual to comply with specified requirements in regulations under section 28

These Regulations will be laid under the affirmative procedure.

Statutory guidance to accompany the Regulations (under section 29 of the 2016 Act), published for consultation at the same time, has been revised and is published in draft on the Welsh Government website, to aid scrutiny of these Regulations. The statutory guidance will be finalised and published in spring 2019.

<https://gov.wales/topics/health/socialcare/regulation/?skip=1&lang=en>

The powers enabling *The Local Authority Fostering Services (Wales) Regulations 2018* to be made are contained in sections 87 (regulations about looked after children), 92 (regulations about the placing of children with local authority foster parents) and 94A (regulation of the exercise of local authority functions relating to looked after and accommodated children) of the 2014 Act.

These Regulations will be laid under the negative procedure.

A code of practice to accompany the Regulations (under section 145 of the 2014 Act), published for consultation at the same time, has been revised and is published in draft on the Welsh Government website, to aid scrutiny of these Regulations. The code of practice will be finalised and laid before the National Assembly in February 2019.

<https://gov.wales/topics/health/socialcare/regulation/?skip=1&lang=en>

4. Purpose and intended effect of the legislation

The purpose of these two sets of Regulations is to ensure that independent fostering services providers and local authority fostering services provide services to the required standards to ensure that the well-being and safety of children and young people in foster placements is promoted and maintained, and that foster parents are appropriately supported.

5. Consultation

A 12 week public consultation ran from 24 May to 16 August 2018, seeking views on draft Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019. This was accompanied by draft statutory guidance for

independent service providers and a draft code of practice for local authority providers.

27 responses were received to the consultation. The key changes made to the content of the draft regulations following consultation were:

- References to ‘child sexual exploitation’ were extended to include ‘child criminal exploitation’. This was added to cover other types of exploitation such as that associated with gangs and ‘county lines’ drug dealing.
- The new duty of candour was extended to cover local authority fostering service providers.
- The requirement on a local authority to appoint one of its own officers to be responsible for managing the fostering service was amended to refer to ‘an officer’. This will allow two or more local authorities to jointly appoint an officer who may be employed by only one of them to manage local authority fostering services across more than one authority, in line with the move towards more regional working set out in the National Fostering Framework for Wales.
- The requirement to provide all the listed policies and procedures to be in an appropriate format and language for children was amended, to exclude those policies which were not directly relevant to children – i.e. whistleblowing, supporting and developing staff, and staff discipline. Additionally, providers will be required to include information about relevant policies and procedures in the children’s guide to the service.
- The regulation on supporting children to manage their money was expanded so that providers have to ensure that there is adequate oversight and monitoring of savings which are made by foster parents on behalf of children, and that foster parents pass on all records of savings to the service provider at the end of the placement. This responds to concerns raised by the Public Services Ombudsman for Wales.
- The frequency of quality of care reviews was standardised at six months for both independent and local authority fostering providers.

Section 27(4) of the Regulation and Inspection of Social Care Act (RISCA) provides that “Before making regulations under this section the Welsh Ministers must—(a) consult any persons they think appropriate, and (b) publish a statement about the consultation.” To discharge this requirement, a summary of the responses, together with the Welsh Government’s analysis and conclusions, is being laid with this Explanatory Memorandum and can be found at: <https://beta.gov.wales/fostering-services-regulations>.

PART 2 – REGULATORY IMPACT ASSESSMENT

Independent fostering services providers

In respect of independent fostering services providers¹, we have identified two main options:

- **Option 1:** as far as possible, replicate in regulations the requirements placed on fostering providers under the Fostering Service (Wales) Regulations 2003 and the relevant National Minimum Standards under the Care Standards Act 2000.
- **Option 2:** harmonise, so far as possible, the requirements on fostering providers and other services regulated under the 2016 Act, with bespoke and/or additional requirements as necessary.

Preferred option: Option 2 is the preferred option.

Under Option 2 requirements would, so far as practicable, be consistent across all regulated services, in line with the policy intent of the 2016 Act.

The 2016 Act made some fundamental changes to the way care and support services are regulated, inspected and delivered; it is therefore difficult to compare and contrast the regulations made under the 2000 Act and the proposed regulations under the 2016 Act. With regard to regulation, the intention of the 2016 Act was to create a consistent set of requirements that would apply across all regulated services, rather than each type of service having its own set of regulations and NMS. The benefit of this approach is that it moves away from focusing on minimum standards to an emphasis on achieving continual improvement.

The National Minimum Standards (NMS) for fostering services will, therefore, no longer apply. Instead, statutory guidance has been developed alongside the regulations to give further detail to regulated service providers about how they may comply with the requirements set out in the regulations. This guidance has been developed by Welsh Government and the cost has already been incurred.

Under Phase 2 of implementation of the 2016 Act, requirements were placed upon providers of care homes (including care homes for children), domiciliary care, residential family centres and secure accommodation. The key regulations were the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 ('the 2017 Regulations'). The 2017 Regulations provide the model for the regulations being made under Phase 3 for fostering, adoption, adult placements and advocacy services, with bespoke changes being made to each of the Phase 3 regulations as required to fit the particular characteristics of each service.

A significant difference affecting the 2017 Regulations and the fostering regulations to be made in 2018/2019 will be the fact that fostering services providers do not

¹ 21 services are registered at present

directly provide care and support to children in foster placements on a day to day basis. Daily care and support is provided to such children by foster parents, who will have been assessed and approved by the fostering agency or local authority, but who are not employees of the agency or authority. This means that for example, some of the requirements on care homes for children will need to be modified for fostering providers. Another difference is that fostering services providers also provide support and training to foster parents.

Local authority fostering services providers

In respect of local authority fostering services providers, we have identified two options:

- **Option 1:** as far as possible, replicate in regulations the requirements placed on fostering providers under the Fostering Service (Wales) Regulations 2003 and the National Minimum Standards under the Care Standards Act 2000.
- **Option 2:** place a new set of requirements on local authority providers which follow, so far as practicable and appropriate, the requirements being placed on independent service providers under section 27 of the 2016 Act (requirements on service providers), in line with the preferred option for regulated service providers above.

The requirements placed upon responsible individuals of regulated services under section 28 of the 2016 Act will not be relevant for local authority providers, as these are not a regulated service under the 2016 Act. Instead, the regulations place a requirement upon local authority providers to appoint a fostering services manager, setting out the requirements of that role. This role already exists and therefore the requirement does not carry any additional costs.

Preferred option: Option 2 is the preferred option.

The rationale for this is that it would not be desirable to have different regulatory frameworks for fostering services provided by independent fostering services providers and local authority providers, given that the outcomes both sectors are seeking to achieve for looked after children are the same and that the nature of fostering itself is the same. It is the same children that are being placed by local authorities, whether with their own fostering service or via an independent provider. Also, some of the improvements which the 2016 Act sought to drive in relation to regulated services, with their associated benefits, are also pertinent to local authority fostering services, and we want to ensure that any new requirements upon local authority providers are equally robust.

It is, however, accepted that there will be some key differences between the regulatory regime for independent providers and local authority fostering services. The main difference is that it would be inappropriate to try to replicate the responsible individual (RI) role within local authorities, given the different accountability structures within local authorities and the policy decision, taken when the 2016 Act was being developed, not to make local authority fostering services a regulated service.

Requirements on service providers – general

For ***independent service providers***, the general requirements would include those relating to the statement of purpose, monitoring and improvement, the responsible individual, financial sustainability, policies and procedures, and the duty of candour.

For ***local authority providers***, the general requirements include requirements relating to the statement of purpose, monitoring and improvement, the local authority fostering manager, policies and procedures, and the duty of candour.

The main differences from the requirements in the 2003 Regulations are:

- *Statement of purpose*

These requirements will be placed upon ***independent service providers and local authority providers***.

Providers would be required to provide the service in accordance with the statement of purpose, keep the statement under review and revise it where appropriate.

Under the 2003 Regulations, providers have to provide a copy of the statement of purpose to the Welsh Government, and make it available upon request for inspection by staff, foster parents / prospective foster parents, children in placement and their parents. They must also notify the Welsh Government of any revision within 28 days.

The new regulations would impose a requirement to notify these persons of any revision to be made at least 28 days before it is to take effect. For ***independent service providers***, the placing authority will also have to be notified.

Costs: The requirement to notify in advance should have no additional cost for providers.

Risks: No risks have been identified.

- *Responsible Individual*

These requirements will be placed upon ***independent service providers***. Requirements relating to the responsible individual (RI) would include the need for the RI to be supported and appropriately trained, action to take when the RI fails to meet requirements placed upon them by the regulations, and what to do when the RI is unable to fulfil their duties. There would also be similar requirements on providers who are individuals and therefore also act as RI.

The role of the RI across the services regulated under the 2016 Act is much greater and attracts a higher level of accountability as compared to the equivalent role in the 2003 Regulations. Discussion of this role and its regulatory implications can be found below.

- *Local authority manager*

These requirements will be placed upon **local authority providers**. The existing requirement for a local authority to appoint one of its officers to manage the fostering service will remain. The manager would need to meet the general requirements set out in relation to fitness of staff at the service, and the local authority provider must ensure that the manager is supported to carry out their duties effectively, and undertakes appropriate training. The local authority provider must also take such action as is necessary in the event that the manager has not complied with a requirement, and put suitable arrangements in place when the manager is absent. Discussion of this role and its regulatory implications can be found below.

- *Policies and procedures*

These requirements will be placed upon **independent service providers** and **local authority providers**.

Providers will have to have policies and procedures in place covering:

- safeguarding
- appropriate use of control and restraint
- bullying
- absence
- medication and access to health services
- supporting and developing staff
- staff discipline
- complaints
- whistleblowing
- support for foster parents on how to help children manage their money.

In addition, **independent service providers** will have to have a policy and procedures in relation to placement and commencement of service. This will not be a requirement on **local authority providers** because they are the placing authority and will manage the placement in line with their duties under the Care Planning, Placement and Case Review (Wales) Regulations 2015.

The 2003 Regulations specify that providers must have in place policies and procedures in relation to safeguarding, acceptable measures of control, restraint and discipline, dealing with allegations of abuse and neglect, and what to do if a child is absent from a foster parent's home without permission.

Costs: There should be no significant additional costs in drawing up and implementing this longer list of policies and procedures, most of which are good practice which providers will already be doing. The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete the annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information as might be expected in a more complex policy or procedure, such as

safeguarding. Other policies or procedures are likely to be simpler. It is therefore estimated that the requirements above will entail a cost of up to £392 per policy for each setting (variable depending on the salary of the person producing the policy/procedure). The actual additional cost for an individual provider will depend on the provider and the policies and procedures they currently have in place. Additional commentary on key policies is provided under the relevant sections below.

Risks/Benefits: There are no identified risks. Benefits include improved accountability at senior level within the service and better support for staff through access to a more comprehensive range of policies.

- *Duty of candour*

These requirements would be placed upon ***independent service providers*** and ***local authority providers***.

The duty of candour would require providers to act in an open and transparent way with children in placement, their parents, foster parents and prospective foster parents, the authority where the child is placed (i.e. the area authority), and (for ***independent service providers***) the placing authority. This is a new requirement.

Costs: There should be no additional costs associated with this duty. Providers should already be acting in an open and transparent way with those to whom they provide services.

Risks: No risks have been identified.

Requirements on service providers as to the steps to be taken before providing care and support - suitability of the service

These requirements will be placed upon only ***independent service providers***. Providers would be required to determine that a placement with a foster parent is suitable to meet the child's needs. The determination would be drawn up in consultation with the child, their parents and the placing authority, and would need to take into account the child's Part 6 care and support plan under the 2014 Act, any other relevant assessments, any risks and various other relevant factors.

These requirements replicate the duty to secure welfare under the 2003 Regulations, but within the context of the framework for care and support set out in the 2014 Act.

This will not apply to ***local authority providers*** because they will be the placing authority for the child in line with their duties under the Care Planning, Placement and Case Review (Wales) Regulations 2015.

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

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements would require the providers to prepare a written guide to the service in a language and format suitable for children (of all ages and levels of understanding) and adults. It will need to be reviewed at least annually and updated as required. The guide will include a summary of relevant policies and procedures, as well as information on how to make complaints and raise concerns. The provider will also have to ensure that children receive support to understand the information provided.

These requirements go beyond the 2003 Regulations which require the fostering provider to prepare a children's guide only.

Costs: There may be some additional costs for providers in adapting the written guide for different audiences. It is, however, good practice to produce versions of the guide for children of different ages, and all fostering providers will already be producing information for foster parents, so the additional costs are likely to be minimal.

Risks/Benefits: No risks have been identified. The benefit would be to support improved accessibility of information to service users and other interested parties.

Requirements on service providers as to the standard of care and support to be provided

The following requirements would be placed upon ***independent service providers*** and ***local authority providers***:

- *Standards of care and support to children*

Providers would be required to ensure that foster parents give care and support in accordance with the child's Part 6 care and support plan, and in a way that maintains, protects and promotes the safety and well-being of the child.

- *Information for children*

There would be similar requirements regarding the information children need to make and participate in day to day decisions about the way care and support is provided to them.

This is a new requirement, in line with the principle underpinning the 2014 Act and the 2016 Act that the new legislation will promote greater choice and control by children and adults who are receiving care and support.

- *Language and communication*

Providers would be required to take reasonable steps to meet the language needs of children, and ensure that children are provided with access to the communication aids and equipment they need.

This is a new requirement on the face of the regulations, although the importance of taking into account the language needs of children was already referred to in the National Minimum Standards (NMS 7 on valuing diversity, and NMS 8 on matching). The communication aids and equipment may be provided by the NHS, social services or via other means. There is no expectation that they will be provided by the fostering service: the duty is to ensure that the child is able to access these.

- *Respect and sensitivity*

There would be a new requirement around ensuring that children in placement are treated with respect and sensitivity.

- *Duty to promote contact*

The duty to promote contact in the 2003 Regulations would be retained. Contact arrangements would be in accordance with the child's Part 6 care and support plan and any relevant court order.

- *Compliance with foster care agreement*

There would be a new requirement for providers to monitor the foster parents' compliance with the foster care agreement. This is already implicit in the 2003 Regulations, where the agreement itself must contain information about the foster parents' compliance.

There would be additional requirements placed upon ***independent service providers*** in relation to:

- *Suitability of the placement*

There would also be additional requirements relating to the initial and ongoing suitability of the placement. These include ensuring that the foster parents are able to give care and support in accordance with the child's Part 6 care and support plan, and a requirement on service providers to give immediate notice to the placing authority if the placement no longer meets the child's needs.

These requirements reflect the emphasis in the 2014 Act on person-centred care and support, and are designed to complement the requirements upon placing authorities under the Care Planning, Placement and Case Review (Wales) Regulations 2015.

Costs: There will be no additional costs to providers in implementing these requirements.

Risks/Benefits: No risks have been identified. The purpose of these requirements (and therefore benefit) is to mitigate the risk of placement breakdown and to ensure that a child's care and support needs are met.

Requirements on service providers – safeguarding

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The regulations would require service providers to put arrangements in place to ensure children are safe and protected from abuse, neglect and improper treatment. This includes what a provider must do when an allegation is made or evidence comes to light. In keeping with the approach taken in the 2016 Act, the new regulations will be more explicit about the overarching requirements – e.g. to put arrangements in place, and to ensure that safeguarding policies and procedures are operated effectively – but the detail will be similar to the 2003 Regulations. The regulations and guidance will reflect current best practice around safeguarding.

The requirements in respect of the use of control and restraint by foster parents, and the prohibition of corporal punishment, would be similar to those in the 2003 Regulations. However, there will be additional requirements for foster parents to be trained in any methods of control and restraint to be used, to make a record of any incident where control or restraint is used, and to notify the service provider of any such incident within 24 hours. The regulations will also specify what constitutes control and restraint in this context.

The requirement to have a procedure for when a child goes absent without permission would be retained. Also there would be a regulation requiring providers to have a policy on the prevention of bullying and procedures for dealing with it. This is currently covered in the NMS.

There would be an additional requirement making it clear that no child is to be deprived of their liberty in foster care without lawful authority. A parent of a child who is not competent may provide authority. 16 and 17 year olds without capacity may be subject to applications to the Court of Protection and to the High Court in exercise of the High Court's inherent jurisdiction.

Costs: No significant additional costs to providers in implementing these requirements have been identified, as providers are already required to provide support, training and information for foster parents under existing regulations.

Risks/Benefit: No risks have been identified. Putting these requirements in place will benefit service users through embodying best practice around safeguarding.

Requirements on service providers – access to health, education and other services

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements in the 2003 Regulations with regard to health and education would be maintained. The consultation suggested some changes which have been incorporated, each with a view to strengthening the current provisions. There are: including an explicit reference to a child's physical, mental and emotional health and development; requiring the provider to ensure that foster parents provide a child with access to optical services; and ensuring that children are supported to engage in play and recreational activities appropriate to their age, and to participate freely in cultural life and the arts.

Costs: There will be no additional costs to providers in implementing these requirements.

Risks: No risks have been identified.

Requirements on service providers – staffing

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements in the 2003 Regulations with respect to staffing would be maintained. These cover the fitness of staff, support and development of staff, and the need for a disciplinary procedure. The new regulations will place a greater emphasis on staffing requirements meeting children's care and support needs and personal outcomes, in line with the ethos of the 2014 Act and the 2016 Act.

The fitness requirement will be extended to volunteers as well as paid employees.

The regulations will reflect the new DBS arrangements, including allowing for the use of the update service.

There will be a new requirement to ensure that all employees and volunteers are provided with information about the service, and made aware of any codes of practice about the standards of conduct required of social workers published by Social Care Wales under the 2016 Act.

In addition, ***independent service providers*** will be required to adhere to the code of practice on the standards of conduct and practice expected of person employing social care workers, also under the 2016 Act.

Costs: No additional costs have been identified.

Risks: No risks have been identified.

Requirements on service providers – premises, facilities and equipment

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements in the 2003 Regulations with respect to premises will be retained. These apply to the premises from which the fostering service is operated. The new regulations will also place requirements on providers with respect to the premises, facilities and equipment used by foster parents in the provision of care and support. Service providers will have to put arrangements in place to ensure that these are suitable, safe and properly maintained, and ensure that foster parents are properly trained in the use of equipment. These requirements (except for equipment) are currently covered in the NMS (Standard 6).

Costs: No significant additional costs have been identified. Training foster carers in the use of equipment should already be good practice, in line with current requirements with respect of health and safety.

Risks: No risks have been identified.

Requirements on service providers – other requirements

The following miscellaneous requirements will be placed upon ***independent service providers*** and ***local authority providers***.

- *Records*

The requirement to keep records of relating to children, employees and accidents for 15 years will be retained. Some amendments would be made to the relevant schedule, to reflect more up-to-date practice. There will be a specific requirement for a child's records to be returned to the placing authority at the end of a placement. The provider would also be required to keep a record of (i) all complaints and action taken, (ii) safeguarding referrals and the outcome, and (iii) incidences of the use of control and restraint. This strengthens the current requirements in the 2003 Regulations, which provides that these are matters to be monitored by the registered person.

- *Conflicts of interest*

There would be a requirement to have effective arrangements in place to identify, record and manage potential conflicts of interest.

- *Complaints*

Providers would be required to have in place a policy and procedures for dealing with complaints, including those made by children in foster placements, their parents and foster parents. These largely replicate existing requirements, except for some clarification and tightening up of procedures in the light of good practice that has developed since the original regulations in 2003.

- *Whistleblowing*

Providers would be required to put effective whistleblowing policies and procedures in place. This is a new requirement, reflecting the development of whistleblowing policy and practice since the 2003 Regulations were drawn up.

In addition, there will also be requirements placed upon ***independent service providers*** in respect of:

- ***Notifications***

The notification requirements would broadly remain the same as in the 2003 Regulations, with the following changes:

- the provider would no longer need to notify the Welsh Ministers of a serious illness of a child placed with foster parents (except infectious diseases)
- references to child prostitution have been removed, as this is covered by child sexual exploitation
- the references to exploitation have been expanded to include child criminal exploitation as well as child sexual exploitation.

Costs: No additional costs have been identified in respect of any of the above requirements. The changes simply update and tighten up procedures in the light of existing good practice.

Risks: No risks have been identified. All the changes to the existing regulations reflect good practice and are designed to mitigate risks to children and other beneficiaries of the service.

Support for foster carers

These requirements will be placed upon ***independent service providers*** and ***local authority providers***.

The requirements on providers in relation to support, training and information for foster parents in the 2003 Regulations would be retained. However, there will be a new requirement to ensure that prospective foster parents also receive such training, information and advice as may be necessary. In line with the emphasis in the 2016 Act on continuous improvement, there will also be a new requirement to monitor and review the information, training, advice and support provided to foster parents under this regulation.

There will be a new regulation requiring providers to ensure that foster parents are appropriately supervised. At present this is dealt with under the NMS (Standard 22), and is not therefore a new requirement.

The policies and procedures which the service provider must ensure that foster parents are familiar with will be expanded to cover some areas currently covered in the NMS only.

The regulations will place a new requirement on providers to develop a policy and procedures to enable foster parents to provide support and assistance to children on how to manage their money. This includes ensuring that there is adequate oversight and monitoring of savings by the provider, and a requirement that foster parents pass

on all records of savings to the provider when a placement comes to an end. Supporting individuals to manage their money is a common requirement across regulated services under the 2016 Act, and in the case of looked after children the need for further provision on the use of savings was highlighted by a recent investigation by the Public Services Ombudsman for Wales. There are no requirements in relation to managing money or savings in the 2003 Regulations or NMS.

Costs: No significant additional cost pressures have been identified. Providers will already be providing information, advice and training to prospective foster parents, and it is very much in their interests to invest in recruitment and training to ensure fostered children are properly safeguarded. As indicated above, the cost of developing a procedure is not likely to exceed £392 per provider.

Risks/Benefits: No risks have been identified. The benefit is that investment in supporting foster carers will help mitigate the risks of placement instability and breakdown.

Requirements on responsible individuals

These requirements will be placed upon *independent service providers*.

In the 2003 Regulations, where the fostering agency is an organisation, the 'responsible individual' is defined as 'an individual ... who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the fostering agency'. In the case of a fostering agency carried on by an individual, that person will also be the responsible individual. Under the current system the responsible individual must satisfy requirements as to fitness to perform that role, must from time to time carry out such training as is appropriate to ensure that he or she has the experience and skills necessary for carrying on the fostering agency, and must notify the Welsh Government if they commit a criminal offence.

Section 21 of the 2016 Act expands on the requirements as to who is eligible to be a responsible individual (RI).²

The new requirements would place greater responsibility on the RI within the service. The key additions to the RI role are set out below:

- *Visits*

There would be a requirement on the RI to visit the premises from which the service is provided, and meet with members of staff and children in placement at

² The Regulation and Inspection of Social Care (Wales) Act 2016, section 21 states that to be eligible to be a responsible individual the individual must (a) where the service provider is an individual, be the service provider; (b) where the service provider is a partnership, be one of the partners; (c) where the service provider is a body corporate other than a local authority — (i) be a director or similar officer of the body, (ii) in the case of a public limited company, be a director or company secretary, or (iii) in the case of a body corporate whose affairs are managed by its members, be a member of the body; (d) where the service provider is an unincorporated body, be a member of the body;

least every three months. It is not expected that RIs would meet every child, but put arrangements in place to meet a representative sample.

- *Oversight of adequacy of resources*

The RI would be required to report to the service provider, on a quarterly basis, on the adequacy of the resources available to provide the service in accordance with the requirements in the regulations.

- *Other reports to the service provider*

The RI would also be required to report on any concerns about or significant changes to the management or provision of the service, or any concerns that the service is not being provided in accordance with the statement of purpose.

- *Engagement with children and others*

The RI would have responsibility for ensuring suitable arrangements are in place for obtaining the views of children in placement, their parents, foster parents, the placing authority, and staff employed at the service, on the quality of care and support provided and how it could be improved. This is currently a duty on the service provider only.

- *Compliance*

The RI would be responsible for ensuring that there are systems in place to record incidents and complaints, for the keeping of records, and that the policies and procedures are kept up to date. The RI would also have to prepare the statement of compliance to be included in the annual return under section 10(2)(b) of the 2016 Act.

- *Quality of care review*

The RI would have to ensure suitable arrangements are in place for monitoring, reviewing and improving the quality of care and support at least every six months. This is currently an annual requirement of the service provider.

- *Notifications*

The RI would also be required to make the following notifications:

- the appointment of a manager
- the expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence
- the unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence
- the unexpected absence of the appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence

- return from absence of the appointed manager
 - interim arrangements where the manager is absent for longer than 28 days
 - someone other than the appointed manager is proposing to manage or is managing the service
 - the appointed manager ceases, or proposes to cease, managing the service.
- *Duty of candour*

The RI must act in an open and transparent way with children in placement, their parents, foster parents and the placing authority.

Placing greater responsibilities on the RI will support the policy intention of ensuring accountability for service quality and compliance is held at the most appropriate level within an organisation. By placing specific duties on the RI, the regulator can ensure that the provider takes an active interest in the services provided. Whilst managers and service providers will retain accountability for their own role, the statutory role of RI ensures that a clear chain of accountability is established, which includes the corporate responsibility of the board, the responsible individual and the service manager.

Costs: It is not anticipated that there will be significantly greater costs to providers in placing these requirement upon RIs. Many RIs are already very involved in their services and many will be undertaking the duties set out under this option already.

There are, however, some additional requirements which may result in some additional costs. These are:

- *Visits*

Using the ONS data from the Annual Survey of Hours and Earnings, which states that the gross hourly earnings for managers and directors in Social Services in 2017 was £19.29³, it is estimated that, assuming RIs spend most of their working day (8 hours) at a service during their visit, this would give a total cost, including on-costs, of £201 per visit. It is required that visits should take place at least every 3 months which would mean an annual cost of around £804 for each of the services. Similar would apply in relation to each visit to a child on placement; £201 for full day or £100 per half day.

- *Quarterly reporting on the adequacy of resources*

To comply with this requirement, the responsible individual should have systems and processes in place that provide information about the service and any areas that may need closer observation/consideration and/or improvement.

Service providers should already have governance systems in place to monitor the running of the service. This requirement ensures the responsible individual takes

³ This figure is then uprated by 30% to include on-costs.

greater ownership of the governance of the service and is proactive in reporting concerns to the service provider (this would not apply if the service provider is an individual). There may be a small increase in staff time to undertake this more formal reporting, however the cost should be negligible as there should already be systems in place.

- *Quality of care review every 6 months*

It is existing practice for providers to undertake an annual quality of care review. This duty would be placed on the responsible individual with the intention that it should be a responsive and on-going process rather than a one-off annual requirement.

The responsible individual must put suitable arrangements in place to establish and maintain a system for monitoring and improving the quality of the service. To complete this quality review the RI must take into account:

- the outcome of engagement with children in placement, parents, foster parents, placing authorities and staff employed by the service
- aggregated data on notifications, safeguarding matters, whistleblowing concerns and complaints
- any action taken in relation to complaints
- the outcome of any audit of the accuracy and completeness of records.

Where this requirement corresponds to the date on which the service provider's annual return is due, much of the information from the quality of care review can be used to complete the relevant section of the annual return in order to avoid unnecessary duplication.

Costs to service providers in submitting the quality of care review report are anticipated to be comparable to the submission of the annual report. There may be some additional initial costs in moving to six monthly reports, but the quality of care review process should become embedded in the ongoing quality assurance process the provider has in place.

The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete an annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information to the quality of care review but as the quality of care review draws from existing monitoring information this should not take as long to complete. A reasonable estimation for this would be more like 2 working days, therefore incurring a cost of around £196 for each service, every six months. As providers are currently required to undertake similar reviews on an annual basis, the additional cost (of moving to six-monthly) should only be £196 per annum. However, this figure will vary depending on the salary of the person undertaking the review and may vary according to the size of the provider.

Risks: Consideration was given to the risks regarding the increased RI role during Phase 2 of implementation of the 2016 Act. The same considerations are relevant to the new requirement with respect to the RIs of fostering services, as a common approach is being taken to RIs across all regulated services under the 2016 Act.

The relevant section from the RIA on the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 reads as follows:

The impact of the duties on RIs will, therefore, vary depending on the organisational model. During the consultation we became aware of risks regarding the duties as they relate to registered charities and RIs of larger organisations.

We were advised that, because trustees of charities (unincorporated bodies) are unpaid volunteers, they may not necessarily be willing, suitable or have the relevant expertise and understanding of the care and support service to take on the responsibility of the RI role. We were also advised that the option of paid officers/senior managers within the charity (which is where they suggest that the RI role should be placed) joining the board is not possible.

Larger organisations providing a number of regulated services in Wales have also identified challenges with the requirement for the RI to be a director. Their concerns focus on the duties being placed on RIs – including the requirement to visit the service – and the extent to which these duties can be delegated. They advised that the directors of larger organisations are too removed from the service and the provision of care and support services and may not be suitably experienced or qualified to carry out the duties of the RI effectively. Similarly, they advised that the number of services these organisations provide would make it impossible for the directors to carry out this role. Furthermore, they suggested that this may deter future investment in Wales. There is therefore a risk here in terms of the RI role being carried out properly, consistent with the policy intent.

This risk will be mitigated by applying a wide interpretation to the term ‘or similar officer’ so that this could include the Chief Executive or a very senior level employee. This would provide a pragmatic solution for both charities and larger organisations without overly compromising the policy intent. The RIs would still be designated as part of the registration of the service and therefore the service regulator will have the opportunity to test their suitability for this role. The regulator would ensure a consistency of approach and an appropriate level of seniority within the organisation by applying the following criteria:

- authority to hire and fire managers and any other staff working in care services;
- authority to set pay rates for all staff working directly within the care services;
- authority to decide on investment decisions for the care services;
- oversight of the health and safety within the relevant care services;
- accountability for determining assurance arrangements and setting any benchmarks.

The proposed approach set out in this advice, coupled with the amendments to the RI duties as set out in the draft regulations, is intended to provide a workable solution without compromising the policy intent.

This will ensure that the application and interpretation of section 21 of the 2016 Act by the service regulator is consistent, equitable across different types of organisations and consistent with the policy intent.

Benefits: the benefits of the requirements will be around securing better oversight of, and therefore greater accountability for, quality of service at senior level within the provider organisation, so driving service improvement.

Duties of local authority managers

The following requirements will be placed upon **local authority providers** in respect of local authority managers:

- *oversight of adequacy of resources*
- *other reports to the local authority provider*
- *engagement with children and others*
- *duty to ensure there are systems in place to record complaints*
- *duty to ensure there are systems in place for keeping of records*
- *duty to ensure policies and procedures are up to date*
- *quality of care review*
- *support for raising concerns*

These requirements are the same as those placed upon the responsible individual (RI) of an independent service provider. Local authority managers will already be undertaking most of these duties already.

Offences

These requirements will be placed upon **independent service providers**.

Section 45 of the 2016 Act is a regulation-making power which allows the Welsh Ministers to provide that it is an offence for a service provider to fail to comply with a specified provision of the regulations made under section 27 of the 2016 Act (duties on service providers). Section 46 is a regulation-making power which allows the Welsh Ministers to provide that it is an offence for a responsible individual to fail to comply with a specified provision made under section 28 (duties on responsible individuals). Breaches of these requirements can be dealt with via a criminal prosecution.

The offences under sections 45 and 46 are intended to ensure that there is a proportionate approach to the creation of offences to enable CIW to take criminal action when it is appropriate to do so – both when a breach is sufficiently serious and when there is enough evidence to meet the threshold to commence legal proceedings.

During Phase 1 of implementation of the 2016 Act, consideration was given as to whether to specify that breach of all the requirements in regulations under section 27 and 28 should be categorised as offences. This would have broadly replicated the

approach taken under the Care Standards Act 2000. It was decided that, for regulated services under the 2016 Act, the regulations would specify that breach of only the key requirements in regulations made under section 27 and 28 would be offences.

The regulations would therefore specify which requirements made under section 27 and 28 would give rise to offences if breached.

The **benefits, costs and risks** associated with this option were set out in the RIA⁴ for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.

Service providers who are liquidated

These requirements will apply to ***independent service providers***.

Section 30(1) of the 2016 Act contains a power for Welsh Ministers to place requirements upon an appointed person. Section 30(2) states that an 'appointed person' means a person appointed as:

- (a) a receiver or administrative receiver of the property of a service provider who is a body corporate or a partnership;
- (b) a liquidator, provisional liquidator or administrator of a service provider who is a body corporate or a partnership;
- (c) a trustee in bankruptcy of a service provider who is an individual or a partnership.

The regulations would require an appointed person to give the Welsh Ministers notice, without delay, of when liquidators have been appointed and the reasons for it; and to inform the Welsh Ministers within 28 days of the appointment, of their intentions regarding the future operation of the service.

These are in line with the requirements already placed upon care homes, domiciliary care providers and other services regulated under the 2016 Act. An analysis of the **benefits, costs and risks** of this option are set out in the RIA for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (See footnote below).

Death of service provider who is an individual

These requirements apply to ***independent service providers*** who are individuals.

Section 31 of the 2016 Act gives the Welsh Ministers the power to make regulations placing requirements on a personal representative of an individual service provider who has died to notify the Welsh Ministers of the provider's death.

⁴ <http://www.assembly.wales/laid%20documents/sub-ld11204-em/sub-ld11204-em-e.pdf>

The regulations would also state that, where a service provider who is an individual has died, the personal representatives of the individual must, without delay, give written notification of the death to the Welsh Ministers, and within 28 days of the death, notify the Welsh Ministers of their intentions regarding the future operation of the service.

The regulation would also state that the personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer period (not exceeding one year) as the Welsh Ministers may agree.

These provisions are in line with the requirements already placed in relation to individual providers of care homes, domiciliary care providers and other services regulated under the 2016 Act. An analysis of the **benefits, costs and risks** of this option are set out in the RIA⁵ for the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.

Competition Assessment

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

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way.

Post implementation review

⁵ <http://www.assembly.wales/laid%20documents/sub-ld11204-em/sub-ld11204-em-e.pdf>

As set out in the RIA for the Act the Welsh Government has two clear aims for the regulation and inspection of social care, the Act and as such these regulations. They are to:

- secure the well-being of citizens
- improve the quality of social care.

The Act makes provision for a number of key reporting mechanisms which will offer a set of clear evidence to inform the post implementation review and establish how successful the Act has been in achieving both of these aims. The reporting mechanisms include:

- annual returns from service providers
- annual reports from local authorities and the review of those reports as undertaken in the Annual Review of Performance and Evaluation of Performance by the service regulator
- the annual report from the Welsh Ministers in their role as the service regulator
- the annual report of the workforce regulator.

CIW will monitor the implementation of these Regulations following their coming-into-force date of 29 April 2019.

Proposed Negative Statutory Instruments with Clear Reports

14 January 2019

Pn(5)004 – The Equality Act 2010 (Statutory Duties) (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations amend regulation 18 of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 by removing a reference to the ‘Public Sector Directive’ as that reference will be deficient after exit day.

The instrument provides that the terms which are currently defined by reference to the Public Sector Directive will instead be defined by reference to the Public Contracts Regulations 2015, as of exit day.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: Yes

Pn(5)005 – The Livestock (Records, Identification and Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.



These Regulations make amendments to subordinate legislation, which apply in relation to Wales, in the fields of the recording, identification and movement of livestock.

The Explanatory Memorandum to these Regulations states that the “purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union”.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: Yes

Pn(5)006 – The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations correct minor, technical deficiencies within The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 as amended. The purpose of the corrections is to ensure that the legislative framework governing radioactive contaminated land is operable post EU-exit.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: Yes



Pn(5)007 – The Animal By-Products and Transmissible Spongiform Encephalopathies (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

The Explanatory Memorandum to these Regulations states:

- The instrument will address deficiencies in domestic legislation arising from the withdrawal of the UK from the EU, and ensures that controls on Animal By-Products and Transmissible Spongiform Encephalopathies continue to operate on EU exit to protect animal and public health.
- EU rules for the control of TSEs and ABPs are at least equivalent to, and in some cases higher than, the international standards set by the World Organisation for Animal Health (Office International des Epizooties – OIE). Whilst the UK will be under no legal obligation to adhere to EU rules for TSE and ABP controls following EU Exit, due to the history of the BSE epidemic in Europe (particularly within the UK in the 1980/90s), third countries will expect the UK to at least mirror the key EU controls, even though these exceed OIE safeguard standards.

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

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: Yes





Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA - L/LG/0826/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

17 December 2018

Dear Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2018, as required by Standing Order 30A.

I am writing to inform you that I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis that our interest in this SI is restricted to operability amendments that will arise as a result of the UK leaving the EU.

The SI provision covers operability amendments in relation to the Wildlife and Countryside Act 1981 and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.

Regards,

Lesley Griffiths AC/AM

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2018**

DATE **18 December 2018**

BY **Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs**

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2018

European Directly Applicable Instruments amended by the 2019 Regulations

- Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive)
- Directive 2009/147/EC on the conservation of wild birds (the Wild Birds Directive) (collectively known as the Nature Directives)

Primary Legislation

- The Wildlife and Countryside Act 1981.

Secondary Legislation

- The Conservation of Habitats and Species Regulations 2017 (England and Wales)
- The Conservation of Offshore Marine Habitats and Species Regulations 2017 (UK)

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

This instrument respects the existing devolution settlement. The National Assembly for Wales has legislative competence in relation to Wales Habitats and Wild Birds.

However, in relation to the offshore marine area, defined in the Government of Wales Act 2006 as the Welsh zone, Welsh Ministers possess executive competence for this area. The National Assembly for Wales does not possess legislative competence for the Welsh zone.

Legislative functions are transferred to the Secretary of State under the new Regulation 84A to the Conservation of Offshore Marine Habitats and Species Regulations 2017. However, this transfer does not impact on the legislative competence of the National Assembly for Wales, or the executive functions exercised by the Welsh Ministers under the Conservation

of Offshore Marine Habitats and Species Regulations 2017.

The purpose of the amendments

The 2018 Regulations (affirmative procedure) allow for the continued implementation of habitat and species protections provided for by the Nature Directives following exit day. There is no change to policy. The changes ensure the Conservation of Habitats and Species Regulations 2017 and Conservation of Offshore Marine Habitats and Species Regulations 2017 continue to work after exit day.

The 2018 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://beta.parliament.uk/work-packages/3Mb6uXHL>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Wildlife and Countryside Act 1981.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2018

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2018 (“the 2018 Regulations”) were laid before the Houses of Parliament on 11 December 2018. The Regulations can be found at: <https://beta.parliament.uk/work-packages/3Mb6uXHL>

Summary of the Statutory Instrument and its objective

3. The objective of the 2018 Regulations is to make minor and technical changes to the Conservation of Habitats and Species Regulations 2017; the Conservation of Offshore Marine Habitats and Species 2017; the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 and the Wildlife and Countryside Act 1981. The changes are necessary to ensure that conservation of habitats and species legislation will continue to be operable in the United Kingdom (UK) after the UK leaves the EU. The instrument addresses deficiencies in the retained EU law arising from the UK’s withdrawal from the EU. The purpose of the 2018 Regulations is to preserve and protect the existing policy regime.
4. In accordance with this objective, the 2018 Regulations amend the Wildlife and Countryside Act 1981 (“The Act”) on an England and Wales basis. The amendments made to the 1981 Act by the 2018 Regulations is to section 27, which defines “wild birds”. Currently “wild bird” is defined in the 1981 in terms of species found in or visiting the European territory of a Member State. On exiting the EU this would mean that species of wild birds found in the UK but not elsewhere in the EU would no longer be protected. To ensure such species of wild birds continue to be protected the definition is amended to add the UK. Species of wild birds found in or regularly visiting either the UK or the European territory of a Member State will continue to be protected.
5. The intention is for the 2018 Regulations to ensure the continued implementation of habitat and species protections provided for by the Habitats Directive (Council Directive 92/43/EEC) and the Wild Birds Directive (Directive 2009/147/EC of the European Parliament and the Council) and the 1981 Act after exit day. The Directives are implemented in the UK by the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species 2017 (“the

2017 Regulations”). There is no change to policy. The changes ensure the 2018 Regulations and the 1981 Act continue to work after exit day.

Relevant provision to be made by the SI

6. The amendments made to The Act by the 2018 Regulations, are to the following provision:

In section 27 of the Wildlife and Countryside Act 1981⁽¹⁾, as it extends to England and Wales, in the definition of “wild bird”, after “visitor to”, insert “the United Kingdom or”.

7. The changes identified in paragraph 5 relate to a subject matter that is within the legislative competence of the National Assembly for Wales, and which could be the subject of a National Assembly Bill.
8. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to habitats and species protections.

Why it is appropriate for the SI to make this provision

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

Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs
18 December 2018

(1) 1981 c.69. the definition of “wild bird” in Section 27 was amended in relation to England and Wales by S.I. 2004/1487.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

WILDLIFE

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State, with the consent of the Treasury, makes these Regulations in exercise of the powers conferred by section 8(1) and section 14(1) of, paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7, to the European Union (Withdrawal) Act 2018^(a).

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

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

PART 2

Amendment of primary legislation

Amendment of the Wildlife and Countryside Act 1981: England and Wales

2. In section 27 of the Wildlife and Countryside Act 1981^(b), as it extends to England and Wales, in the definition of “wild bird”, after “visitor to”, insert “the United Kingdom or”.

^(a) 2018 c. 16.

^(b) 1981 c.69. the definition of “wild bird” in Section 27 was amended in relation to England and Wales by S.I. 2004/1487.

PART 3

Amendments to the Conservation of Habitats and Species Regulations 2017

Amendment of the Conservation of Habitats and Species Regulations 2017

3. The Conservation of Habitats and Species Regulations 2017^(a) are amended as follows.

Amendment of regulation 3 (interpretation)

4.—(1) Regulation 3 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “marine area”, insert—

““the national site network” means the network of sites in the United Kingdom’s territory consisting of such sites as—

(a) immediately before exit day formed part of Natura 2000; or

(b) at any time on or after exit day are European sites, European marine sites and European offshore marine sites for the purposes of any of the retained transposing regulations;”;

(b) in the definition of “Natura 2000”, at the end insert “(but see paragraphs (10) and (11))”;

(c) after the definition of “officer”, insert—

““offshore marine area” has the meaning given by regulation 4(2) (Plans or projects relating to offshore marine area or offshore marine installations)”

(d) after the definition of “relevant licensing body”, insert—

““the requirements of the Directives” is to be interpreted in accordance with paragraphs (3) and (4) of regulation 3A;”;

(e) after the definition of “research”, insert—

““the retained transposing regulations”, means—

(i) the Offshore Marine Conservation Regulations 2017 ^(b);

(ii) the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995^(c);

(iii) the Conservation (Natural Habitats, &c.) Regulations 1994^(d); and

(iv) these Regulations;

and “the other retained transposing regulations” means the retained transposing regulations other than these Regulations;”;

(f) in the definition of “special area of conservation”, at the end, insert “, and includes any such site designated after exit day under the retained transposing regulations;”.

(g) After the definition of “the TCPA 1990”—

““the United Kingdom’s territory” means the United Kingdom and the offshore marine area;”;

(3) In paragraph (4), for “as amended from time to time”, substitute “as it had effect immediately before exit day, or as subsequently amended under regulation 144”.

(4) After paragraph (9), insert—

(a) S.I. 2017/1012.

(b) S.I. 2017/1013.

(c) S.R.(N.I.) 1995 No.380. Amendments have been made by the Marine Act (Northern Ireland) 2013 (c.10)(N.I.), section 40, by S.R. 2004 No.435, 2007 No.345, 2009 No.8, 2011 No. 216, 2012 No.1928, 2012 No.368 and 2015 No.182.

(d) S.I. 1994/2716. Relevant amendments are made by paragraph 15 of Schedule 2 to the Land Reform (Scotland) Act 2003 (asp 2), by S.I. 1997/3055, 2007/1843 and 2010/490, and by S.S.I. 2004/475, 2007/80, 2011/155 and 2012/228.

“(10) For the purposes of these Regulations, and any guidance issued before exit day by the appropriate authority or the appropriate nature conservation body, relating to the application of these Regulations, on or after exit day, references to “Natura 2000” (other than in this regulation) are to be construed as references to the national site network.

(11) Paragraph (10) does not affect the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day.”.

Insertion of new regulation 3A

5. After regulation 3, insert—

“Interpretation: the Directives

3A.—(1) The Habitats Directive is to be construed for the purposes of these Regulations as if—

- (a) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom;
- (b) any reference to “Member State” or “Member States” included a reference to the United Kingdom;
- (c) any reference to “of Community interest” included, in relation to the United Kingdom, a reference to “of national interest”;
- (d) in Article 1(d) and (h), references to “the Community” were references to “the European Union or the United Kingdom”; and
- (e) in Article 1(l), the reference to “a site of Community importance designated by the Member State” included, in relation to the United Kingdom, a reference to a site of national importance designated under any of the retained transposing regulations.

(2) The new Wild Birds Directive is to be construed for the purposes of these Regulations as if—

- (a) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom; and
- (b) any reference to “Member State” or “Member States” included a reference to the United Kingdom.

(3) Any reference in these Regulations to “the requirements of the Directives” is to be construed as if the objectives of the Directives included the objectives referred to in regulation 16A(2).

(4) The appropriate authority may, after consultation with the appropriate nature conservation body and such other bodies or persons as it considers appropriate, issue guidance as to the interpretation of the requirements of the Directives.

(5) Any guidance issued under paragraph (4) must be published by the appropriate authority in such manner as it considers appropriate.”.

Amendments of regulation 8 (European sites and European marine sites)

6. In regulation 8(1)—

- (a) in sub-paragraph (b), at the end insert “before exit day”;
- (b) omit sub-paragraph (c);
- (c) in sub-paragraph (d), after “classified”, insert “before exit day”, and after the closing parenthesis, insert “or classified after exit day under the retained transposing regulations”;
- (d) in sub-paragraph (e)—
 - (i) after “which”, insert “before exit day”, and for “under regulation 12” substitute “ in accordance with Article 4(1) of the Habitats Directive”; and

(ii) for sub-paragraphs (i) and (ii) substitute—

- “(i) the site is designated as a special area of conservation under regulation 12 or under a corresponding provision in the other retained transposing regulations; or
- (ii) the appropriate authority gives the appropriate nature conservation body notice of its intention not to designate the site, setting out the reasons for its decision, in accordance with regulation 141A(3).”.

Amendment to regulation 9 (duties relating to compliance with the Directives)

7. In regulation 9, after paragraph (4) insert—

“(4A) In complying with their duties under paragraphs (1) and (3), the nature conservation body and a competent authority must have regard to any guidance issued under regulation 3A(4)—

- (a) by the Secretary of State, in relation to England; or
- (b) by the Welsh Ministers, in relation to Wales.”.

New regulation 9A

8. After regulation 9, insert—

“Reports

9A.—(1) Within six years from exit day, and at least every six years thereafter, the appropriate authority must publish, in such form as it sees fit, a report on the implementation of the measures taken for the purpose of giving effect to the provisions of the Directives, and the achievement of the objectives set out in Article 2 of the Habitats Directive and Articles 2 and 3 of the new Wild Birds Directive.

(2) The report under paragraph (1) must include in particular—

- (a) information concerning conservation measures taken under Article 6(1) of the Habitats Directive;
- (b) information on provisions mentioned in Article 12 of the new Wild Birds Directive;
- (c) an evaluation of the impact of those conservation measures on the conservation status of the natural habitat types listed in Annex I of the Habitats Directive, and of the species listed in Annex II of that Directive; and
- (d) the main results of the surveillance undertaken under Part 4 of these Regulations.

(3) Within, two years from the later of the date of publication of the last of the reports to be published—

- (a) under paragraph (1); or
- (b) within the relevant six-year period under any corresponding requirement of the other retained transposing regulations.
the Secretary of State must, publish a composite report.

(4) A composite report published under paragraph (3) must—

- (a) be in such form as the Secretary of State sees fit;
- (b) include an appropriate evaluation of the progress achieved and, in particular, of the contribution of the national site network to the achievement of the objective of enabling the natural habitat types listed in Annex I to the Habitats Directive, and the species listed in Annex II to that Directive, to be maintained at or, where appropriate, restored to, a favourable conservation status in their natural range; and
- (c) be submitted in draft to the devolved administrations for verification.”.

Amendment of Regulation 10 (duties in relation to wild bird habitat)

9. In regulation 10(8), for “area to which the new Wild Birds Directive applies” substitute “seaward limits of the offshore marine area (as defined in regulation 4(2))”.

Amendments of regulations 12 to 13

10. For regulations 12 to 13 substitute—

“Duty to designate special areas of conservation

12.—(1) The appropriate authority must, having regard to the priorities established under regulation 13, designate as special areas of conservation such sites in England and Wales as the authority considers to be sites of national importance.

(2) Sites of national importance are sites which contribute significantly to the objective in paragraph (3)(a) or the objective in paragraph (3)(b).

(3) The objectives referred to in paragraph (2) are—

- (a) the maintenance, or restoration, at favourable conservation status in their natural range of the natural habitat types listed in Annex I to the Habitats Directive or the species listed in Annex II to that Directive; and
- (b) the maintenance of biological diversity within the Atlantic biogeographic region.

(4) For animal species ranging over wide areas, those sites determined to be of national importance must correspond to places within the natural range of such species, which present the physical or biological factors essential to their life and reproduction.

(5) For aquatic species which range over wide areas, such sites are to be determined to be of national importance only where there is a clearly identifiable area which is distinct in providing the physical and biological factors essential to their life and reproduction.

(6) In determining which sites are of national importance for the purposes of paragraph (1), the appropriate authority must—

- (a) apply the Annex III criteria;
- (b) make its determination only on the basis of relevant scientific information; and
- (c) have regard to the importance of the population of a species or area of a habitat found in the United Kingdom for the purpose of meeting the objectives in paragraph (3).

(7) For the purposes of paragraph (6)(a), the Annex III criteria are to be construed as if—

- (a) for “Community importance” there were substituted “national importance”;
- (b) a reference to a “Member State” is to be taken to be a reference to the appropriate authority;
- (b) for “continuous ecosystem situated on both sides of one or more internal Community frontiers” there were substituted “continuous ecosystem extending beyond the borders of the United Kingdom”; and
- (c) for “the biogeographical regions concerned and/or for the whole of the territory referred to in Article 2” there were substituted “the Atlantic biogeographical region”.

(8) In applying the Annex III criteria, the appropriate authority must—

- (a) in relation to the application of stage 1 of the Annex III criteria, have regard to the advice of the appropriate nature conservation body; and
- (b) in relation to the application of stage 2 of the Annex III criteria, have regard to the advice of the Joint Nature Conservation Committee.

(9) In this regulation, “the Annex III criteria” means the criteria set out in Annex III to the Habitats Directive.

Priorities for designating special areas of conservation

13.—(1) The appropriate authority must, in accordance with paragraph (2), establish priorities for designating as special areas of conservation such sites as it has determined to be sites of national importance.

(2) Priorities for the purpose of paragraph (1) must be established in the light of—

- (a) the importance of the sites for the maintenance at or restoration to a favourable conservation status of—
 - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
 - (ii) a species specified in Annex II to the Habitats Directive;
- (b) the importance of such sites for the coherence of the national site network; and
- (c) the threats of degradation or destruction to which the sites are exposed.”

Omission of Regulation 14 (Consultation as to inclusion of site omitted from the list)

11. Omit regulation 14.

Amendment of regulation 15 (classification of sites as special protection areas)

12.—(1) Regulation 15 is amended as follows.

(2) For paragraph (4) substitute—

“(4) In applying the criteria referred to in sub-paragraphs (3)(a) and (b) in relation to any species, references in Articles 4(1) and (2) of the new Wild Birds Directive to classifying the most suitable territories “in the geographical sea and land area where this Directive applies” are to be construed as referring to the most suitable territories in the United Kingdom’s territory, having regard to the importance of such territories for ensuring the survival and reproduction of that species in their area of distribution”.

(3) Omit paragraphs (5) and (6).

Insertion of new regulation 16A

13. After regulation 16, insert—

“Management objectives of the national site network

16A.—(1) The appropriate authority must, in co-operation with any other authority having a corresponding responsibility, manage, and where necessary adapt, the national site network, so far as it consists of European sites, with a view to contributing to the achievement of the management objectives of the national site network.

(2) The management objectives of the national site network are—

- (a) to maintain at, or where appropriate restore to, a favourable conservation status in their natural range (so far as it lies in the United Kingdom’s territory, and so far as is proportionate)—
 - (i) the habitat types listed in Annex I to the Habitats Directive; and
 - (ii) the species listed in Annex II to that Directive whose natural range includes any part of the United Kingdom’s territory; and
- (b) to contribute to ensuring the survival and reproduction in their area of distribution of—
 - (i) species of birds listed in Annex I to the new Wild Birds Directive which naturally occur in the United Kingdom’s territory; and
 - (ii) regularly occurring migratory species of birds not listed in that Annex which naturally occur in the United Kingdom’s territory.

(3) In complying with the obligation in paragraph (1), the appropriate authority must have regard—

- (a) in relation to any European sites which is not of a kind mentioned in regulation 8(1)(d), to the considerations mentioned in paragraph (4); and
- (b) in relation to European sites of a kind mentioned in regulation 8(1)(d), to the consideration mentioned in paragraph (5).

(4) The considerations mentioned in paragraph (3)(a) are—

- (a) the importance of the sites for the maintenance at, or restoration to, a favourable conservation status, throughout their natural range, of—
 - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
 - (ii) a species specified in Annex II to the Habitats Directive;
- (b) the importance of the sites for the coherence of national site network; and
- (c) the threats of degradation or destruction to which the sites are exposed.

(5) The consideration mentioned in paragraph (3)(b) is the importance of the sites for ensuring the survival and reproduction of the species mentioned in regulation 15(2) in their area of distribution.

(6) In paragraph (2)(a), “proportionate” means proportionate to the relative importance of—

- (a) the part of the natural range lying in the United Kingdom’s territory; and
- (b) the part of the natural range lying outside the United Kingdom’s territory; for achieving a favourable conservation status.”.

Amendment of regulation 17 (register of European sites)

14. Regulation 17(2) is amended as follows—

- (a) in sub-paragraph (b), for “as soon as they are” substitute “which before exit day were”;
- (b) omit sub-paragraph (c); and
- (c) in sub-paragraph (e), for “under regulation 12” substitute “before exit day”.

Amendment of regulation 24 (assessment of implications for European sites)

15. Omit regulation 24(3).

Amendment of regulation 29 (assessment of implications for European sites after service of stop notice)

16.—(1) Regulation 29 is amended as follows.

- (2) In paragraph (6)(b), omit “, having due regard to the opinion of the European Commission,”;
- (3) Omit paragraph (8).

Amendment of regulation 44 (protection of certain wild animals: defences)

17. In regulation 44(7), before sub-paragraph (a), insert—

“(aa) it was taken from the wild in the United Kingdom without contravention of the law and before 10th June 1994;”.

Amendment of regulation 45 (prohibition of certain methods of capturing or killing wild animals)

18.—(1) Regulation 45 is amended as follows.

- (2) In paragraph (2), for sub-paragraphs (a) and (b), substitute—

- “(a) any means listed in paragraph 1 or 2 of Schedule 4A;
- (b) any form of capturing or killing from a mode of transport listed in paragraph 3 of Schedule 4A.”.
- (3) Omit paragraphs (3) to (5).

Amendment of regulation 48 (protection of certain wild plants: defences)

19. In regulation 48(5), before sub-paragraph (a), insert—

“(aa) it was taken from the wild in the United Kingdom without contravention of the law and before 10th June 1994;”.

Amendment of regulation 50 (surveillance of conservation status of habitats and species)

20.—(1) Regulation 50 is amended as follows.

(2) In paragraph (1), for “Community”, in both places where it occurs, substitute “national”.

(3) In paragraph (7)—

(a) for the definition of “natural habitat types of Community interest” substitute—

““natural habitats of national interest” means natural habitat types listed in Annex I to the Habitats Directive;”

(b) in the definition of “relevant habitat type or species”, for “Community” substitute “national”; and

(c) for the definition of “species of Community interest”, substitute—

““species of national interest” means species of wild fauna and flora listed in Annex II, IV or V to the Habitats Directive.”.

Amendment to regulation 51 (protection of certain animals and plants from exploitation)

21. In regulation 51(1), omit “or otherwise arranged for the purpose of Article 11 of the Habitats Directive (surveillance)”.

Amendment of regulation 53 (protection from incidental capture and killing)

22. In regulation 53(1), omit “or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive (system to monitor incidental capture and killing)”.

Amendment of regulation 55 (licences for certain activities relating to animals or plants)

23. In regulation 55, after paragraph 14, insert—

“(15) Within two years from exit day, and thereafter within two years of the publication of the last such report, each relevant licensing body must publish, in such form as it sees fit, a report on licences granted under paragraph (1) in the preceding two years.

(16) A report made under paragraph (15) must specify—

- (a) the species to which the licence relates and the reason for granting the licence, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
- (b) in relation to any animal species, any means authorised for the capture or killing of the species and the reasons for the use of that means;
- (c) when and where the licence was granted; and
- (d) the supervisory measures taken to check that the required conditions of the licence have been complied with, any monitoring that has been carried out of compliance with the conditions of the licence, and the results of that monitoring.”.

Amendment of regulation 63 (assessment of implications for European sites and European offshore marine sites)

24. In regulation 63(7), omit sub-paragraphs (a) and (b).

Amendment of regulation 64 (considerations of overriding public interest)

25.—(1) Regulation 64 is amended as follows.

(2) In paragraphs (2)(b) and (3), for “European Commission” substitute “appropriate authority”.

(3) For paragraph (4) substitute—

“(4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.”.

(4) After paragraph (4), insert—

“(4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) where the appropriate authority is the Secretary of State, the devolved administrations;
- (c) where the appropriate authority is the Welsh Ministers, the Secretary of State, and the other devolved administrations; and
- (d) any other person the appropriate authority considers appropriate.”.

Amendment of regulation 107 (considerations of overriding public interest)

26.—(1) Regulation 107 is amended as follows.

(2) In paragraphs (2)(b) and (3), for “European Commission” substitute “appropriate authority”.

(3) For paragraph (4) substitute—

“(4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.”.

(4) After paragraph (4) insert—

“(4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) where the appropriate authority is the Secretary of State, the devolved administrations;
- (c) where the appropriate authority is the Welsh Ministers, the Secretary of State and the other devolved administrations; and
- (d) any other person the appropriate authority considers appropriate.”.

Amendment of regulation 116 (powers of entry: wildlife inspectors)

27. In regulation 116(9), in the definition of “third country ship”—

- (a) in sub-paragraph (a), for “(other than Gibraltar) which is not a member State” substitute “other than the United Kingdom”;
- (b) in sub-paragraph (b), for “a member State”, substitute “the United Kingdom”.

Amendment to regulation 136 (research)

28. Omit regulation 136(2).

Insertion of new regulation 141A

29. After regulation 141, insert—

“Transitional provisions: EU exit

141A.—(1) Where before exit day a site in England or Wales has been adopted in accordance with the procedure set out in Article 4(2) of the Habitats Directive (list of sites of Community importance), the appropriate authority must designate that site as a special area of conservation as soon as possible and no later than six years from the date of adoption of that site.

(2) Paragraph (3) applies where a site in England or Wales—

- (a) has before exit day been proposed, in a list of sites transmitted to the European Commission, as eligible for identification as of Community importance in accordance with the procedure laid out in Article 4(2) of the Habitats Directive (list of sites of Community importance); and
- (b) has not yet been so identified as being of Community importance.

(3) Where this paragraph applies, the appropriate authority must within six years of exit day designate the site as a special area of conservation or give notice to the appropriate nature conservation body of its intention not to designate the site, and publish, in such form as it sees fit, its reasons for not designating it.”.

Insertion of new regulations 143 to 145

30. After regulation 142, insert—

“Amendment of Schedules

143.—(1) The appropriate authority may by regulations amend Schedule 2 or 5 for the purpose of adding any species listed in Annex IV(a) or (b) to the Habitats Directive where it is satisfied that the natural range of that species includes any area in Great Britain.

(2) The appropriate authority may by regulations make such other amendments as it considers necessary for adapting Schedules 2 to 5 to technical and scientific progress.

(3) Regulation 145 applies in relation to any amendment made under paragraph (1) or (2).

Amendment of the Annexes to the Directives

144.—(1) Paragraph (2) applies for the purposes of the application of the Annexes so far as they are relevant to any reference in these Regulations to—

- (a) the Directives;
- (b) the Annexes; or
- (c) any provisions of the Directives to which the Annexes relate.

(2) The appropriate authorities may by regulations make such amendments to the Annexes as they consider necessary for the purpose of adapting them to technical and scientific progress.

(3) Regulation 145 applies in relation to any amendment made under paragraph (2).

(4) In this regulation, “the Annexes” means—

- (a) Annexes I to IV to the Habitats Directive; and
- (b) Annexes I to V to the new Wild Birds Directive.”.

Statutory instruments

145.—(1) The power to make an amendment under regulation 143 (amendment of Schedules) or 144 (amendment of the Annexes to the Directives) is exercisable by statutory instrument.

(2) A statutory instrument made by the Secretary of State under regulation 143(2) amending Schedule 2, or under regulation 144 amending Annex IV to the Habitats Directive, may not be made unless a draft of the instrument has been laid before, and approved by resolution of each House of Parliament.

(3) A statutory instrument made by the Secretary of State in any other case is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) A statutory instrument made by the Welsh Ministers under regulation 143(2) amending Schedule 2, or under regulation 144 amending Annex IV to the Habitats Directive, may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

(5) A statutory instrument made by the Welsh Ministers in any other case is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”.

Insertion of new Schedule 4A

31. After Schedule 4, insert Schedule 4A, as set out in Schedule 1.

PART 4

Amendments to the Conservation of Offshore Marine Habitats and Species Regulations 2017

Amendment of the Conservation of Offshore Marine Habitats and Species Regulations 2017

32. The Conservation of Offshore Marine Habitats and Species Regulations 2017(a) are amended as follows.

Amendment of regulation 2 (interpretation)

33.—(1) Regulation 2 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “the 2017 Regulations” insert—

““the United Kingdom territory” means “the United Kingdom (including its internal waters), the territorial sea adjacent and the offshore marine area;”;

(b) in the definition of “the Habitats Directive”, at the end, insert “under regulation 144 of the 2017 Regulations”;

(c) after the definition of “management scheme”, insert—

““the national site network” means the network of sites in the United Kingdom’s territory consisting of such sites as—

(a) immediately before exit day formed part of Natura 2000; or

(b) at any time on or after exit day are European sites or European marine sites for the purposes of any of the retained transposing regulations;”;

(d) in the definition of “Natura 2000”, at the end, insert “(but see paragraphs (3) and (4))”;

(e) after the definition of “the register”, insert—

(a) S.I. 2017/1013.

““the relevant administration”, except where otherwise specified, means—

- (a) in relation to a site within the Scottish offshore region, the Scottish Ministers;
- (b) in relation to a site within the Welsh offshore region, the Welsh Ministers; and
- (c) in relation to any other site, the Secretary of State;

“the retained transposing regulations”, means—

- (a) the Conservation (Natural Habitats, &c.) Regulations 1994;
- (b) the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;
- (c) the 2017 Regulations; and
- (d) these Regulations;”;

(f) in the definition of “third country ship”—

- (i) in sub-paragraph (a), for “(other than Gibraltar) which is not a member State” substitute “other than the United Kingdom”; and
- (ii) in sub-paragraph (b), for “a member state”, substitute “the United Kingdom”; and

(g) in the definition of “the Wild Birds Directive”, at the end insert “under regulation 144 of the 2017 Regulations for the purposes specified in paragraph (1) of that regulation.”.

(3) After paragraph (2), insert—

“(3) For the purposes of these Regulations, and any guidance issued by the Secretary of State, the devolved administrations or the Joint Committee relating to the application of these Regulations, on or after exit day, references to “Natura 2000” (other than in this regulation) are to be construed as references to the national site network.

(4) Paragraph (3) does not affect the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day.

(5) The Habitats Directive is to be construed for the purposes of these Regulations as if—

- (a) any reference to “the European territory of Member States to which the Treaty applies” included a reference to the United Kingdom;
- (b) any reference to “Member State” or “Member States” included a reference to the United Kingdom;
- (c) any reference to “of Community interest”, included, in relation to the United Kingdom, a reference to “of national interest”;
- (d) in Article 1(d) and (h), the reference to “the Community” were a reference to “the European Union or the United Kingdom”; and
- (e) in Article 1(1), the reference to “a site of Community importance designated by the Member States” included, in relation to the United Kingdom, a reference to a site of national importance designated under any of the retained transposing regulations.

(6) The Wild Birds Directive is to be construed for the purposes of these Regulations as if any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom.”.

Amendment of regulation 6 (duty of competent authorities)

34. After regulation 6, insert—

“**6A.**—(1) The Secretary of State must publish, at least every six years from exit day, a report on the implementation of the measures for the conservation of the natural habitat types listed in Annex I to the Habitats Directive and species listed in Annex II to that Directive.

(2) The report must include in particular—

- (a) information concerning conservation measures taken under Article 6(1) of the Habitats Directive;

- (b) information on provisions mentioned in Article 12 of the new Wild Birds Directive;
 - (c) an evaluation of the impact of those conservation measures on the conservation status of the natural habitat types listed in Annex I to the Habitats Directive and of the species listed in Annex II to that Directive;
 - (d) the main results of the surveillance undertaken under Part 4 of these Regulations.
- (3) The report must be published in such form as the Secretary of State sees fit.
- (4) The report, must be submitted in draft to the devolved administrations for verification.
- „

Amendment of regulation 7 (list of sites eligible for identification as of Community importance)

35. For regulation 7 substitute—

“Duty to designate special areas of conservation

7.—(1) The relevant administration must designate as special areas of conservation such sites in the offshore marine area it considers to be sites of national importance.

(2) Sites of national importance are sites which contribute significantly to the objective in paragraph (3)(a) or the objective in paragraph (3)(b).

(3) The objectives referred to in paragraph (2) are—

- (a) the maintenance, or restoration, at favourable conservation status in their natural range, of the natural habitat types listed in Annex I to the Habitats Directive or the species listed in Annex II to that Directive; and
- (b) the maintenance of biological diversity within the Atlantic biogeographic region.

(4) For aquatic species which range over wide areas, such sites are to be determined to be of national importance only where there is a clearly identifiable area which is distinct in providing the physical and biological factors essential to their life and reproduction.

(5) in determining which sites are of national importance for the purposes of paragraph (1), the relevant administration must—

- (a) apply the Annex III criteria;
- (b) make its determination only on the basis of relevant scientific information; and
- (c) have regard to the importance of the population of a species or area of a habitat, found in the United Kingdom’s territory, in ensuring that the objectives in paragraph (3) are met .

(6) For the purposes of paragraph (5)(a), the Annex III criteria are to be construed as if—

- (a) for “Community importance” there were substituted “national importance”;
- (b) a reference to a “Member State” is to be taken to be a reference to the relevant administration;
- (c) for “continuous ecosystem situated on both sides of one or more internal Community frontiers” there were substituted “continuous ecosystem extending beyond the borders of the United Kingdom; and
- (d) for “the biogeographical regions concerned and/or for the whole of the territory referred to in Article 2” there were substituted “the Atlantic biogeographical region””.

(7) The relevant authority must have regard to the advice of the Joint Committee in relation to the application of Annex III to the Habitats Directive.

(8) In relation to a site in the Welsh offshore region which before these Regulations come into force has been the subject of a proposal under regulation 8(1) of the Offshore Marine

(Natural Habitats, &c.) Regulations 2007^(a), the relevant administration for the purposes of paragraph (1) is the Secretary of State.

(9) In this regulation, “the Annex III criteria” means the criteria set out in Annex III to the Habitats Directive”.

New regulation 7A

36. After regulation 7, insert—

“Priorities for designating special areas of conservation

7A. The relevant administration must establish priorities for the designation of sites in the light of—

- (a) the importance of the sites for the maintenance or restoration at a favourable conservation status of—
 - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
 - (ii) a species specified in Annex II to the Habitats Directive;
- (b) the importance of the sites for the coherence of national site network; and
- (c) the threats of degradation or destruction to which the sites are exposed.”.

Amendment of regulation 8 (notification of a proposal)

37.—(1) Regulation 8 is amended as follows.

(2) In paragraph (1), for “If the Secretary of State proposes to include a site in the list to be transmitted under regulation 7(1), the Secretary of State” substitute “If the relevant administration proposes to designate a site as a special area of conservation, it”.

(3) Omit paragraphs (2) and (3).

(4) In paragraph (4), for “(3)” substitute “(1)”.

(5) In paragraph (5)—

- (a) omit “or (3)”; and
- (b) in sub-paragraph (e), for “(3)” substitute “(1)”.

(6) In paragraph (9), for “Secretary of State” substitute “relevant administration”.

(7) Omit paragraphs (10) and (12).

Amendment of regulations 9 to 11

38. Omit regulations 9 to 11.

Amendment of regulation 12 (classification of sites as special protection areas)

39.—(1) Regulation 12 is amended as follows.

(2) For paragraph (4) substitute—

“(4) In applying the criteria referred to in sub-paragraphs (3)(a) and (b), references in Articles 4(1) and (4)(2) of the Wild Birds Directive to classifying the most suitable territories “in the geographical sea and land area where this Directive applies” are to be construed as referring to the most suitable sites in the offshore marine area, having regard to the importance of such territories for ensuring the survival and reproduction of that species in their area of distribution.”.

(a) S.I. 2007/1842, as amended by S.I. 2009/7, S.I. 2010/490, S.I. 2010/491, S.I. 2010/1513, S.I. 2011/2043, S.I. 2012/1809, S.I. 2012/1928, S.I. 2013/755, S.I. 2015/191, S.I. 2016/912, S.S.I. 2007/485 and SSI 2015/320.

- (3) Omit paragraphs (5) and (6).

Amendment of regulation 13 (classification of sites in the Scottish offshore region and the Welsh offshore region as special protection areas)

- 40.** In regulation 13 omit paragraphs (9) and (10).

Amendment to regulations 15 to 17 (hearings)

- 41.**—(1) Regulation 15 is amended as follows.

(2) In paragraphs (1) to (3), for “Secretary of State”, in each place where it occurs, substitute “relevant administration”;

(3) In paragraph (1), omit sub-paragraph (b);

(4) In paragraph (4)—

(a) for “the Secretary of State”, in both places where it occurs, substitute “a relevant administration”;

(b) for “the Scottish Ministers”,—

(i) for the first reference, substitute “another relevant administration”;

(ii) for the second reference, substitute “that other administration”; and

(c) For “regulation 16”, substitute “this regulation”.

(5) Omit paragraph (5).

(6) Omit regulations 16 and 17.

Amendment of regulation 18 (meaning of “European offshore marine site”)

- 42.** In regulation 18—

(a) in paragraph (b), at the end insert “before exit day”;

(b) omit paragraph (c); and

(c) for sub-paragraph (e) substitute—

“(e) a site which, before exit day, was proposed to the European Commission under Article 4(1) of the Habitats Directive, until such time as—

(i) the site is designated as a special area of conservation under regulation 7; or

(ii) the relevant administration gives notice to the appropriate nature conservation body of its intention not to designate the site, setting out the reasons for its decision, in accordance with regulation 86A(3)(b).”.

Insertion of new regulation 18A

- 43.** After regulation 18, insert—

“Management objectives of the national site network

18A.—(1) The Secretary of State and the devolved administrations must, in co-operation with each other, manage, and where necessary adapt, the national site network, so far as it consists of European offshore marine sites, with a view to contributing to the achievement of the management objectives of the national site network.

(2) The management objectives of the national site network are—

(a) to maintain or, where appropriate restore to, a favourable conservation status in their natural range (so far as it lies in the United Kingdom’s territory, and so far as is proportionate)—

(i) the habitat types listed in Annex 1 to the Habitats Directive; and

- (ii) the species listed in Annex II to that Directive whose natural range includes any part of the United Kingdom's territory; and
- (b) to contribute to ensuring the survival and reproduction in their area of distribution of —
 - (i) species of birds listed in Annex I to the Wild Birds Directive which naturally occur in the United Kingdom's territory; and
 - (ii) regularly occurring migratory species of birds not listed in that Annex which naturally occur in that area .
- (3) In complying with the obligation in paragraph (1), the Secretary of State and the devolved administrations must have regard—
 - (a) in relation to sites designated under regulation 7(1) to—
 - (i) the importance of the sites for meeting the objectives in regulation 7(3);
 - (ii) the importance of the sites for the coherence of national site network; and
 - (iii) the threats of degradation or destruction to which the sites are exposed; and
 - (b) in relation to sites classified under regulation 12(1), to the importance of such sites for ensuring the survival and reproduction of the species mentioned in regulation 12(2) in their area of distribution.
- (4) In paragraph (2)(a), “proportionate” means proportionate to the relative importance of—
 - (a) the part of the natural range lying in the United Kingdom's territory; and
 - (b) the part of the natural range lying outside the United Kingdom's territory;
 for achieving a favourable conservation status.”.

Amendment of regulation 19 (register of European offshore marine sites)

44.—(1) Regulation 19 is amended as follows.

(2) In paragraph (2)—

- (a) in sub-paragraph (b), for “as soon as they are” substitute “which before exit day were”;
- (b) omit sub-paragraph (c); and
- (c) in sub-paragraph (e), after “which” insert “, before exit day,”.

(3) In paragraph (3), omit sub-paragraph (d).

(4) For paragraph (5), substitute—

“(5) Where a site ceases to fall within any of the categories in paragraph (2) for which it is listed in the register the relevant administration must amend the relevant entry in the register in respect of that site.”.

Amendment of regulation 20 (notification of changes to the register)

45. In regulation 20(2), for “another” substitute “a”.

Amendment of regulation 24 (co-ordinated management of sites)

46. In regulation 24, in paragraphs (1) to (3), for “another”, in each place where it occurs, substitute “a”.

Amendment of regulation 26 (prevention of deterioration of habitats and disturbance of species)

47.—(1) Regulation 26 is amended as follows.

(2) In paragraph (3)—

- (a) after paragraph 3(b), insert “and”; and
- (b) omit paragraphs 3(c) and the “and” that follows it.
- (3) In paragraph (4)—
 - (a) in paragraph 4(b), after sub-paragraph (ii), insert “and”;
 - (b) omit sub-paragraphs (4)(c).
- (4) Omit paragraph (5).

Amendment of regulation 27 (meaning of “European site”)

- 48.**—(1) Regulation 27 is amended as follows.
- (2) In paragraph (1)—
 - (a) in sub-paragraph (b), at the end insert “before exit day”;
 - (b) omit sub-paragraph (c);
 - (c) in sub-paragraph (d), after “classified” insert “before exit day” and at the end insert “or classified after exit day under the retained transposing legislation”;
 - (d) for sub-paragraph (e) substitute—
 - “(e) a site which before exit day was proposed to the European Commission under Article 4(1) of the Habitats Directive, until such time as—
 - (i) the site is designated as a special area of conservation under regulation 7; or
 - (ii) the relevant administration gives notice to the appropriate nature conservation body of its intention not to designate the site, setting out the reasons for its decision, in accordance with regulation 86A(3)(b).”.
 - (3) Omit paragraphs (2) and (3).

Amendment of regulation 28 (protection of European offshore marine sites and European sites)

- 49.** In regulation 28, omit paragraph (7)(a) and (b).

Amendment of regulation 29 (considerations of overriding public interest)

- 50.**—(1) Regulation 29 is amended as follows.
- (2) In paragraph (3)—
 - (a) after “a competent authority”, insert “other than the relevant administration”; and
 - (b) for “Commission” substitute “relevant administration”.
 - (3) In paragraph (4), for “Secretary of State”, in both places where it occurs, and, for “Commission”, substitute “relevant administration”.
 - (4) For paragraphs (5) to (7), substitute—
 - “(5) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the relevant administration must have regard to the national interest, and provide its opinion to the competent authority.
 - (6) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the relevant administration must consult the following, and have regard to their opinion—
 - (a) the Joint Nature Conservation Committee;
 - (b) where the relevant administration is the Secretary of State, the devolved administrations;
 - (c) where the relevant administration is a devolved administration, the Secretary of State and the other devolved administrations; and

- (d) any other person the relevant administration considers appropriate.
- (7) In this regulation, “the relevant administration” means—
 - (a) in relation to a plan or project relating to an activity other than one specified in regulation 55(16)—
 - (i) where the plan or project is to be carried out in the Scottish offshore region, the Scottish Ministers; and
 - (ii) where the plan or project is to be carried out in the Welsh offshore region, the Welsh Ministers; and
 - (b) in relation to a plan or project relating to an activity specified in regulation 55(16), or in any case not falling within sub-paragraph (a)(i) or (ii), the Secretary of State.”

Amendment of regulation 33 (review of existing decisions and consents)

51. In regulation 33, omit paragraphs (6)(a) and (b).

Amendment of regulation 37 (notification of compensatory measures)

52. In regulation 37 for paragraph (1), substitute—

“(1) The appropriate authority must ensure that the compensatory measures taken pursuant to regulation 36(2) are notified to each of the following (other than the appropriate authority itself)—

- (a) the Secretary of State;
- (b) the devolved administrations.”.

Amendment of regulation 38 (offences relating to European offshore marine sites)

53.—(1) Regulation 38 is amended as follows.

(2) In paragraph (3), at the end, insert “unless the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state”.

(3) In paragraphs (13) and (14), for “relevant EU instrument”, substitute “relevant retained EU law”.

Amendment of regulation 39 (application of offences in Part 3)

54. In regulation 39(2), at the end, insert “unless the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state”.

Amendment of regulation 40 (protection of wild birds, their eggs and nests)

55. In regulation 40—

- (a) in paragraphs (5)(c) and (6), for “relevant EU instrument”, substitute “relevant retained EU law”; and
- (b) in paragraph 6(b), for “is adopted” substitute “transposes an instrument adopted”.

Amendment of regulation 41 (defences to the offences in regulation 40)

56. In regulation 41(7)(b), omit “(other than the United Kingdom)”.

Amendment of regulation 42 (prohibition of certain methods of capturing or killing wild birds)

57. In regulation 42, for paragraph (2), substitute—

“(2) The prohibited means of capturing or killing wild birds are those listed in Schedule 2A.”.

Amendment of regulation 43 (sale etc. of live or dead wild birds, eggs etc.)

58. In regulation 43(4)(b), omit “(other than the United Kingdom)”.

Amendment of regulation 45 (protection of wild animals listed in Annex IV(a) to the Habitats Directive)

59.—(1) Regulation 45 is amended as follows.

(2) In paragraphs (11)(c) and (12), for “relevant EU instrument”, substitute “relevant retained EU law”; and

(3) In sub-paragraph 12(b), at the beginning add “transposes an instrument”.

Amendment of regulation 46 (defences to the offences in regulation 45)

60. In regulation 46(10), before sub-paragraph (a), insert—

“(aa) it was taken from the wild in the United Kingdom without contravention of the law and before 10th June 1994;”.

Amendment of regulation 47 (prohibition of certain methods of capturing and killing wild animals)

61.—(1) Regulation 47 is amended as follows.

(2) In paragraph (2), for sub-paragraphs (a) and (b), substitute—

“(a) any means listed in paragraph 1 or 2 of Schedule 3A;

(b) any form of capturing or killing from any mode of transport listed in paragraph 3 of Schedule 3A.”.

(3) Omit paragraphs (3) and (4).

Amendment of regulation 49 (offences relating to wild plants listed in Annex IV(b) to the Habitats Directive)

62. In regulation 49(6), before sub-paragraph (a), insert—

“(aa) it was taken from the wild in the United Kingdom without contravention of the law and before 10th June 1994;”.

Amendment of regulation 50 (surveillance of conservation status of habitats and species)

63. In regulation 50, in paragraphs (1) to (3), in each place where it occurs, for “natural habitats of Community interest and species of wild flora and fauna of Community interest”, substitute “natural habitat types listed in Annex I of the Habitats Directive and species of wild fauna and flora listed in Annex II, IV or V of that Directive”.

Amendment of regulation 54 (introduction of new species)

64. In regulation 54(8), at the end, insert “unless the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state”.

Insertion of new regulation 55A

65. After regulation 55, insert—

“Report on licences

55A.—(1) Within two years from exit day, and thereafter within two years of the publication of the last such report, the relevant administration must publish, in such form as it sees fit, a report on licences granted under regulation 55 for the preceding two years .

(2) A report published under paragraph (1) must specify—

- (a) the species to which the licence relates, and the reason for granting the licence, including the nature of the risk, with, if appropriate a reference to alternatives rejected and scientific data used;
- (b) in relation to any animal species, any means authorised for the capture or killing of the species and the reasons for the use of that means;
- (c) the circumstances of when and where the licence was granted; and
- (d) the supervisory measures taken to check that the required conditions of the licence have been complied with, any monitoring that has been carried out of compliance with the conditions of the licence, and the results of that monitoring.”.

Amendment of regulation 74 (research)

66. Omit regulation 74(2).

Amendment of regulation 76 (re-introduction of species)

67. In regulation 76(5)(a), for “other” substitute “any”.

Omission of regulation 79 (reports to the Commission)

68. Omit regulation 79.

Insertion of new regulations 84A and 84B

69. After regulation 84, insert—

“Amendment of Schedules

84A.—(1) The Secretary of State may, where satisfied that the natural range of a species of animal listed in Annex IV(a) to the Habitats Directive includes any part of the offshore marine area, by regulations amend Schedule 1 as appropriate in the light of that conclusion.

(2) The Secretary of State may make such other amendment as he considers necessary for adapting Schedules 1 to 3A to technical and scientific progress.

(3) Before exercising the power under paragraph (1) or (2), the Secretary of State must obtain the consent of the devolved administrations.

Statutory instruments

84B.—(1) The power to make an amendment under paragraph (1) or (2) of regulation 84(A) is exercisable by statutory instrument.

(2) A statutory instrument made by the Secretary of State under regulation 84A(1) may not be made unless a draft of the statutory instrument has been laid before, and approved by a resolution of, each House of Parliament;

(3) A statutory instrument made by the Secretary of State under regulation 84A(2) is subject to annulment in pursuance of a resolution of either House of Parliament.”.

New regulation 86A

70. After regulation 86, insert—

“Transitional provisions: EU exit

86A.—(1) Where before exit day a site in the offshore marine area has been adopted in accordance with the procedure laid out in Article 4(2) of the Habitats Directive (list of sites of Community importance), the relevant administration must designate that site as a special area of conservation as soon as possible and no later than six years from the date of adoption of that site.

(2) Paragraph (3) applies where before exit day a site in the offshore marine area—

- (a) has been proposed as eligible for identification as of Community importance in accordance with the procedure laid out in Article 4(2) of the Habitats Directive (list of sites of Community importance) as part of a list of sites transmitted to the European Commission; and
- (b) has not yet been so identified as being of Community importance.

(3) Where this paragraph applies, the relevant administration must within six years of exit day—

- (a) designate the site as a special area of conservation; or
- (b) give notice to the Joint Committee of its intention not to designate the site, and publish, in such form as it sees fit, its reasons for not designating the site, having regard the objective in regulation 7(3).”.

Insertion of new Schedule 2A

71. After Schedule 2, insert Schedule 2A, set out in Schedule 2 to these Regulations.

Insertion of new Schedule 3A

72. After Schedule 3, insert Schedule 3A, set out in Schedule 3 to these Regulations.

PART 5

Amendments to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001

Amendment of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001

73. The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(a) are amended as follows.

Amendment of regulation 2 (interpretation)

74.—(1) Regulation 2 is amended as follows.

(2) In paragraph (1)—

- (a) after the definition of “the 1998 Act” insert—

““the 2017 Regulations” means the Conservation of Habitats and Species Regulations 2017;”

- (b) In the definition of “relevant site”—

- (i) omit sub-paragraph (c); and
- (ii) for sub-paragraph (d) substitute—

(a) S.I. 2001/1754; relevant amendments were made by S.I.s 2007/77, 2007/1842, 2010/1513 and 2015/1431.

- “(d) an area classified, as a special protection area, before exit day pursuant to Article 4(1) or (2) of the Wild Birds Directive or classified as such after exit day under any of the retained transposing regulations, or”; and
- (c) after the definition of “relevant site” insert—
 - ““the retained transposing regulations” means—
 - (a) the Conservation (Natural Habitats, &c.) Regulations 1994;
 - (b) the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;
 - (c) the Conservation of Offshore Marine Habitats and Species Regulations 2017;
 - (d) the 2017 Regulations;”.
- (3) In paragraph (2), at the beginning, insert “Subject to paragraphs (3) and (4),”.
- (4) After paragraph (2) insert—
 - “(3) For the purposes of these Regulations—
 - (a) the Habitats Directive is to be construed as if—
 - (i) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom;
 - (ii) any reference to “Member State” or “Member States” included a reference to the United Kingdom;
 - (iii) any reference to “of Community interest” included, in relation to the United Kingdom, a reference to “of national interest”;
 - (iv) in Article 1(d) and (h), references to “the Community” were references to “the European Union or the United Kingdom”;
 - (v) in Article 1(l), the reference to “a site of Community importance designated by the Member State” included, in relation to the United Kingdom, a reference to “a site of national importance designated under any of the retained transposing regulations”;
 - (b) the Wild Birds Directive is to be construed as if—
 - (i) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom;
 - (ii) any reference to “Member State” or “Member States” included a reference to the United Kingdom.
- (4) Any reference in these Regulations to the “requirements” or “objectives” of the Directives is to be construed as if the objectives of the Directives included the objectives referred to regulation 16A(2) of the 2017 Regulations.”

Amendment of regulation 3 (application of the Directives)

75. In regulation 3 (application of the Directives), omit paragraph (2).

Amendment of regulation 6 (projects which should be carried out for imperative reasons of overriding public interest)—

76.—(1) Regulation 6, is amended as follows.

(2) For paragraph (2)(b) substitute—

- “(b) the Secretary of State has consulted, and had regard to the opinion of—
- (i) the Joint Nature Conservation Committee;
- (ii) the Scottish Ministers;
- (iii) the Department of Agriculture, Environment and Rural Affairs;
- (iv) the Welsh Ministers; and
- (v) any other person the Secretary of State considers appropriate.”.

- (3) In paragraph (3), for “Natura 2000” substitute “the national site network”;
- (4) After paragraph (4), insert—
- “(5) In this regulation, “the national site network” means such sites as—
- (a) immediately before exit day formed part of Natura 2000, or
 - (b) at any time on or after exit day are a relevant site.”.

Amendment of regulation 7 (control of activities under licence)

77. In regulation 7(9), for “pursuant to Article 4 of the Wild Birds Directive” substitute “under any of the retained transposing regulations”.

Amendment of regulation 20A (fees)

- 78.** In regulation 20A, after paragraph (1)(c) insert—
- “(ca) consulting any person under regulation 6(2)(b);”.

Signatory text

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

We consent

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE 1

Regulation 31

**New Schedule 4A to the Conservation of Habitats and Species
Regulations 2017**

“SCHEDULE 4A

Regulation 45

Prohibited Methods of Capturing or Killing Wild Animals

- 1.** The prohibited means of capturing or killing mammals are—
- (a) the use of blind or mutilated animals as live decoys;
 - (b) tape recorders;
 - (c) electrical and electronic devices capable of killing or stunning;
 - (d) artificial light sources;
 - (e) mirrors and other dazzling devices;
 - (f) devices for illuminating targets;
 - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
 - (h) explosives;
 - (i) nets which are non-selective according to their principle or their conditions of use;

- (j) traps which are non-selective according to their principle or their conditions of use;
 - (k) crossbows;
 - (l) poisons and poisoned or anaesthetic bait;
 - (m) gassing or smoking out; and
 - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
2. The prohibited methods of capturing or killing fish are—
- (a) poison; and
 - (b) explosives.
3. The prohibited modes of transport are—
- (a) aircraft; and
 - (b) moving motor vehicles.”

SCHEDULE 2

Regulation 71

New Schedule 2A to the Conservation of Offshore Marine Habitats and Species Regulations 2017

“SCHEDULE 2A

Regulation 42(2)

Prohibited Methods of Capturing or Killing of Wild Birds

1. The prohibited means of capturing or killing wild birds are—
- (a) snares, limes or hooks;
 - (b) using blind or mutilated birds as live decoys;
 - (c) sound recordings;
 - (d) electrical or electronic devices capable of killing or stunning;
 - (e) artificial light sources;
 - (f) mirrors or other dazzling devices;
 - (g) devices for illuminating targets;
 - (h) sighting devices for night shooting comprising an electronic image magnifier or image converter;
 - (i) explosives;
 - (j) nets or traps;
 - (k) poisoned or anaesthetic bait; and
 - (l) automatic or semi-automatic weapons with a magazine capable of holding more than two rounds of ammunition.”

New Schedule 3A to the Conservation of Offshore Marine Habitats and Species Regulations 2017

“SCHEDULE 3A

Regulation 47(2)

Prohibited Methods of Capturing or Killing Wild Animals

1. The prohibited means of capturing or killing mammals are—
 - (a) the use of blind or mutilated animals as live decoys;
 - (b) sound recordings;
 - (c) electrical and electronic devices capable of killing or stunning;
 - (d) artificial light sources;
 - (e) mirrors and other dazzling devices;
 - (f) devices for illuminating targets;
 - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
 - (h) explosives;
 - (i) nets which are non-selective according to their principle or their conditions of use;
 - (j) traps which are non-selective according to their principle or their conditions of use;
 - (k) bows and crossbows;
 - (l) poisons and poisoned or anaesthetic bait;
 - (m) gassing or smoking out; and
 - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
2. The prohibited methods of capturing or killing fish are—
 - (a) poison; and
 - (b) explosives.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) and section 14(1) of, paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7, to the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a),(b), (c), (d), (f) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of biodiversity protection in relation to England, Wales and offshore waters. Part 2 amends primary legislation and Parts 3, 4 and 5 amend subordinate legislation.

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

£6.90

UK201812071020 12/2018 19585

<http://www.legislation.gov.uk/id/ukdsi/2019/9780111176573>

Pack Page 264

ISBN 978-0-11-117657-3



9 780111 176573

EXPLANATORY MEMORANDUM TO
THE CONSERVATION OF HABITATS AND SPECIES (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument makes changes to the three existing instruments which transpose the Habitats and Wild Birds Directives so that they continue to work (are operable) upon the UK's exit from the European Union (EU). The existing instruments are: The Conservation of Habitats and Species Regulations 2017; The Conservation of Offshore Marine Habitats and Species Regulations 2017; and The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001. This instrument also amends section 27 of the Wildlife and Countryside Act 1981 to ensure existing protections continue.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Conservation of Habitats and Species Regulations 2017 and The Conservation of Offshore Marine Habitats and Species Regulations 2017 ("the 2017 Regulations") are the principal pieces of secondary legislation which transpose the terrestrial and offshore marine aspects of the EU Habitats Directive (Council Directive 92/43/EEC) and certain elements of the EU Wild Birds Directive (Directive 2009/147/EC), commonly referred to as the Nature Directives, into domestic law. The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 ("the 2001 Regulations") apply to specific activities only. The Nature Directives lay down rules for the protection and management of habitats and the protection and exploitation of species.

Why is it being changed?

- 2.3 The 2017 and 2001 Regulations fulfil the objectives of the Nature Directives in the UK's terrestrial areas, inland waters and its inshore and offshore marine areas by ensuring that activities are carried out in a manner that is consistent with the Directives. This instrument provides changes to those parts of the 2017 and 2001 Regulations which would no longer work when the UK leaves the EU.

What will it now do?

- 2.4 The intention is to ensure habitat and species protection and standards as set out under the Nature Directives are implemented in the same way or an equivalent way when the UK exits the EU. There is no change to policy.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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

3.2 The territorial application of this instrument varies between provisions.

3.3 This instrument amends two instruments that are limited to England and Wales, which are The Conservation of Habitats and Species Regulations 2017 and The Wildlife and Countryside Act 1981 and two that extend to England, Wales, Scotland and Northern Ireland but are not within devolved competence. Those are The Conservation of Offshore Marine Habitats and Species Regulations 2017 and The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom except for Part 2 which extends to England and Wales, and Part 3 which extends to England and Wales but is subject to regulation 2 of the Conservation of Habitats and Species Regulations 2017 which extend certain provisions in certain circumstances to Scotland and Northern Ireland.

4.2 The territorial application of this instrument is the United Kingdom except for Part 2 which applies to England and Wales.

5. European Convention on Human Rights

5.1 The Parliamentary under Secretary of State for the Environment, Thérèse Coffey, has made the following statement regarding Human Rights:

“In my view the provisions of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument corrects deficiencies in The Conservation of Habitats and Species Regulations 2017; The Conservation of Offshore Marine Habitats and Species Regulations 2017; and The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 which will arise when the UK exits the EU. It also amends section 27 of the Wildlife and Countryside Act 1981 to maintain existing protections and enforcement for species of wild birds. This instrument is being made using the powers in section 8 (1), and section 14(1) of, paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. Without these amendments the UK would be unable to continue to apply some of the protection measures provided by EU Habitats Directive (Council Directive 92/43/EEC) and certain elements of the EU Wild Birds Directive (Directive 2009/147/EC).

7. Policy background

What is being done and why?

- 7.1 In order to maintain existing environmental protections when the UK exits the EU and for regulations to operate effectively any deficiencies in existing legislation arising from the UK's exit need to be corrected. This instrument addresses those deficiencies which arise in the 2017 Regulations, The 2001 Regulations, and the Wildlife and Countryside Act 1981 and ensures the UK will continue to meet its international commitments in particular under The Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) and The Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention).
- 7.2 Part 1 of this instrument provides a short introduction.
- 7.3 In Part 2 a minor amendment is made to section 27 of the Wildlife and Countryside Act 1981 (WCA). Currently "wild bird" is defined in the WCA in terms of species found in or visiting the European territory of a Member State. On exiting the EU this would mean that species of wild birds found in the UK but not elsewhere in the EU would no longer be protected. To ensure such species of wild birds continue to be protected the definition is amended to add the UK. Species of wild birds found in or regularly visiting either the UK or the European territory of a Member State will continue to be protected.
- 7.4 Part 3 amends the Conservation of Habitats and Species Regulations 2017 (covering England and Wales) and Part 4 amends the Conservation of Offshore Marine Habitats and Species Regulations 2017 (covering the United Kingdom). The changes in Part 4 largely mirror changes made in Part 3. Paragraphs 7.7 to 7.14 provide additional information and detail the main changes.
- 7.5 Part 5 of these regulations amends the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 and is consistent with changes made to the 2017 Regulations.
- 7.6 The costs incurred by the Secretary of State for Business, Energy and Industrial Strategy (BEIS) in exercising imperative reasons of overriding public interest (IROPI) related functions under regulation 6 of the 2001 Regulations which would have previously been undertaken by the European Commission are recovered through fees charged to persons applying for consent to undertake such IROPI projects. These regulations amend the fees provision in regulation 20A of the 2001 Regulations to allow charging for work when carrying out this new activity.
- 7.7 References throughout these regulations are re-defined in a UK only context. For example,
- References to the territory of the EU become references to "the territory of the UK".
 - Sites designated under the Nature Directives previously contributed to the EU's Natura 2000 network. A national site network is created to retain the concept of a UK network of sites. The 'national site network' is defined as including Natura 2000 sites designated prior to EU exit and those Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) designated post EU exit.
 - There is also clarification that any guidance that refers to Natura 2000 is construed as referring to the national site network.

- Various terms in the Habitats and Wild Birds Directives that relate to the EU are amended to be relevant to the UK after EU exit. It also clarifies that any reference to the “the requirements of the Directive” should be understood to include the management objectives of the national site network. A power is also provided for the relevant appropriate authority¹ to provide guidance to interpret these requirements should there be a need for further clarification.
- 7.8 Current references to “European site”, “European Marine Site”, “Special Area of Conservation” and “Special Protection Area” are retained as there is no operability reason for these to change.
 - 7.9 Reporting requirements are transposed by these Regulations and reporting will no longer be to the European Commission. Each appropriate authority will report publically on the implementation of the Regulations within six years from the date of exit and every six years thereafter and the Secretary of State will compile these into a combined report within 2 years of that. Biennial reporting on the use of exemptions/derogations from protections is maintained.
 - 7.10 At present the European Commission considers the designation of new SACs in a 2-stage process based on criteria set out in Annex III of the EU Habitats Directive. The European Commission’s role is removed by transferring the assessment function to the appropriate authority acting on the advice of the appropriate nature conservation body and the Joint Nature Conservation Committee (JNCC). Where a site may be part way through designation at the time of exit the means is provided to either complete the designation process or explain why that process will not now go ahead.
 - 7.11 Management objectives are established for the national site network. Appropriate authorities are required to manage, and where necessary, adapt the national site network and co-operate with each other to meet the management of objectives of the national site network. The management objectives encompass the requirement to maintain or restore habitats and species to favourable conservation status and contribute to ensuring the survival and reproduction of birds in their area of distribution. These objectives need to be considered in combination with the existing general duty on Ministers to secure the requirements of the Directives when exercising their functions. Appropriate authorities must also have regard to these objectives for the management of SACs and SPAs.
 - 7.12 The role of the European Commission in giving an opinion as to whether imperative reasons of overriding public interest (IROPI) apply in relation to plans and projects adversely affecting priority habitats or species (as listed in Annex I and II of the EU Habitats Directive), where the overriding public interest reasons do not relate to human health, public safety or beneficial consequences of primary importance to the environment has been removed. Priority habitats and species are those which are considered to be under threat of disappearance such as saline lagoons. A competent authority (e.g. a planning authority) would now seek an opinion from the appropriate authority (Secretary of State in England or Welsh Minister in Wales) as to whether their reasons to proceed are to be considered imperative reasons of overriding public

¹ For the Conservation of Habitats and Species Regulations 2017 the ‘appropriate authority’ means the Secretary of State for England or Welsh Government. For the Conservation of Offshore Marine Habitats and Species Regulations 2017 the ‘relevant administration’ means either the Secretary of State for England, Welsh Government, Scottish Government or Northern Ireland Executive.

interest. The appropriate authority would need to take account of the national interest and consult widely, seeking advice from other Devolved Administrations, Joint Nature Conservation Committee (JNCC) and any other person the appropriate authority considers appropriate.

- 7.13 Currently, the definition of third country ships covers all ships not registered in the EU or Gibraltar, and provides such ships with exemptions from offences relating to damage to offshore nature conservation sites. This definition is extended to cover all non-UK ships as there is no longer any basis for treating such vessels differently and ensures the UK continues to comply with international law regarding freedom of passage.
- 7.14 Currently annexes to the Directives list those habitats, plants and animals to which the Directives apply and to which the European Commission can propose amendments. They also list other conditions such as the criteria for selecting SACs and prohibited methods of killing. A new instrument-making power is provided to make amendments as necessary for adapting the annexes in the Directives and schedules in the Regulations to technical and scientific progress. Prohibited methods of capturing and killing of wild animals, currently listed in the body of the Regulations, are transferred into new schedules to allow for future amendments for scientific or technical reasons using the instrument-making power.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8(1) and section 14(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the powers in paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 covering devolved administrations, the charging of fees and the consent of HM Treasury. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 None

10. Consultation outcome

- 10.1 No separate consultation exercise was conducted as the purpose of this instrument is intended to amend regulations to maintain continuity of the policy approach in the context of the UK leaving the EU and is not intended to change policy. Engagement with key stakeholder organisations took place to explain the purpose of the instrument. The Devolved Administrations have confirmed they are content with this instrument.

11. Guidance

- 11.1 Various guidance produced by Natural England, Natural Resources Wales, the Environment Agency, the Marine Management Organisation, Forestry Commission, the Joint Nature Conservation Committee, government departments and the European

Commission already exists. The most critical guidance is being made accessible in one place via .gov.uk for when the UK exits the EU.

12. Impact

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

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring and review

- 14.1 The approach to monitoring of this legislation is set out in the 2017 Regulations and applies only in relation to England. The first review must be conducted by the Secretary of State England and published before 30th November 2022 and not more than every five years thereafter.
- 14.2 As this instrument is made under the EU (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Mark Baxter at the Department for Environment, Food and Rural Affairs Telephone: 0208 026 6794 or email: Mark.Baxter@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Richard Pullen at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Thérèse Coffey, Parliamentary Under Secretary of State for the Environment at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because: the Government has stated its intention that there should be no increase in cost or protection; there are no powers to introduce changes other than those which facilitate operability

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are: to ensure the regulations continue to operate effectively and maintain protections for habitats and species when the UK exits the EU and are set out at paragraphs 2.1, 2.2, 2.3 and 2.4 of this Memorandum.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey has made the following statement(s)

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 3.2 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

61 - The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 18 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 15
SICM under SO 30A (because amends primary legislation)	Paper 16

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ('the 2019 Regulations') are proposed to be made by the UK Government pursuant to section 8(1), and section 14(1) of, paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The 2019 Regulations (affirmative procedure) makes changes to the three existing instruments which transpose the Habitats and Wild Birds Directives so that they continue to work (are operable) upon the UK's exit from the European Union (EU). The existing instruments are: The Conservation of Habitats and Species Regulations 2017; The Conservation of Offshore Marine Habitats and Species Regulations 2017; and The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001. This instrument also amends section 27 of the Wildlife and Countryside Act 1981 to ensure existing protections continue.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 18 December 2018 regarding the effect of these Regulations:

- Other than in the heading, "European Directly Applicable Instruments amended by the 2019 Regulations", the statement incorrectly refers throughout to the 2019 Regulations as being dated 2018. (The Statutory Instrument Consent Memorandum also incorrectly refers throughout to the 2019 Regulations as being dated 2018).
- The statement omits reference to The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001. These Regulations form part of the three sets of domestic Regulations subject to change by the 2019 Regulations according to the Explanatory Memorandum ('EM'). The territorial application of these Regulations is the United Kingdom. Whilst paragraph 3.3 of the EM states that these and The Conservation of Offshore Marine Habitats and Species Regulations 2017 are not within devolved competence - which may have been a reason why they might be omitted - it is anomalous that the statement does include the latter as secondary legislation amended by the 2019 Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/LG/0497/18
Mick Antoniwm AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

19 December 2018

Dear Mick

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of The Public Procurement (Amendment) (EU Exit) Regulations 2019 ("the Regulations"), as required by Standing Order 30A. The Regulations contain amendments to Section 155 (2) and (3) of the Equality Act 2010.

I am not minded to lay a motion for a debate about this SI in this instance. I have reached this decision on the basis that this SI is restricted to making corrections to the deficiencies in law that will arise as a result of the UK leaving the EU.

The SI makes technical amendments to the Equality Act 2010 and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.drakeford@gov.Wales

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

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Public Procurement (Amendment) (EU Exit) Regulations 2019 - amendments to Section 155 (2) and (3) of the Equality Act 2010.**

DATE **18 December 2018**

BY **Prof Mark Drakeford AM, First Minister of Wales**

Public Procurement (Amendment) (EU Exit) Regulations 2019 - amendments to Section 155 (2) and (3) of the Equality Act 2010

The Law which is being amended

These Regulations amend section 155(2) and (3) of the Equality Act 2010.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The proposed amendments will have no impact on the Assembly's legislative competence and/or the Welsh Ministers' executive competence.

The purpose of the amendments

These Regulations amend section 155(2) and (3) of the Equality Act 2010 to define a term by reference to the Public Contract Regulations 2015, rather than by reference to the Public Sector Directive. This amendment is technical in nature and is required in order for this provision to operate effectively after EU exit.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here:

<http://www.legislation.gov.uk/ukdsi/2019/9780111176788/contents>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency and to ensure consistency and coherence of the statute book. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Equality Act 2010.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

Public Procurement (Amendment) (EU Exit) Regulations 2019 which contain amendments to Section 155 (2) and (3) of the Equality Act 2010

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("Assembly") if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Public Procurement (Amendment) (EU Exit) Regulations 2019 were laid before Parliament on 13 December 2018. The Regulations can be found at:

<http://www.legislation.gov.uk/ukdsi/2019/9780111176788/contents>

Summary of the Regulations and their objective

3. The objective of the SI, in the main, is to correct deficiencies in legislation arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018.
4. The Regulations make amendments to a suite of procurement related legislation but the amendments to which this SICM relates are technical amendments to section 155 (2) and (3) of the Equality Act 2010. These amendments are required to ensure this provision of the Equality Act 2010 can continue to operate effectively post EU exit.
5. The SI to which this Statutory Instrument Consent Memorandum relates has been laid in the UK Parliament under the negative procedure, which will automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the provisions that amend the primary legislation referenced in this Memorandum would come into force on exit day.

Provisions to be made by the Regulations for which consent is sought

6. The primary legislation that is within the legislative competence of the Assembly that is to be amended by the draft SI, is section 155(2) and (3) the Equality Act 2010, which itself is amended by regulation 3 of the Regulations. The amendment provides for defining a term by reference to the Public Contracts Regulations 2015, rather than by reference to the Public Sector Directive. The Public Contract Regulations 2015 are domestic regulations which gave effect to the Public Sector Directive.

7. It is the view of the Welsh Government that the provisions described above fall within the legislative competence of the National Assembly for Wales, and could be the subject of a National Assembly Bill.

Why is it appropriate for the Regulations to make this provision

8. This amendment is relatively minor and is technical in nature given that it provides for certain terms to be defined by reference to a set of domestic regulations which gave effect to an EU Directive, rather than by reference to the EU Directive itself. There is no divergence between the Welsh Government and the UK Government in relation to the policy of the correction. Making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In the exceptional circumstances presented by EU exit, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Financial implications

9. There are no anticipated financial implications for the Welsh Government associated with these Regulations.

Prof Mark Drakeford AM
First Minister of Wales
18 December 2018

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No.

EXITING THE EUROPEAN UNION

PUBLIC PROCUREMENT

**The Public Procurement (Amendment etc.) (EU Exit)
Regulations 2019**

Made - - - -

Coming into force in accordance with regulation 1

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

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

PART 1

GENERAL

Citation, commencement and transitional and saving provision

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

(2) Except for regulations 6, 8, and 10, these Regulations come into force on exit day.

(3) Regulations 6, 8 and 10 come into force eight months after the day on which exit day falls.

(4) The amendments and modifications made by these Regulations are subject to the transitional and saving provision made by the Schedule.

^(a) 2018 c. 16.

PART 2

AMENDMENT OF PRIMARY LEGISLATION

The Greater London Authority Act 1999

- 2.**—(1) The Greater London Authority Act 1999(a) is amended as follows.
- (2) In section 355 (duties of waste collection authorities etc), in subsection (8)—
- (a) in paragraph (b)—
 - (i) for “sends” substitute “submits”;
 - (ii) for “Publications Office of the European Union” substitute “UK e-notification service”;
 - (b) in paragraph (c), for “sends” substitute “submits”.
- (3) In section 356 (directions by the Mayor), in subsection (3A)(b)—
- (a) for “sent” substitute “submitted”;
 - (b) for “Publications Office of the European Union” substitute “UK e-notification service”.
- (4) In section 358 (information about new waste contracts)—
- (a) in subsection (1ZA)(a)—
 - (i) for “send” substitute “submit”;
 - (ii) for “Publications Office of the European Union” substitute “UK e-notification service”;
 - (b) in subsection (1A), in the words before paragraph (a) and in paragraph (a), for “send” substitute “submit”;
 - (c) in subsection (1BA)—
 - (i) in paragraph (a), for “send” substitute “submit”;
 - (ii) in paragraph (b)—
 - (aa) for “send” substitute “submit”;
 - (bb) for “Publications Office of the European Union” substitute “UK e-notification service”;
 - (d) in subsection (1C), in the words before paragraph (a) and in paragraph (a), for “send” substitute “submit”.
- (5) In section 360 (interpretation of sections 353 to 359), in subsection (2), after the definition of “treatment” insert—
- “the UK e-notification service” has the same meaning as in the Public Procurement Regulations”.

The Equality Act 2010

- 3.**—(1) The Equality Act 2010(b) is amended as follows.
- (2) In section 155 (power to impose specific duties: supplementary)—
- (a) in subsection (2), for “Public Sector Directive” substitute “Public Contracts Regulations”;
 - (b) in subsection (3), for the definitions substitute—

(a) 1999 c. 29; sections 355(8), 356(3A) and 358(1ZA) and (1BA) were inserted by S.I. 2015/102 and amended by S.I. 2016/275; section 358(1A) and (1C) were respectively substituted and inserted by the Greater London Authority Act 2007 (c. 24), section 39(1) to (3) and amended by S.I. 2015/102.

(b) 2010 c. 15; section 155(3) was amended by S.I. 2016/275.

““Public Contracts Regulations” means the Public Contracts Regulations 2015 (S.I. 2015/102) or, in Scotland, the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time;

“public procurement functions” means functions the exercise of which is regulated by Part 2 of the Public Contracts Regulations 2015 (S.I. 2015/102) or by the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time.””.

The Public Services (Social Value) Act 2012

4.—(1) The Public Services (Social Value) Act 2012(a) is amended as follows.

(2) In section 1 (contracts of relevant authorities)—

- (a) in subsection (2)(a), for “sending a notice to the Publications Office of the European Union” substitute “submitting a notice to the UK e-notification service”;
- (b) in subsection (15), after the definition of “sub-central contracting authority” insert—

“the UK e-notification service” has the same meaning as in the Regulations (whether or not the Regulations apply)”.

PART 3

AMENDMENT OF SECONDARY LEGISLATION

CHAPTER 1

THE PUBLIC CONTRACTS REGULATIONS 2015

Amendments commenced on exit day

5.—(1) The Public Contracts Regulations 2015(b) are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

- (a) omit the definition of “the Commission”;
- (b) after the definition of “Contracts Finder” insert—

“covered by regulation 3(2)”, in relation to an element, a part of a contract, or procurement, means that regulation 3(2)—

 - (a) applies to that element, part or procurement, or
 - (b) would do so if this Part applied;”;
- (c) after the definition of “design contests” insert—

“devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998(c));

“devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006(d);”;
- (d) omit the definitions of “ESPD” and “EU Publications Office”;

(a) 2012 c. 3; section 1(2)(a) was amended by S.I. 2015/102; in section 1(15), the definition of “sub-central contracting authority” was inserted by S.I. 2016/275.

(b) S.I. 2015/102, amended by S.I. 2016/275, 696; there are other amending instruments but none is relevant.

(c) 1998 c. 47; section 6 was amended by S.I. 2011/1053, article 6(2)(a) and by the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”), section 12(5); section 6A was inserted by the 2018 Act, section 12(6); section 7 was amended by the Justice (Northern Ireland) Act 2002 (c. 26), section 84(1) and Schedule 13, by the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33) and by the 2018 Act, Schedule 3, paragraphs 50 and 51; section 7A was inserted by the Northern Ireland (Miscellaneous Provisions) Act 2014 (c. 13), section 6(1) and (3).

(d) 2006 c. 32; section 157A was inserted by the Wales Act 2017 (c. 4), section 4(1).

- (e) in the definition of “GPA”, after “amended” insert “before exit day”;
 - (f) in the definition of “innovation”, omit “the Europe 2020 strategy for smart,”;
 - (g) after the definition of “qualified certificate for electronic signature” insert—
 - ““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;
 - “SPD” means the Single Procurement Document referred to in regulation 59(1);”;
 - (h) omit the definition of “the Treaties”;
 - (i) before the definition of “VAT” insert—
 - ““the UK e-notification service” has the meaning given by regulation 51(5), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with regulation 51(7);”.
- (3) In regulation 3 (subject-matter and scope of Part 2), for paragraph (2) substitute the following—
- “(2) This Part—
- (a) does not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
 - (b) does not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.
- (3) The arms, munitions and war material to which paragraph (2)(b) applies are, subject to paragraph (5), those included in the 1958 List.
- (4) Subject to the effect of any regulations made under paragraph (5), any measures which, if they had been taken immediately before exit day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2).
- (5) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of this Part as if it were changed in respects specified in the regulations.
- (6) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.
- (4) In regulation 4 (mixed procurement), in paragraph (3), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (5) In regulation 5 (threshold amounts)—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), for “the sum specified in Article 4(a) of the Public Contracts Directive” substitute “£4,551,413”;
 - (ii) in sub-paragraph (b), for “the sum specified in Article 4(b) of the Public Contracts Directive” substitute “£118,133”;
 - (iii) in sub-paragraph (c), for “the sum specified in Article 4(c) of the Public Contracts Directive” substitute “£181,302”;
 - (iv) in sub-paragraph (d), for “the sum specified in Article 4(d) of the Public Contracts Directive” substitute “£615,278”;
 - (b) in paragraph (2), for “Article 4(c) of the Public Contracts Directive” substitute “paragraph (1)(c)”;

- (c) omit paragraphs (3) and (4).
- (6) After regulation 5 insert—

“Review and amendment of certain thresholds

5A.—(1) Every two years the Minister for the Cabinet Office must review the thresholds mentioned in regulation 5(1)(a), (b) and (c) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Minister must do so by calculating the sterling value of each of the reviewable thresholds on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of a reviewable threshold so calculated differs from the sum for the time being mentioned in regulation 5(1) in respect of that threshold, the Minister must make regulations amending regulation 5(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

- (a) must be made and laid before Parliament before 1st November following the end of the 24 month period covered by the review; and
- (b) must provide for the substitution to come into force on the following 1st January.

(6) The first review under this regulation must relate to the 24 month period ending with 31st August 2019.”.

(7) In regulation 6 (methods for calculating the estimated value of procurement)—

- (a) in paragraph (7), for “sent” substitute “submitted”;
- (b) in paragraph (14)(a), for “80,000 euro” substitute “£65,630”;
- (c) in paragraph (14)(b), for “1 million euro” substitute “£820,370”.

(8) In regulation 9 (public contracts awarded, and design contests organised, pursuant to international rules), in paragraph (1)(a)—

- (a) before “Treaties” insert “Retained”;
- (b) for “a member State and one or more third” substitute “the United Kingdom and one or more other”.

(9) In regulation 10 (specific exclusions for service contracts), in paragraph (1)(d)—

- (a) in paragraph (i)—
 - (i) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;
 - (ii) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
- (b) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”.

(10) In regulation 11 (service contracts awarded on the basis of an exclusive right), for “TFEU” substitute “anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section”.

(11) In regulation 12 (public contracts between entities within the public sector), in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.

(12) In regulation 13 (contracts subsidised by contracting authorities)—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), for “Article 13(a) of the Public Contracts Directive” substitute “regulation 5(1)(a)”;
 - (ii) in sub-paragraph (b), for “Article 13(b) of the Public Contracts Directive” substitute “regulation 5(1)(c)”;
 - (b) omit paragraph (2).
- (13) In regulation 15 (defence and security), in paragraph (2)(a), omit “or another member State”.
- (14) In regulation 16 (mixed procurement involving defence or security aspects)—
- (a) in paragraphs (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation 3(2)”;
 - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 3(2)”.
- (15) In regulation 17 (public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—
- (a) in sub-paragraph (a)—
 - (i) before “Treaties” insert “Retained”;
 - (ii) for “a member State” substitute “the United Kingdom”;
 - (iii) for “third” substitute “other”;
 - (b) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”.
- (16) In regulation 19 (economic operators), omit paragraph (1).
- (17) In regulation 20 (reserved contracts), in paragraph (2), for “Article 20 of the Public Contracts Directive” substitute “this regulation”.
- (18) In regulation 22 (rules applicable to communication)—
- (a) in paragraph (15)(a)(i)—
 - (i) for “in the Official Journal” substitute “on the UK e-notification service”;
 - (ii) for “sent” substitute “submitted”;
 - (b) in paragraph (20), for the words from “the Public” to the end substitute “this Part”.
- (19) After regulation 22 insert—

“Powers to amend regulation 22

Exceptions to obligation to require use of electronic means of communication

22A.—(1) The Minister for the Cabinet Office may make regulations amending paragraph (3) of regulation 22 by—

- (a) omitting any of the situations described in that paragraph where the Minister considers that technological developments render it inappropriate for that situation to continue to be an exception from the obligation to require electronic means of communication, or
- (b) inserting a description of a new situation where, exceptionally, the Minister considers that it must become a new exception because of technological developments.

(2) Where the Minister considers that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Minister may make regulations omitting paragraph (3) from regulation 22.

(3) Where regulations have been made under paragraph (2) and, exceptionally, the Minister considers that a new exception must be provided for because of technological

developments, the Minister may make regulations re-inserting paragraph (3) into regulation 22 in terms which give effect to that new exception (and the powers conferred by paragraphs (1) and (2) of this regulation may subsequently be exercised in relation to paragraph (3) as re-inserted).

Requirements relating to tools and devices for electronic receipt of documents

(4) The Minister for the Cabinet Office may make regulations amending the technical details and characteristics set out in regulation 22(16) if the Minister considers it appropriate to do so to take account of technical developments.”.

(20) In regulation 25 (conditions relating to the GPA and other international agreements)—

- (a) in the heading, omit “and other international agreements”;
- (b) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—
 - (i) omit “and by the other international agreements by which the EU is bound”;
 - (ii) for “those agreements” substitute “the GPA”;
 - (iii) for “of the EU” substitute “of the United Kingdom”;
- (c) after that paragraph (1) insert—

“(2) For the purposes of paragraph (1)—

- (a) each country that was a member State immediately before exit day is deemed to be a signatory to the GPA; and
- (b) the EU’s Appendix 1 to the GPA has effect as if each such country were referred to in the same way that Iceland is referred to in the following places in that Appendix—
 - (i) paragraph 2(a) of Annex 1;
 - (ii) Annex 6.”.

(21) In regulation 26 (choice of procedures), in paragraph (2), omit “and the Public Contracts Directive”.

(22) In regulation 27 (open procedure)—

- (a) in paragraph (2), for “sent” substitute “submitted”;
- (b) in paragraph (4)—
 - (i) in sub-paragraph (a), for “for the contract notice in section I of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
 - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
- (c) in paragraph (5), for “sent” substitute “submitted”.

(23) In regulation 28 (restricted procedure)—

- (a) in paragraph (2)(a), for “sent” substitute “submitted”;
- (b) in paragraph (6)—
 - (i) in sub-paragraph (a), for “in section I of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
 - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
- (c) in paragraph (10)(a), for “sent” substitute “submitted”.

(24) In regulation 29 (competitive procedure with negotiation)—

- (a) in paragraph (4)(a), for “sent” substitute “submitted”;
- (b) in paragraph (6)—
 - (i) in sub-paragraph (a), for “in section 1 of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
 - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;

- (c) in paragraph (10)(a), for “sent” substitute “submitted”.
- (25) In regulation 30 (competitive dialogue), in paragraph (2), for “sent” substitute “submitted”.
- (26) In regulation 31 (innovation partnership), in paragraph (5), for “sent” substitute “submitted”.
- (27) In regulation 32 (use of the negotiated procedure without prior publication), in paragraph (2)(a), for the words from “and that” to the end substitute—
 - “and that—
 - (i) a report is sent to the Cabinet Office if it so requests;
 - (ii) where the contracting authority is a devolved Welsh authority, a report is sent to the Welsh Ministers if they so request (whether or not the Cabinet Office also makes a request under paragraph (i));
 - (iii) where the contracting authority is a devolved Northern Ireland authority, a report is sent to a Northern Ireland department if that department so requests (whether or not the Cabinet Office also makes a request under paragraph (i));”
- (28) In regulation 34 (dynamic purchasing systems)—
 - (a) in paragraph (9)(a), for “sent” substitute “submitted”;
 - (b) in paragraph (25), for “ESPD” substitute “SPD”;
 - (c) for paragraph (28) substitute the following—
 - “(28) Where the period of validity is changed without terminating the dynamic purchasing system, the contracting authority shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.
 - (28A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (27) or (28), the contracting authority shall submit for publication on the UK e-notification service a contract award notice under regulation 50.”.
- (29) Omit regulation 39 (procurement involving contracting authorities from other member States).
- (30) In regulation 42 (technical specifications)—
 - (a) in paragraph (9), for “adopted by a legal act of the EU” substitute “imposed by retained EU law”;
 - (b) in paragraph (11), in the words before sub-paragraph (a), omit “to the extent that they are compatible with EU law,”.
- (31) In regulation 48 (prior information notices)—
 - (a) in paragraph (2), after “Directive” insert—
 - “, but as if—
 - (a) in paragraph 2, “the second and third subparagraph of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations; and
 - (b) in paragraph 9, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”
 - ;
 - (b) in paragraph (3)(a), for “send” substitute “submit”;
 - (c) in paragraph (4)—
 - (i) for “send” substitute “submit”;
 - (ii) after “Directive” insert “, but as if, in paragraph 6, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;

- (d) in paragraph (5)—
 - (i) in sub-paragraph (c)—
 - (aa) for “set out in section 1 of part B of Annex V to the Public Contracts Directive” substitute “required by paragraph (2)”;
 - (bb) for “that part” substitute “part B of Annex 5 to the Public Contracts Directive, but as if paragraph 12 of that part (financing by EU funds) were omitted”;
 - (ii) in sub-paragraph (d), for “been sent” substitute “been submitted”.
- (32) For regulation 49 (contract notices) substitute—

“Contract notices

- 49. Contract notices—**
 - (a) shall contain the information set out in part C of Annex 5 to the Public Contracts Directive, but as if—
 - (i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations;
 - (ii) paragraph 24 (financing by EU funds) were omitted;
 - (iii) in paragraph 26, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;
 - (iv) in paragraph 28, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
 - (b) shall be submitted for publication in accordance with regulation 51.”.
- (33) In regulation 50 (contract award notices)—
 - (a) in paragraphs (1), (4) and (5)(a) and (b), for “send” substitute “submit”;
 - (b) for paragraph (2) substitute—
 - “(2) Such notices—
 - (a) shall contain the information set out in part D of Annex 5 to the Public Contracts Directive, but as if—
 - (i) in paragraph 9, “Article 67” were a reference to regulation 67 of these Regulations;
 - (ii) in paragraph 11(b), the words “Member State or from a third” were omitted;
 - (iii) paragraph 15 (financing by EU funds) were omitted;
 - (iv) in paragraph 17, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;
 - (v) in paragraph 18, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
 - (b) shall be submitted for publication in accordance with regulation 51.”.
 - (34) In regulation 51 (form and manner of sending notices for publication at EU level)—
 - (a) for the heading, substitute “Publication on the UK e-notification service”;
 - (b) in paragraph (1)—
 - (i) in the words before sub-paragraph (a)—
 - (aa) after “regulations” insert “34.”;
 - (bb) for “sent” substitute “submitted”;

- (cc) after “notices)” insert “shall be submitted to the UK e-notification service for publication.”;
 - (ii) omit sub-paragraphs (a) and (b);
 - (c) in paragraph (2), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
 - (d) in paragraph (3)—
 - (i) for “EU Publications Office” substitute “provider of the UK e-notification service”;
 - (ii) omit “the receipt of the notice and of”;
 - (e) in paragraph (4)—
 - (i) for “send” substitute “submit”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
 - (iii) omit the words from “, provided” to the end;
 - (f) after paragraph (4) insert—

“(5) In these Regulations, “the UK e-notification service” means a single web-based portal which is provided, for purposes which include the purposes of this Part, by or on behalf of the Cabinet Office.

(6) The Minister for the Cabinet Office must make arrangements under which—

 - (a) notices that are submitted to the UK e-notification service for publication are published in an area of the portal that is freely accessible to the public; and
 - (b) confirmations are issued for the purposes of paragraph (3).

(7) For the purposes of these Regulations, a notice of any description is submitted to the UK e-notification service if the information comprising the notice is entered in the portal in such form or manner as the portal may elicit it and in compliance with any specific instructions that are given within the portal about how the information, or any particular element of it, is to be entered.”.
- (35) In regulation 52 (publication at national level)—
- (a) in the heading, for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (b) in paragraph (1)—
 - (i) after “regulations” insert “34,”;
 - (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”;
 - (c) in paragraph (3)—
 - (i) after “regulations” insert “34,”;
 - (ii) from the words from “at national level” to the end substitute “otherwise than on the UK e-notification service before they are published on that service”;
 - (d) in paragraph (4)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for the words from “by the EU” to the end substitute “on that service within 48 hours after the notice was submitted to that service”;
 - (e) in paragraph (5)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
 - (iii) for “sending of the notice to the EU Publications Office” substitute “submission of the notice to that service”;
 - (f) in paragraph (6)—
 - (i) in sub-paragraph (a), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;

- (ii) in sub-paragraph (b), for “sending” substitute “submission”.
- (36) In regulation 53 (electronic availability of procurement documents), in paragraph (1), for “in the Official Journal of a notice sent” substitute “on the UK e-notification service of a notice submitted”.
- (37) In regulation 56 (general principles in awarding contracts etc)—
 - (a) in paragraph (2)—
 - (i) omit “EU law,”;
 - (ii) after “agreements or” insert “, subject to paragraphs (2A) and (2B),”;
 - (b) after paragraph (2) insert—

“(2A) Where—

 - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (2), and
 - (b) the agreement is not already listed,

the Minister for the Cabinet Office may make regulations providing that paragraph (2) is to have effect as if the agreement were listed.

(2B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (2) is to have effect as if the agreement were not listed.

(2C) In paragraphs (2A) and (2B)—

 - (a) “listed” means listed as described in paragraph (2); and
 - (b) where paragraph (2) already has effect as if an agreement were listed, “already listed” includes that agreement.”.
- (38) In regulation 57 (exclusion grounds), in paragraph (1)—
 - (a) omit sub-paragraph (e);
 - (b) in sub-paragraph (n), in the words before paragraph (i), for “Article 57(1)” substitute “Article 57(1)(a), (b), (d), (e) or (f)”.
- (39) In regulation 58 (selection criteria), omit paragraph (5).
- (40) In regulation 59 (European Single Procurement Document)—
 - (a) in the heading, omit “European”;
 - (b) in paragraph (1), omit “European”;
 - (c) in each of paragraphs (2) to (7), for “ESPD” substitute “SPD”;
 - (d) in paragraph (11)(a), for “any member State” substitute “the United Kingdom”.
- (41) In regulation 60 (means of proof)—
 - (a) in paragraph (4)(a) and (b), omit “member State or”;
 - (b) in paragraph (5)—
 - (i) omit “member State or” in both places;
 - (ii) omit “member States or”.
- (42) Omit regulation 61 (recourse to e-Certis).
- (43) In regulation 62 (quality assurance standards and environmental management standards)—
 - (a) omit paragraph (2);
 - (b) in paragraph (4)—
 - (i) omit sub-paragraphs (a) and (b);
 - (ii) in sub-paragraph (c), omit “other”;
 - (iii) omit the words after sub-paragraph (c).

- (44) Omit regulation 64 (recognition of official lists of approved economic operators and certification by certification bodies).
- (45) In regulation 68 (life-cycle costing)—
- (a) in paragraph (3)(c)—
 - (i) omit ‘third’;
 - (ii) omit the words from “or other” to the end;
 - (b) omit paragraphs (5) and (6).
- (46) In regulation 69 (abnormally low tenders)—
- (a) in paragraph (2), omit sub-paragraph (f);
 - (b) omit paragraphs (6) and (7).
- (47) In regulation 71 (subcontracting), in paragraph (5), for “ESPDs” substitute “SPDs”.
- (48) In regulation 72 (modification of contracts during their term)—
- (a) in paragraph (3), for “send” substitute “submit”;
 - (b) in paragraph (4), after “Directive” insert—
 - “, but as if—
 - (a) paragraph 9 (financing by EU funds) were omitted;
 - (b) in paragraph 11, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”; and
 - (c) in paragraph 12, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”
- (49) In regulation 73 (termination of contracts), in paragraph (1)—
- (a) after paragraph (a), insert “or”;
 - (b) after paragraph (b), omit “or”;
 - (c) omit paragraph (c).
- (50) In regulation 75 (publication of notices)—
- (a) in paragraph (4), for “sending” substitute “submitting”;
 - (b) in paragraph (5), for “send” substitute “submit”.
- (51) In regulation 77 (reserved contracts for certain services), in paragraph (5), for “Article 77 of the Public Contracts Directive” substitute “this regulation”.
- (52) In regulation 79 (notices)—
- (a) in paragraph (2)—
 - (i) in sub-paragraph (a), after “Directive” insert—
 - “, but as if—
 - (i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations;
 - (ii) in paragraph 16, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
 - (ii) in sub-paragraph (b), for “sent” substitute “submitted”;
 - (b) in paragraph (3)—
 - (i) for “send” substitute “submit”;
 - (ii) for “of dispatch” substitute “on which the notice was submitted to the UK e-notification service”;
 - (c) in paragraph (4), after “Directive” insert—

“, but as if—

- (a) paragraph 12 (financing by EU funds) were omitted;
- (b) in paragraph 13, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”; and
- (c) in paragraph 14, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”

(53) In regulation 80 (rules on the organisation of design contests and the selection of participants), omit paragraph (2).

(54) In regulation 83 (retention of contract copies)—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£820,370”;
 - (ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,203,700”;
- (b) in paragraph (2), for “applicable EU or national rules on access to documents and data protection” substitute “rules on access to documents and data protection applicable in the relevant part of the United Kingdom”.

(55) In regulation 84 (reporting and documentation requirements)—

- (a) for paragraph (4) substitute—

“(4) A contracting authority shall communicate the report, or its main elements—

 - (a) to the Cabinet Office if it so requests;
 - (b) where the contracting authority is a devolved Welsh authority, to the Welsh Ministers if they so request (whether or not the Cabinet Office also makes a request under sub-paragraph (a));
 - (c) where the contracting authority is a devolved Northern Ireland authority, to a Northern Ireland department if that department so requests (whether or not the Cabinet Office also makes a request under sub-paragraph (a)).”;
- (b) omit paragraph (5);
- (c) omit paragraph (6) and the italic heading preceding it.

(56) After regulation 84 insert—

“CHAPTER 4A REGULATIONS UNDER THIS PART

General provisions about regulations under this Part

84A.—(1) Regulations under this Part are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 3(5) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulations 22A or 56 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 22A or 56 without such consent, but in such cases the amending regulations must amend regulation 22 or, as the case may be, make provision under regulation 56, in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;

- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.
- (6) Without prejudice to paragraph (7), to the extent that the amending regulations are being made under regulation 22A, the duty imposed by paragraph (5) may be complied with by—
 - (a) restructuring regulation 22 (so that, for example, different paragraphs apply to devolved Welsh authorities and other contracting authorities or utilities respectively, where the Welsh Ministers have not consented to the making of the amending regulations); and
 - (b) amending the powers conferred by regulation 22A so that they refer to the relevant provisions in regulation 22 as so restructured.
- (7) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.
- (57) In regulation 89 (duty owed to economic operators from EEA states)—
 - (a) in the heading, for “EEA states” substitute “the United Kingdom and Gibraltar”;
 - (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
 - (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.
- (58) In regulation 90 (duty owed to economic operators from certain other states)—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (a)—
 - (aa) for “GPA state” substitute “country other than the United Kingdom”;
 - (bb) for “the GPA” substitute “Condition 1 or Condition 2”;
 - (ii) omit sub-paragraph (b) and the preceding “and”;
 - (b) for paragraph (2) substitute—

“(2) Condition 1 is that—

 - (a) at the relevant time the economic operator is from a GPA state;
 - (b) the procurement may result in the award of a contract of any description; and
 - (c) immediately before exit day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.

(2A) Condition 2 is that—

 - (a) at the relevant time the economic operator is from a country which, immediately before exit day, was a member State other than the United Kingdom;
 - (b) the procurement may result in the award of a contract of any description; and
 - (c) immediately before exit day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”;
 - (c) omit paragraph (3);
 - (d) in paragraph (4)—
 - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before exit day was”;
 - (ii) in the definition of “relevant time”—
 - (aa) for “sent” substitute “submitted”;
 - (bb) for “EU Publications Office” substitute “UK e-notification service”.
- (59) In regulation 93 (special time limits for seeking a declaration of ineffectiveness), in paragraph (3), for “in the Official Journal”, substitute “on the UK e-notification service”.
- (60) In regulation 99 (grounds for ineffectiveness)—

- (a) in paragraphs (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
- (b) in paragraph (4), in the words before sub-paragraph (a), omit the words from “is in” to “and which”.

(61) In regulation 106 (publication of information on Contracts Finder where contract notices are used)—

- (a) in paragraph (1)—
 - (i) for “sends” substitute “submits”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
- (b) in paragraph (4), for “by the EU Publications Office” substitute “on the UK e-notification service”;
- (c) in paragraph (5)—
 - (i) for “sending” substitute “submitting”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”.

(62) In regulation 108 (publication of information on Contracts Finder about contracts awarded)—

- (a) in paragraph (1)(a)—
 - (i) for “sends” substitute “submits”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
- (b) in paragraph (5)—
 - (i) for “sends, or intends to send” substitute “submits, or intends to submit”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
 - (iii) for the words from “earlier than” to the end substitute “before the notice is published on the UK e-notification service”;
- (c) in paragraph (7), for “by the EU Publications Office” substitute “on the UK e-notification service”;
- (d) in paragraph (8)—
 - (i) for “sending” substitute “submitting”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”.

(63) In regulation 112 (publication of information on Contracts Finder about contracts awarded), in paragraph (4), in the definition of “SME”, for the words from “the Commission” to the end substitute “Annex 1 to Regulation (EU) No 651/2014”.

(64) Omit Schedule 5 (professional and trade registers etc.).

Amendments commenced eight months after exit day

6.—(1) The Public Contracts Regulations 2015 (as amended by regulation 5) are further amended as follows.

- (2) Omit regulation 25 (conditions relating to the GPA).
- (3) In regulation 68 (life-cycle costing), in paragraph (3)(c), omit the words from “, including” to the end.
- (4) Omit regulation 90 (duty owed to economic operators from certain other states).

CHAPTER 2
THE CONCESSION CONTRACTS REGULATIONS 2016

Amendments commenced on exit day

- 7.—(1) The Concession Contracts Regulations 2016^(a) are amended as follows.
- (2) In regulation 2 (definitions), in paragraph (1)—
- (a) omit the definition of “the Commission”;
 - (b) after the definition of “contracting authorities” insert—

““covered by regulation 7(3)”, in relation to an activity, an element, a part of a contract, or procurement, means that regulation 7(3)—

 - (a) applies to that activity, element, part or procurement, or
 - (b) would do so if these Regulations applied;”;
 - (c) after the definition of “CPV” insert—

““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

“devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;”;
 - (d) in the definition of “exclusive right”, before “Treaties” insert “Retained”;
 - (e) after the definition of “execution of works” insert—

““GPA” means the Agreement on Government Procurement between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before exit day^(b);”;
 - (f) after the definition of “prior information notice” insert—

““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;”;
 - (g) omit the definition of “the Treaties”;
 - (h) before the definition of “utilities” insert—

“the UK e-notification service” has the meaning mentioned in regulation 33(5), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with the provisions applied (and adapted) by regulation 33(5);”
- (3) In regulation 5 (meaning of “utilities”), in paragraph (4)(b), before “Treaties” insert “Retained”.
- (4) In regulation 7 (subject-matter and scope of these Regulations), for paragraph (3) substitute—
- “(3) These Regulations—
- (a) do not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;

^(a) S.I. 2016/273.

^(b) All the substantive provisions of the Agreement were substituted by the Protocol which was approved, on behalf of the EU, by Council Decision 2014/115/EU (OJ No L 68, 7.3.2014, p 1), to which the text of the Protocol is attached (at OJ No L 68, 7.3.2014, p 2).

- (b) do not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.

(4) The arms, munitions and war material to which paragraph (3)(b) applies are, subject to paragraph (6), those included in the 1958 List.

(5) Subject to the effect of any regulations made under paragraph (6), any measures which, if they had been taken immediately before exit day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (3).

(6) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of these Regulations as if it were changed in respects specified in the regulations.

(7) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.

(5) In regulation 9 (threshold amounts and methods for calculating the estimated value of concession contracts)—

- (a) in paragraph (1), for the words from “the sum” to the end substitute “£4,551,413”;
- (b) omit paragraph (2);
- (c) in paragraph (4), for “sent” substitute “submitted”.

(6) After regulation 9 insert—

“Review and amendment of the threshold in regulation 9(1)

9A.—(1) Every two years the Minister for the Cabinet Office must review the threshold mentioned in regulation 9(1) to verify whether it corresponds with the threshold established in the GPA for works concessions.

(2) The Minister must do so by calculating the sterling value of the threshold on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of the threshold so calculated differs from the sum for the time being mentioned in regulation 9(1) in respect of the threshold, the Minister must make regulations amending regulation 9(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

- (a) must be made and laid before Parliament before 1st November following the end of the 24 month period covered by the review; and
- (b) must provide for the substitution to come into force on the following 1st January.

(6) The first review under this regulation must relate to the 24 month period ending with 31st August 2019.”.

(7) In regulation 10 (general exclusions)—

- (a) in paragraph (2), omit the words from “that has” to the end;
- (b) in paragraph (5)(a)—
 - (i) before “Treaties” insert “Retained”;
 - (ii) for “a member State and one or more third” substitute “the United Kingdom and one or more other”;

- (c) in paragraph (9)—
 - (i) in sub-paragraph (a)—
 - (aa) for “one or more member States” substitute “the United Kingdom”;
 - (bb) for “third” substitute “other”;
 - (ii) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”;
 - (iii) in sub-paragraph (c), for “a member State” substitute “the United Kingdom”;
 - (iv) in sub-paragraph (g)—
 - (aa) for “third country” substitute “country other than the United Kingdom or Gibraltar”;
 - (bb) for “territory of the EU” substitute “United Kingdom and Gibraltar” ;
- (d) in paragraph (10), omit “or another member State”;
- (e) in paragraph (11)(d)—
 - (i) in paragraph (i)—
 - (aa) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;
 - (bb) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
 - (ii) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”;
- (f) in paragraph (14)—
 - (i) for “third country” substitute “country other than the United Kingdom”;
 - (ii) for “EU” substitute “United Kingdom”.
- (8) In regulation 13 (concession contracts awarded to an affiliated undertaking), in paragraph (5)—
 - (a) in sub-paragraph (a), for the words from “Directive” to “Council” substitute “Part 15 of the Companies Act 2006(a)”;
 - (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.
- (9) Omit regulation 15 (notification of information by utilities).
- (10) In regulation 17 (concession contracts between entities within the public sector) in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.
- (11) In regulation 20 (mixed contracts), in paragraph (5), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (12) In regulation 21 (mixed procurement contracts involving defence or security aspects)—
 - (a) in paragraphs (1), (2) and (in both places in) (6)(a), for “Article 346 of TFEU” substitute “regulation 7(3)”;
 - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 7(3)”.
- (13) In regulation 22 (contracts covering both activities listed in Schedule 2 and other activities), in paragraph (6), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (14) In regulation 23 (contracts covering both activities listed in Schedule 2 and activities involving defence or security aspects), in paragraphs (1), (5)(a) and (7), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (15) In regulation 24 (reserved concession contracts), in paragraph (2), for “Article 24 of the Concessions Directive” substitute “this regulation”.

(a) 2006 c. 46.

- (16) In regulation 26 (economic operators), omit paragraph (1).
- (17) In regulation 31 (concession notices)—
- (a) in paragraph (2)(a), after “Directive,” insert—
 - “but as if—
 - (i) in paragraph 3, “Article 34(2)” were a reference to regulation 34(3) of these Regulations;
 - (ii) in paragraph 10, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
 - (iii) paragraph 15 (financing by EU funds) were omitted”;
 - (b) in paragraph (5), for “send” substitute “submit”;
 - (c) in paragraph (6)(a), for the words from “and that” to the end substitute—
 - “and that—
 - (i) a report is sent to the Minister for the Cabinet Office if the Minister so requests;
 - (ii) where the contracting authority or utility is a devolved Welsh authority, a report is sent to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));
 - (iii) where the contracting authority or utility is a devolved Northern Ireland authority, a report is sent to a Northern Ireland department if that department so requests (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));”.
- (18) In regulation 32 (concession award notices)—
- (a) in paragraphs (1) and (2), for “send” substitute “submit”;
 - (b) in paragraph (3), for “A concession award” substitute “Subject to paragraph (4), a concession award”;
 - (c) after paragraph (3) insert—
 - “(4) In paragraph (3), the reference to Annex VII is a reference to that Annex, but as if—
 - (i) in paragraph 7, “Article 41” were a reference to regulation 41 of these Regulations;
 - (ii) in paragraph 11(c), “Article 8(3)” were a reference to regulation 9(6) and (7) of these Regulations;
 - (iii) paragraph 12 (financing by EU funds) were omitted;
 - (iv) in paragraph 14, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Concession Contracts Regulations 2016)”;
 - (v) in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.”.
- (19) In regulation 33 (form and manner of publication of notices)—
- (a) in paragraph (1)—
 - (i) in the words before sub-paragraph (a)—
 - (aa) for “sent” substitute “submitted”;
 - (bb) after “notices)” insert “shall be submitted to the UK e-notification service for publication.”;
 - (ii) omit sub-paragraphs (a) and (b);
 - (b) in paragraph (2)—

- (i) for “EU Publications Office” substitute “the provider of the UK e-notification service”;
 - (ii) omit “the receipt of the notice and of”;
- (c) in paragraph (3)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “by the EU Publications Office” substitute “on that service”;
 - (iii) for “by that Office” substitute “on that service”;
 - (iv) for the words from “it confirms” to the end substitute “the notice was submitted to that service”;
- (d) in paragraph (4)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
 - (iii) for “sending of the notice to that Office” substitute “submission of the notice to that service”;
- (e) after paragraph (4) insert—

“(5) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (2) of this regulation.”.
- (20) In regulation 34 (electronic availability of concession documents), in paragraph (1), for “in the Official Journal” substitute “on the UK e-notification service”.
- (21) In regulation 38 (selection of and qualitative assessment of candidates)—
 - (a) in paragraph (8)—
 - (i) omit sub-paragraph (e);
 - (ii) in sub-paragraph (o), in the words before paragraph (i), for “Article 38(4)” substitute “Article 38(4)(a), (b), (d), (e) or (f)”;
 - (b) in paragraph (16)(a)—
 - (i) omit “EU law,”;
 - (ii) after “agreements or” insert “, subject to paragraphs (26) and (27),”;
- (c) after paragraph (25) insert—

“Power to modify effect of paragraph (16)(a)
- (26) Where—
 - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (16)(a), and
 - (b) the agreement is not already listed,

the Minister for the Cabinet Office may make regulations providing that paragraph (16)(a) is to have effect as if it the agreement were listed.
- (27) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (16)(a) is to have effect as if it the agreement were not listed.
- (28) In paragraphs (26) and (27)—
 - (a) “listed” means listed as described in paragraph (16)(a); and
 - (b) where paragraph (16)(a) already has effect as if an agreement were listed, “already listed” includes that agreement.”.
- (22) In regulation 39 (time limits for receipt of applications and tenders for the concession contract), in paragraph (3), for “sent” substitute “submitted”.

(23) In regulation 41 (award criteria), in paragraph (9), omit “the Europe 2020 strategy for smart,”.

(24) In regulation 43 (modification of concession contracts during their term)—

(a) in paragraph (3), for “send” substitute “submit”;

(b) in paragraph (4), after “Directive” insert—

“, but as if—

(a) paragraph 9 (financing by EU funds) were omitted;

(b) in paragraph 11, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Concession Contracts Regulations 2016)”; and

(c) in paragraph 12, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”

(25) In regulation 44 (termination of concession contracts), in paragraph (1)—

(a) after paragraph (a), insert “or”;

(b) after paragraph (b), omit “or”;

(c) omit paragraph (c).

(26) In regulation 47 (notices of decisions to award a concession contract), in paragraph (5)(a), for “in the Official Journal” substitute “on the UK e-notification service”.

(27) In regulation 50 (duty owed to economic operators from EEA states)—

(a) in the heading, for “EEA states” substitute “the United Kingdom and Gibraltar”;

(b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;

(c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.

(28) In regulation 51 (duty owed to economic operators from certain other states)—

(a) in paragraph (1)—

(i) in sub-paragraph (a)—

(aa) for “GPA state” substitute “country other than the United Kingdom”;

(bb) for “the GPA” substitute “Condition 1 or Condition 2”;

(ii) omit sub-paragraph (b) and the preceding “and”;

(b) for paragraph (2) substitute—

“(2) Condition 1 is that—

(a) at the relevant time the economic operator is from a GPA state;

(b) the procurement may result in the award of a concession contract of any description; and

(c) immediately before exit day that GPA state had agreed with the EU that the GPA shall apply to a concession contract of that description.

(2A) Condition 2 is that—

(a) at the relevant time the economic operator is from a country which, immediately before exit day, was a member State other than the United Kingdom;

(b) the procurement may result in the award of a concession contract of any description; and

(c) immediately before exit day the EU had agreed with a GPA state that the GPA shall apply to a concession contract of that description.”;

(c) omit paragraph (3);

(d) in paragraph (4)—

- (i) omit the definition of “GPA”;
- (ii) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “immediately before exit day was”;
- (iii) in the definition of “relevant time”—
 - (aa) for “sent” substitute “submitted”;
 - (bb) for “Publications Office of the European Union” substitute “UK e-notification service”.

(29) In regulation 54 (special time limits for seeking a declaration of ineffectiveness), in paragraphs (3) and (4)(a) and (b), for “in the Official Journal” substitute “on the UK e-notification service”.

(30) In regulation 60 (grounds for ineffectiveness)—

- (a) in paragraphs (2) and (3)(a), (b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
- (b) in paragraph (4), in the words before sub-paragraph (a), omit the words from “is in” to “and which”.

(31) In Part 6, before regulation 65 insert—

“General provisions about regulations under these Regulations

65ZA.—(1) Regulations under these Regulations are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 7(6) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulation 38 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 38 without such consent, but in such cases the amending regulations must make provision in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

(6) Regulations under these Regulations may make supplementary, incidental, transitional, transitory or saving provision.”.

Amendment commenced eight months after exit day

8.—(1) The Concession Contracts Regulations 2016 (as amended by regulation 7) are further amended as follows.

- (2) Omit regulation 51 (duty owed to economic operators from certain other states).

CHAPTER 3

THE UTILITIES CONTRACTS REGULATIONS 2016

Amendments commenced on exit day

9.—(1) The Utilities Contracts Regulations 2016(a) are amended as follows.

(a) S.I. 2016/274, amended by S.I. 2016/696.

- (2) In regulation 2 (definitions), in paragraph (1)—
- (a) omit the definition of “the Commission”;
 - (b) after the definition of “contracting authorities” insert—
 - ““covered by regulation 3(2)”, in relation to an activity, an element, a part of a contract, or procurement, means that regulation 3(2)—
 - (a) applies to that activity, element, part or procurement, or
 - (b) would do so if these Regulations applied;”;
 - (c) after the definition of “design contests” insert—
 - ““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);
 - “devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;”;
 - (d) omit the definition of “EU Publications Office”;
 - (e) in the definition of “GPA”, after “amended” insert “before exit day”;
 - (f) in the definition of “innovation”, omit “the Europe 2020 strategy for smart,”;
 - (g) after the definition of “qualified certificate for electronic signature” insert—
 - ““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;”;
 - (h) omit the definition of “the Treaties”;
 - (i) before the definition of “Utilities Contracts Directive” insert—
 - ““the UK e-notification service” has the meaning mentioned in regulation 71(6), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with the provisions applied (and adapted) by regulation 71(6);”
- (3) In regulation 3 (subject-matter and scope), for paragraph (2) substitute—
- “(2) Parts 1 to 4—
- (a) do not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
 - (b) do not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.
- (2A) The arms, munitions and war material to which paragraph (2)(b) applies are, subject to paragraph (2C), those included in the 1958 List.
- (2B) Subject to the effect of any regulations made under paragraph (2C), any measures which, if they had been taken immediately before exit day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2).
- (2C) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of Parts 1 to 4 as if it were changed in respects specified in the regulations.
- (2D) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.

(4) In regulation 6 (mixed procurement covering the same activity), in paragraph (3), for “Article 346 of TFEU” substitute “regulation 3(2)”.

(5) In regulation 7 (procurement covering several activities), in paragraph (4), for “Article 346 of TFEU” substitute “covered by regulation 3(2)”.

(6) In regulation 16 (threshold amounts)—

- (a) in paragraph (1)(a), for “the sum specified in Article 15(a) of the Utilities Contracts Directive” substitute “£363,424”;
- (b) in paragraph (1)(b), for “the sum specified in Article 15(b) of the Utilities Contracts Directive” substitute “£4,551,413”;
- (c) in paragraph (1)(c), for “the sum specified in Article 15(c) of the Utilities Contracts Directive” substitute “£820,370”;
- (d) omit paragraphs (3) and (4).

(7) After regulation 16 insert—

“Review and amendment of certain thresholds

16A.—(1) Every two years the Minister for the Cabinet Office must review the thresholds mentioned in regulation 16(1)(a) and (b) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Minister must do so by calculating the sterling value of each of the reviewable thresholds on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Minister must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of a reviewable threshold so calculated differs from the sum for the time being mentioned in regulation 16(1) in respect of that threshold, the Minister must make regulations amending regulation 16(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

- (a) must be made and laid before Parliament before 1st November following the end of the 24 month period covered by the review; and
- (b) must provide for the substitution to come into force on the following 1st January.

(6) The first review under this regulation must relate to the 24 month period ending with 31st August 2019.”.

(8) In regulation 17 (methods for calculating the estimated value of the procurement)—

- (a) in paragraph (7), for “sent” substitute “submitted”;
- (b) in paragraph (14)—
 - (i) in sub-paragraph (a), for “EUR 80,000” substitute “£65,630”;
 - (ii) in sub-paragraph (b), for “EUR 1 million” substitute “£820,370”.

(9) In regulation 18 (contracts awarded for the purpose of resale or lease to third parties), omit paragraph (2).

(10) In regulation 19 (contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country)—

- (a) in the heading, for “in a third country” substitute “outside the United Kingdom”;
- (b) in paragraph (1)(b)—
 - (i) for “in a third country” substitute “outside the United Kingdom”;
 - (ii) for “EU” substitute “United Kingdom”;
- (c) omit paragraph (2).

(11) In regulation 20 (contracts awarded and design contests organised pursuant to international rules), in paragraph (1)(a)—

- (a) before “Treaties” insert “Retained”;
- (b) for “a member State and one or more third” substitute “the United Kingdom and one or more other”.

(12) In regulation 21 (specific exclusions for service contracts), in paragraph (1)(c)—

- (a) in paragraph (i)—
 - (i) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;
 - (ii) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
- (b) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”.

(13) In regulation 22 (service contracts awarded on the basis of an exclusive right), for “TFEU” substitute “anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which TFEU had immediately before exit day in giving rise to any of the powers, rights etc mentioned in that section”.

(14) In regulation 24 (defence and security), in paragraph (2)(a), omit “or another member State”.

(15) In regulation 25 (mixed procurement covering the same activity and involving defence or security aspects)—

- (a) in paragraphs (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation 3(2)”;
- (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 3(2)”.

(16) In regulation 26 (procurement covering several activities and involving defence or security aspects), in paragraphs (5)(b) and (7), for “Article 346 of TFEU” substitute “regulation 3(2)”.

(17) In regulation 27 (contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—

- (a) in sub-paragraph (a)—
 - (i) before “Treaties” insert “Retained”;
 - (ii) for “a member State” substitute “the United Kingdom”;
 - (iii) for “third” substitute “other”;
- (b) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”.

(18) In regulation 28 (contracts between contracting authorities), in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.

(19) In regulation 29 (contracts awarded to an affiliated undertaking), in paragraph (5)—

- (a) in sub-paragraph (a), for the words from “Directive” to “Council” substitute “Part 15 of the Companies Act 2006”;
- (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.

(20) Omit regulation 31 (notification of information).

(21) In regulation 33 (contracts subject to special arrangements)—

- (a) in paragraph (b), for the words from “EUR” in the words before sub-paragraph (i) to the end of sub-paragraph (xiii) substitute “£4,101,850, submit, within 48 days of the award, a contract award notice for publication, and regulation 70(2) shall apply in relation to such a notice as it applies to notices under regulation 70(1)”;
- (b) in paragraph (c)—
 - (i) in the words before sub-paragraph (i)—

- (aa) for “400,000 euro” substitute “£328,150”;
- (bb) for “5,000,000 euro” substitute “£4,101,850”;
- (ii) in sub-paragraph (i), for the words from “the information “ to the end substitute “, for not less than 4 years from the date on which the contract is awarded, the information that would have been required to be included in a contract award notice if paragraph (b) had applied”;
- (iii) in sub-paragraph (ii)—
 - (aa) omit “, either”;
 - (bb) for the words from “Commission” to the end substitute “Minister for the Cabinet Office”.
- (22) In regulation 34 (activities directly exposed to competition), in paragraph (2), omit sub-paragraph (b) and the preceding “or”.
- (23) Omit regulation 35 (procedure for establishing whether regulation 34(2)(b) is applicable).
- (24) In regulation 37 (economic operators), omit paragraph (1).
- (25) In regulation 38 (reserved contracts), in paragraph (2), for “Article 38 of the Utilities Contracts Directive” substitute “this regulation”.
- (26) In regulation 40 (rules applicable to communication)—
 - (a) in paragraph (15)(a)(i)—
 - (i) for “in the Official Journal” substitute “on the UK e-notification service”;
 - (ii) for “sent” substitute “submitted”;
 - (b) in paragraph (20), in the words after sub-paragraph (b), for the words from “Utilities” to the end substitute “these Regulations”.
- (27) After regulation 40 insert—

“Powers to amend regulation 40

Exceptions to obligation to require use of electronic means of communication

40A.—(1) The Minister for the Cabinet Office may make regulations amending paragraph (3) of regulation 40 by—

- (a) omitting any of the situations described in that paragraph where the Minister considers that technological developments render it inappropriate for that situation to continue to be an exception from the obligation to require electronic means of communication, or
- (b) inserting a description of a new situation where, exceptionally, the Minister considers that it must become a new exception because of technological developments.

(2) Where the Minister considers that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Minister may make regulations omitting paragraph (3) from regulation 40.

(3) Where regulations have been made under paragraph (2) and, exceptionally, the Minister considers that a new exception must be provided for because of technological developments, the Minister may make regulations re-inserting paragraph (3) into regulation 40 in terms which give effect to that new exception (and the powers conferred by paragraphs (1) and (2) of this regulation may subsequently be exercised in relation to paragraph (3) as re-inserted).

Requirements relating to tools and devices for electronic receipt of documents

(4) The Minister for the Cabinet Office may make regulations amending the technical details and characteristics set out in regulation 40(16) if the Minister considers it appropriate to do so to take account of technical developments.”.

- (28) In regulation 43 (conditions relating to the GPA and other international agreements)—
- (a) in the heading, omit “and other international agreements”;
 - (b) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—
 - (i) omit “and by the other international agreements by which the EU is bound”;
 - (ii) for “those agreements” substitute “the GPA”;
 - (iii) for “of the EU” substitute “of the United Kingdom”;
 - (c) after that paragraph insert—

“(2) For the purposes of paragraph (1)—

 - (a) each country that was a member State immediately before exit day is deemed to be a signatory to the GPA; and
 - (b) the EU’s Appendix 1 to the GPA has effect as if each such country were referred to in the same way that Iceland is referred to in the following places in that Appendix—
 - (i) paragraph 2(a) of Annex 1;
 - (ii) Annex 6.”.
- (29) In regulation 44 (choice of procedures), in paragraph (2), omit “and the Utilities Contracts Directive”.
- (30) In regulation 45 (open procedure)—
- (a) in paragraph (2), for “sent” substitute “submitted”;
 - (b) in paragraph (4)—
 - (i) in sub-paragraph (a), for “Section I and II of Part A of Annex VI to the Utilities Contracts Directive” substitute “regulation 67(2) and (5)(c)”;
 - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
 - (c) in paragraph (5), for “sent” substitute “submitted”.
- (31) In regulation 46 (restricted procedure), in paragraph (2)(a), for “sent” substitute “submitted”.
- (32) In regulation 47 (negotiated procedure with prior call for competition), in paragraph (2)(a), for “sent” substitute “submitted”.
- (33) In regulation 48 (competitive dialogue), in paragraph (2)(a), for “sent” substitute “submitted”.
- (34) In regulation 49 (innovation partnership), in paragraph (5), for “sent” substitute “submitted”.
- (35) In regulation 52 (dynamic purchasing systems)—
- (a) in paragraph (9)(a), for “sent” substitute “submitted”;
 - (b) for paragraph (29) substitute the following—

“(29) Where the period of validity is changed without terminating the dynamic purchasing system, the utility shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.

(29A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (28) or (29), the utility shall submit for publication on the UK e-notification service a contract award notice under regulation 70.”.
- (36) Omit regulation 57 (procurement involving utilities from other member States).
- (37) In regulation 60 (technical specifications)—

- (a) in paragraph (8), for “adopted by a legal act of the EU” substitute “imposed by retained EU law”;
 - (b) in paragraph (10), omit “to the extent that they are compatible with EU law,”.
- (38) In regulation 67 (periodic indicative notices)—
- (a) in paragraph (2), after “Directive” insert “, but as if both references to “dispatch of the notice” in paragraph 4 were references to the submission of the notice to the UK e-notification service for the purposes of these Regulations;
 - (b) in paragraph (3)(a), for “send” substitute “submit”;
 - (c) in paragraph (4)—
 - (i) for “send” substitute “submit”;
 - (ii) after “Directive” insert “, but as if “date of dispatch” in paragraph 5 were a references to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
 - (d) in paragraph (5)—
 - (i) in sub-paragraph (c)—
 - (aa) for “set out section I of Part A of Annex VI to the Utilities Contracts Directive” substitute “required by paragraph (2)”;
 - (bb) after “II of Part A” insert—

“of Annex 6 to the Utilities Contracts Directive, but as if—

 - (i) in paragraph 7, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations”; and
 - (ii) in paragraph 21—
 - (aa) “Article 82” were a reference to regulation 82 of these Regulations; and
 - (bb) “point (b) of Article 67(2)” were a reference to regulation 67(5)(b) of these Regulations”;
 - (ii) in sub-paragraph (d), for “been sent” substitute “been submitted”.

(39) In regulation 68 (notices on the existence of a qualification system)—

 - (a) in paragraph (1), omit the words from “which” to “Directive,”;
 - (b) after paragraph (1) insert—

“(1A) Such a notice shall include the information set out in Annex 10 to the Utilities Contracts Directive, but as if, in paragraph 10, “Article 82” were a reference to regulation 82 of these Regulations.”;
 - (c) in paragraph (3)—
 - (i) in the words before sub-paragraph (a)—
 - (aa) for “notify the EU Publications Office” substitute “give notice”;
 - (bb) for “, using the following standard forms” substitute “by submitting to the UK e-notification service”;
 - (ii) in sub-paragraph (a), for “the form for notices” substitute “a notice”.

(40) For regulation 69 (contract notices) substitute—

“Contract notices

69.—(1) Contract notices shall contain the information set out in the relevant part of Annex 11 to the Utilities Contracts Directive, but as if—

- (a) in paragraph 10 of Part A, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations;
- (b) in—

- (i) paragraph 19 of Part A,
 - (ii) paragraph 16 of Part B, and
 - (iii) paragraph 15 of part C,

“Article 82” were a reference to regulation 82 of these Regulations;
 - (c) in—
 - (i) paragraph 20 of Part A,
 - (ii) paragraph 18 of Part B, and
 - (iii) paragraph 18 of part C,

“in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”; and
 - (d) in—
 - (i) paragraph 22 of Part A,
 - (ii) paragraph 20 of Part B, and
 - (iii) paragraph 20 of Part C,

“date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.
- (2) Such notices shall be submitted for publication in accordance with regulation 71.”.
- (41) In regulation 70 (contract award notices)—
- (a) in paragraph (1), for “send” substitute “submit”;
 - (b) for paragraph (2) substitute—

“(2) Such notices shall—

 - (a) contain the information set out in Annex 12 to the Utilities Contracts Directive, but as if—
 - (i) in paragraph 5(b), “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”;
 - (ii) in paragraph 5(c), “Article 50” were a reference to regulation 50(1) of these Regulations;
 - (iii) in paragraph 9, “Article 50(h)” were a reference to regulation 50(1)(h) of these Regulations;
 - (iv) in paragraph 17, the words in brackets were omitted;
 - (v) in paragraph 19, “Article 64(1)” were a reference to regulation 64(1) of these Regulations;
 - (vi) in paragraph 20, “Article 84” were a reference to regulation 84 of these Regulations; and
 - (vii) in paragraph 21, “date of transmission” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
 - (b) be sent for publication in accordance with regulation 71.”;
 - (c) in paragraphs (4) and (5)(a) and (b), for “send” substitute “submit”.

(42) In regulation 71 (form and manner of sending notices for publication at EU level)—

 - (a) for the heading substitute “Publication on the UK e-notification service”;
 - (b) in paragraph (1)—
 - (i) after “regulations” insert “52.”;
 - (ii) for “sent” (in both places) substitute “submitted”;

- (iii) for “by electronic means to the EU Publications Office” substitute “to the UK e-notification service”;
- (c) in paragraph (2), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
- (d) in paragraph (3)—
 - (i) for “EU Publications Office” substitute “the provider of the UK e-notification service”;
 - (ii) omit “the receipt of the notice and of”;
- (e) in paragraph (4)—
 - (i) for “send” substitute “submit”;
 - (ii) for “EU Publications Office” substitute “UK e-notification service”;
 - (iii) omit the words from “, provided” to the end;
- (f) omit paragraph (5);
- (g) at the end insert—

“(6) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (3) of this regulation.”.
- (43) In regulation 72 (publication at national level)—
 - (a) in the heading, for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (b) in paragraph (1)—
 - (i) after “regulations” insert “52,”;
 - (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”;
 - (c) in paragraph (3)—
 - (i) after “regulations” insert “52,”;
 - (ii) from the words from “at the national level” to the end substitute “otherwise than on the UK e-notification service before they are published on that service.”;
 - (d) in paragraph (4)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for the words from “by the EU” to the end substitute “on that service within 48 hours after the notice was submitted to that service”;
 - (e) in paragraph (5)—
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”;
 - (iii) for “sending of the notice to the EU Publications Office” substitute “submission of the notice to that service”;
 - (f) in paragraph (6)—
 - (i) in sub-paragraph (a), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
 - (ii) in sub-paragraph (b), for “sending” substitute “submission”.
- (44) In regulation 73 (electronic availability of procurement documents), in paragraph (1), for “in the Official Journal” substitute “on the UK e-notification service”.
- (45) In regulation 76 (general principles), in paragraph (6)—
 - (a) omit “EU law,”;
 - (b) after “agreements or” insert “, subject to paragraphs (6A) and (6B)”;

- (c) after paragraph (6) insert—
- “(6A) Where—
- (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (6), and
 - (b) the agreement is not already listed,
- the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if it the agreement were listed.
- (6B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if it the agreement were not listed.
- (6C) In paragraphs (6A) and (6B)—
- (a) “listed” means listed as described in paragraph (6), and
 - (b) where paragraph (6) already has effect as if an agreement were listed, “already listed” includes that agreement.”.

(46) In regulation 81 (quality assurance standards and environmental management standards)—

 - (a) omit paragraph (2);
 - (b) in paragraph (4)—
 - (i) omit sub-paragraphs (a) and (b);
 - (ii) in sub-paragraph (c), omit “other”;
 - (iii) omit the words after sub-paragraph (c).

(47) In regulation 83 (life-cycle costing)—

 - (a) in paragraph (3)(c)—
 - (i) omit ‘third’;
 - (ii) omit the words from “or other” to the end;
 - (b) omit paragraphs (5) and (6).

(48) In regulation 84 (abnormally low tenders)—

 - (a) in paragraph (2), omit sub-paragraph (f);
 - (b) omit paragraphs (6) and (7).

(49) In regulation 85 (tenders comprising products originating in third countries), in paragraph (2)(a), for the words from “in accordance” to “time to time” substitute “as it would be determined for the purposes of Part 1 of the Taxation (Cross-Border Trade) Act 2018(a) if the products were chargeable goods within the meaning of that Part”.

(50) In regulation 87 (subcontracting), in paragraph (5), for “ESPDs” substitute “SPDs”.

(51) In regulation 88 (modification of contracts during their term)—

 - (a) in paragraph (2), for “send” substitute “submit”;
 - (b) in paragraph (3), after “Directive” insert “, but as if paragraph 10 (financing by EU funds) were omitted”.

(52) In regulation 89 (termination of contracts), in paragraph (1), omit sub-paragraph (c).

(53) In regulation 91 (publication of notices)—

 - (a) in paragraph (4), for “send” substitute “submit”;
 - (b) in paragraph (5), after “Directive” insert “, but as if, in paragraph 4 of part D, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts Regulations 2016)”;
 - (c) in paragraph (6), for “send” substitute “submit”.

(a) 2018 c. 22. See section 17 (place of origin of chargeable goods).

(54) In regulation 93 (reserved contracts for certain services), in paragraph (5), for “Article 94 of the Utilities Contracts Directive” substitute “this regulation”.

(55) In regulation 95 (notices)—

(a) in paragraph (2)—

- (i) in sub-paragraph (a), after “Directive” insert “, but as if, in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
- (ii) in sub-paragraph (b), for “sent” substitute “submitted”;

(b) in paragraph (3), in the words before sub-paragraph (a), for “sent” substitute “submitted”;

(c) in paragraph (4), after “Directive” insert “, but as if, in paragraph 11, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”.

(56) In regulation 96 (rules on the organisation of design contests and the selection of participants and the jury), omit paragraph (2).

(57) In regulation 98 (retention of contract copies)—

(a) in paragraph (1)—

(i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£820,370”;

(ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,203,700”;

(b) in paragraph (2), for “applicable EU or national rules on access to documents and data protection” substitute “rules on access to documents and data protection applicable in the relevant part of the United Kingdom”.

(58) In regulation 99 (information and documentation requirements)—

(a) in paragraph (3), after “regulation” insert “33(b),”;

(b) for paragraph (7) substitute—

“(7) A utility shall communicate the report, or its main elements—

(a) to the Minister for the Cabinet Office if the Minister so requests;

(b) where the utility is a devolved Welsh authority, to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a));

(c) where the utility is a devolved Northern Ireland authority, to a Northern Ireland department if that department so requests (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a)).”;

(c) omit paragraph (8);

(d) omit paragraph (9) and the italic heading preceding it.

(59) In regulation 104 (duty owed to economic operators from EEA States)—

(a) in the heading, for “EEA States” substitute “the United Kingdom and Gibraltar”;

(b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;

(c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.

(60) In regulation 105 (duty owed to economic operators from certain other States)—

(a) in paragraph (1)—

(i) in sub-paragraph (a)—

(aa) for “GPA state” substitute “country other than the United Kingdom”;

(bb) for “the GPA” substitute “Condition 1 or Condition 2”;

(ii) omit sub-paragraph (b) and the preceding “and”;

(b) for paragraph (2) substitute—

- “(2) Condition 1 is that—
- (a) at the relevant time the economic operator is from a GPA state;
 - (b) the procurement may result in the award of a contract of any description; and
 - (c) immediately before exit day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.
- (2A) Condition 2 is that—
- (a) at the relevant time the economic operator is from a country which, immediately before exit day, was a member State other than the United Kingdom;
 - (b) the procurement may result in the award of a contract of any description; and
 - (c) immediately before exit day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”;
- (c) omit paragraph (3);
 - (d) in paragraph (4)—
 - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before exit day was”;
 - (ii) in the definition of “relevant time”—
 - (aa) for “sent” (in both places) substitute “submitted”;
 - (bb) for “EU Publications Office” (in both places) substitute “UK e-notification service”;
 - (cc) for “sending” substitute “submitting”.
- (61) In regulation 108 (special time limits for seeking a declaration of ineffectiveness), in paragraphs (3) and (4)(a), for “in the Official Journal” substitute “on the UK e-notification service”.
- (62) In regulation 114 (grounds for ineffectiveness)—
- (a) in paragraphs (2) and (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
 - (b) in paragraph (4)—
 - (i) in the words before sub-paragraph (a), omit the words from “is in” to “and which”;
 - (ii) in sub-paragraph (c), for “in the Official Journal” substitute “on the UK e-notification service”.
- (63) After regulation 119 insert—

“PART 5A

AMENDING THESE REGULATIONS

General provisions about regulations under these Regulations

- 119A.**—(1) Regulations under these Regulations are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under regulation 3(2C) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) Any other statutory instrument containing regulations under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subject to paragraph (5), Regulations may not be made under regulations 40A or 76 without the consent of the Welsh Ministers and a Northern Ireland Department.
- (5) Regulations (“the amending regulations”) may be made under regulation 40A or 76 without such consent, but in such cases the amending regulations must amend regulation 40

or, as the case may be, make provision under regulation 76, in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

(6) Without prejudice to paragraph (7), to the extent that the amending regulations are being made under regulation 40A, the duty imposed by paragraph (5) may be complied with by—

- (a) restructuring regulation 40 (so that, for example, different paragraphs apply to devolved Welsh authorities and other utilities respectively, where the Welsh Ministers have not consented to the making of the amending regulations); and
- (b) amending the powers conferred by regulation 40A so that they refer to the relevant provisions in regulation 22 as so restructured.

(7) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.

Amendments commenced eight months after exit day

10.—(1) The Utilities Contracts Regulations 2016 (as amended by regulation 9) are further amended as follows.

- (2) Omit regulation 43 (conditions relating to the GPA).
- (3) In regulation 83 (life-cycle costing), in paragraph (3)(c), omit the words from “, including” to the end.
- (4) Omit regulation 105 (duty owed to economic operators from certain other States).

CHAPTER 4

AMENDMENT OF OTHER SUBORDINATE LEGISLATION

The Public Contracts Regulations 2006

11.—(1) To the extent that the Public Contracts Regulations 2006(a) (“the 2006 Regulations”) continue to have prospective effect, their effect is modified as follows.

- (2) The 2006 Regulations have prospective effect as if—
 - (a) all references in them to a “member State” continued to include the United Kingdom;
 - (b) all requirements to send any notice to the Official Journal of the European Union were instead a requirement to submit the notice to the UK e-notification service for publication;
 - (c) all provisions relating or referring to such a requirement, or to the publication of such a notice in that Journal, were instead references to that requirement as modified by sub-paragraph (b) and to the publication of that notice on the UK e-notification service;
 - (d) in regulation 9(5) (which provides for the definition of certain technical specifications), the words “and to the extent that those provisions are compatible with EU obligations” were omitted;
 - (e) regulation 14(2) (which requires certain reports to be supplied to the European Commission on request) were omitted;

(a) S.I. 2006/5. The Regulations were revoked by S.I. 2015/102 but subject to savings. Before being revoked, the Regulations had been amended by S.I. 2007/3542, 2008/2256, 2683, 2848, 2009/1307, 2992, 2010/133, 976, 2011/1043, 1848, 2053, 2581, 3058, 2013/252, 1431, 2014/834 and by the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 20, paragraph 2.

- (f) in regulation 25(4)(a) (which provides for evidence of certain environmental management measures)—
 - (i) in paragraph (i), sub-paragraph (aa) were omitted; and
 - (ii) in paragraph (ii), the words “conforming to EU law or” were omitted;
- (g) regulation 30(7)(e), (8) and (9) (which relate to State aid) were omitted;
- (h) regulation 32(16) (which provides for the provision of certain reports requested by the European Commission) were omitted;
- (i) regulation 40(2) (which requires certain information to be provided for the European Commission) were omitted;
- (j) in regulation 47A(1)(a)(ii) (which makes compliance with certain obligations a duty owed to economic operators), the words “any enforceable EU obligation” referred instead to any retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018.

(3) In paragraph (2)(b) and (c), “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6)(a) and (7) of those Regulations apply for the purposes of the 2006 Regulations as modified by paragraph 2(b) and (c).

(4) Where—

- (a) immediately before exit day, a procurement has been commenced,
- (b) on or after exit day, a contract is awarded or any other act is done, pursuant to that procurement, and
- (c) that award or other act would, if it had occurred before exit day, have been covered by an exemption from requirements of the 2006 Regulations by virtue of any provision in those Regulations,

that award or other act is covered by that exemption on and after exit day regardless of whether the terms used to define that exemption in the 2006 Regulations would otherwise have been apt to continue to achieve that effect on and after exit day.

(5) Paragraph 1 of the Schedule to these Regulations applies for the purposes of paragraph (4) of this regulation as it applies for the purposes of the Schedule.

The Utilities Contracts Regulations 2006

12.—(1) To the extent that the Utilities Contracts Regulations 2006^(a) (“the 2006 Regulations”) continue to have prospective effect, their effect is modified as follows.

(2) The 2006 Regulations have prospective effect as if—

- (a) all references in them to a “member State” continued to include the United Kingdom;
- (b) all requirements to send any notice to the Official Journal of the European Union were instead a requirement to submit the notice to the UK e-notification service for publication;
- (c) all provisions relating or referring to such a requirement, or to the publication of such a notice in that Journal, were instead references to that requirement as modified by sub-paragraph (b) and to the publication of that notice on the UK e-notification service;
- (d) in regulation 4(3) (which imposes certain duties on utilities in relation to the treatment of economic operators), the words “(in accordance with Article 10 of the Utilities Directive)” were omitted;
- (e) regulation 7(7) (which relates to information requested by the European Commission) were omitted;

^(a) S.I. 2006/6. The Regulations were revoked by S.I. 2016/274 but subject to savings. Before being revoked, the Regulations had been amended by S.I. 2007/2157, 3542, 2008/2256, 2848, 2009/3100, 2011/1043, 1441, 2053, 1848, 2012/1659, 2013/610, 2015/102.

- (f) in regulation 8(3) (which provides for certain information to be sent to or for the European Commission)—
 - (i) in sub-paragraph (a), the words from “5,000,000 euro” in the words before sub-paragraph (i) to the end of paragraph (xiii) read “£4,101,850, submit, within 48 days of the award, a contract award notice to the UK e-notification service for publication, containing the information referred to in regulation 70(2)(a) of the Utilities Contracts Regulations 2016”;
 - (ii) in sub-paragraph (b)—
 - (aa) “400,000 euro” read “£328,150”;
 - (bb) “5,000,000 euro” read “£4,101,850”;
 - (cc) paragraph (ii) read as follows—
 - “(ii) if the Minister requests that information in relation to any such contract, forthwith send it to the Minister;”;
- (g) in regulation 12(5) (which provides for the definition of certain technical specifications), the words “and to the extent that those requirements are compatible with EU obligations” were omitted;
- (h) in regulation 24(3)(a) (which provides for evidence of certain environmental management measures)—
 - (i) in paragraph (i), sub-paragraph (aa) were omitted; and
 - (ii) in paragraph (ii), the words “conforming to EU law or” were omitted;
- (i) regulation 30(7)(e), (8) and (9) (which relate to State aid) were omitted;
- (j) in regulation 31(2) (which provides for determining the country of origin of goods for certain purposes), the words from “in accordance” to “Code” read “as it would be determined for the purposes of Part 1 of the Taxation (Cross-Border Trade) Act 2018 if the products were chargeable goods within the meaning of that Part”;
- (k) regulation 38(2) (which provides for the provision of certain reports requested by the European Commission) were omitted;
- (l) regulation 39(6) (which makes provision about reports for onward transmission to the European Commission) were omitted;
- (m) in regulation 45A(1)(b) (which makes compliance with certain obligations a duty owed to economic operators), the words “any enforceable EU obligation” referred instead to any retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018.

(3) In paragraph (2)(b), (c) and (f), “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6)(a) and (7) of those Regulations apply for the purposes of the 2006 Regulations as modified by paragraph 2(b), (c) and (f).

(4) Where—

- (a) immediately before exit day, a procurement has been commenced,
- (b) on or after exit day, a contract is awarded or any other act is done, pursuant to that procurement, and
- (c) that award or other act would, if it had occurred before exit day, have been covered by an exemption from requirements of the 2006 Regulations by virtue of any provision in those Regulations,

that award or other act is covered by that exemption on and after exit day regardless of whether the terms used to define that exemption in the 2006 Regulations would otherwise have been apt to continue to achieve that effect on and after exit day.

(5) Paragraph 1 of the Schedule to these Regulations applies for the purposes of paragraph (4) of this regulation as it applies for the purposes of the Schedule.

The Service Charges (Consultation Requirements) (England) Regulations 2003

13.—(1) The Service Charges (Consultation Requirements) (England) Regulations 2003(a) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1), in the definition of “public notice”, for the words from “published” to the end substitute “published, pursuant to the Public Contracts Regulations 2015, on the UK e-notification service (as defined by those Regulations)”.

The Provision of Services Regulations 2009

14.—(1) The Provision of Services Regulations 2009(b) are amended as follows.

(2) In regulation 31 (certificates and other documents), in paragraph (5)(g), omit “(read with regulation 58(5))”.

The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013

15.—(1) The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013(c) are amended as follows.

(2) In Schedule 2 (application of the Utilities Contracts Regulations 2016), in Part 1, in the entry relating to regulation 99 (information and documentation requirements), in the second column—

- (a) for ““the Commission”, in the first place it occurs,” substitute ““the Minister for the Cabinet Office” in sub-paragraph (a)”;
- (b) for “, in the second place it occurs,” substitute “as if the subsequent reference to “the Minister” in sub-paragraph (a)”;
- (c) for “(3), (8) and (9)” substitute “(3) and (7)(b) and (c).”

PART 4

AMENDMENT OF RETAINED DIRECT EU LEGISLATION

Regulation 2195/2002 of the European Parliament and of the Council

16.—(1) Regulation 2195/2002 of the European Parliament and of the Council of 5th November 2002 on the Common Procurement Vocabulary (CPV) is amended as follows.

(2) For Articles 2 and 3 substitute the following—

“Article 2

- 1. The Minister for the Cabinet Office may make regulations amending the Annexes to this Regulation.
- 2. Regulations under this Article are to be made by statutory instrument.
- 3. A statutory instrument containing regulations under this Article is subject to annulment in pursuance of a resolution of either House of Parliament.
- 4. Regulations under this Article may make consequential, supplementary, incidental, transitional, transitory or saving provision.”.

(3) In Article 4, omit the second paragraph.

(a) S.I. 2003/1987, amended by S.I. 2006/5, 2015/102; there are other amending instruments but none is relevant.

(b) S.I. 2009/2999, amended by S.I. 2015/102; there are other amending instruments but none is relevant.

(c) S.I. 2013/1582, amended by S.I. 2016/275; there are other amending instruments but none is relevant.

Commission Decision 2006/211/EC

17.—(1) Commission Decision 2006/211/EC of 8th March 2006 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to electricity generation in England, Scotland and Wales is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016(a)”.

(3) Omit Articles 2 and 3.

Commission Decision 2007/141/EC

18.—(1) Commission Decision 2007/141/EC of 26th February 2007 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to the supply of electricity and gas in England, Scotland and Wales is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016”.

(3) Omit Articles 2 and 3.

Commission Decision 2010/192/EU

19.—(1) Commission Decision 2010/192/EU of 29th March 2010 exempting exploration for and exploitation of oil and gas in England, Scotland and Wales from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016”.

(3) Omit Article 2.

Commission Implementing Regulation (EU) No 2015/1986

20. Commission Implementing Regulation (EU) No 2015/1986 of 11th November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 is revoked.

PART 5

CESSATION OF RIGHTS ETC.

Cessation of rights etc under certain international agreements

21.—(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures in the field of public procurement which—

- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
- (b) are derived from any of the agreements specified in paragraph (2),

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) on exit day.

(a) S.S.I. 2016/49.

(2) The agreements are—

- (a) Agreement in the form of an exchange of letters between the European Community and the United States of America on government procurement signed in Washington and Brussels on 30th May 1995(a);
- (b) Agreement between the European Community and the State of Israel on government procurement signed in Brussels on 10th July 1997(b);
- (c) Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part signed in Brussels on 8th December 1997(c);
- (d) Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement signed in Luxembourg on 21st June 1999(d);
- (e) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part signed by exchange of letters in Luxembourg on 9th April 2001(e);
- (f) Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part signed in Brussels on 11th May 2002(f);
- (g) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part signed in Luxembourg on 12th June 2006(g);
- (h) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part signed in Luxembourg on 15th October 2007(h);
- (i) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part signed in Luxembourg on 29th April 2008(i);
- (j) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part signed in Luxembourg on 16th June 2008(j);
- (k) Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part signed in Bridgetown, Barbados on 15th October 2008(k);
- (l) Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part signed in Brussels on 6th October 2010(l);
- (m) Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part signed in Brussels on 11th May 2012(m);
- (n) Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part signed in Brussels on 21st March 2014(n);

-
- (a) OJ No L 134, 20.6.95, p 26.
 - (b) OJ No L 202, 30.7.97, p 85.
 - (c) OJ No L 226, 13.8.98, p 25.
 - (d) OJ No L 114, 30.4.2002, p 430.
 - (e) OJ No L 84, 20.3.2004, p 3 (the exchange of letters begins at p 3, the text of the Agreement begins at p 13).
 - (f) OJ No L 352, 30.12.2002, p 3.
 - (g) OJ No L 107, 28.4.2008, p 166.
 - (h) OJ No L 108, 29.4.2010, p 3.
 - (i) OJ No L 278, 18.10.2013, p 16.
 - (j) OJ No L 164, 30.6.2015, p 2.
 - (k) OJ No L 289/I, 30.10.2008, p 3.
 - (l) OJ No L 127, 14.5.2011, p 6.
 - (m) OJ No L 204, 31.7.2012, p 20.
 - (n) OJ No L 161, 29.5.2014, p 3.

- (o) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part signed in Brussels on 27th June 2014^(a);
 - (p) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part signed in Brussels on 27th June 2014^(b);
 - (q) Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part signed in Strasbourg on 27th October 2015^(c);
 - (r) Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part signed in Brussels on 24th November 2017^(d).
- (3) Where applicable, the specification of an agreement by paragraph (2) includes that agreement as amended before exit day.

Date _____ *Name*
Minister for the Cabinet Office

SCHEDULE Regulation 1(4)

TRANSITIONAL AND SAVING PROVISION

Interpretation

1.—(1) In this Schedule—

“amended”, in relation to a provision, means that provision as amended or substituted by these Regulations;

“amendments” (and cognate expressions) include the modifications made by regulations 11 and 12;

“Official Journal” means the Official Journal of the European Union;

“the Procurement Regulations” means—

- (a) the Public Contracts Regulations 2006;
- (b) the Utilities Contracts Regulations 2006;
- (c) the Public Contracts Regulations 2015;
- (d) the Concession Contracts Regulations 2016;
- (e) the Utilities Contracts Regulations 2016;

“unamended”, in relation to a provision, means that provision in the form in which it existed immediately before it was amended or substituted by these Regulations.

(2) In this Schedule, the following have the same meaning as in whichever of the Procurement Regulations the context requires—

- (a) contracting authority;
- (b) design contest;
- (c) dynamic purchasing system;

(a) OJ No L 261, 30.8.2014, p 4.
 (b) OJ No L 260, 30.8.2014, p 4.
 (c) OJ No L 71, 16.3.2016, p 3.
 (d) OJ No L 23, 26.1.2018, p 4.

- (d) framework agreement;
- (e) utility.

(3) For the purposes of this Schedule, a procurement has been commenced before a particular date if, before that date—

- (a) a notice has been sent to the Official Journal in accordance with applicable Procurement Regulations in order to—
 - (i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system; or
 - (ii) publicise an intention to hold a design contest;
- (b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system; or
- (c) the contracting authority or utility has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed contract, framework agreement or dynamic purchasing system; or
 - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, framework agreement or dynamic purchasing system.

(4) For the purposes of this Schedule, a procurement covers the whole of the procedures which stem from that commencement.

(5) Accordingly, for example, if a contract notice in relation to a proposed framework agreement under the Public Contracts Regulations 2015 has, before exit day, been sent as described in sub-paragraph (3)(a), paragraph 3(1) applies to the award of any contracts based on that framework agreement regardless of whether the relevant specific procedure for the award of any such contract under regulation 33(7) to (11) of the Public Contracts Regulations 2015 had itself been commenced before exit day.

(6) Procedures taken for the purpose of modifying a contract or framework agreement are not to be regarded, for the purposes of sub-paragraph (4), as stemming from the commencement of the procurement from which the award of that contract or framework agreement had itself stemmed.

(7) A procedure commenced as described in sub-paragraph (3)(a)(i), (b) or (c) is not to be regarded, for the purposes of sub-paragraph (4), as stemming from the commencement of any design contest that had previously been held in relation to the subject-matter of the procurement.

General principles

2.—(1) Subject to the other provisions of this Schedule, the amendments made by these Regulations apply prospectively even in relation to procurements which had commenced before the amendments came into force.

(2) But, subject to the following provisions of this Schedule, an amendment made by these Regulations does not apply to the extent that the provision amended refers or relates (directly or indirectly) to something which in fact occurred before the amendments came into force.

(3) Accordingly, for example—

- (a) where, before exit day, a contract notice was published in the Official Journal after being sent for such publication in accordance with unamended regulations 49 and 51 of the Public Contracts Regulations 2015, but exit day occurred before the sending of a contract award notice to the EU Publications Office in accordance with unamended regulations 50 and 51 of those Regulations in relation to that procurement—
 - (i) the contract award notice is, on or after exit day, to be submitted for publication on the UK e-notification service in accordance with amended regulations 50 and 51 of those Regulations; but

- (ii) the information to be included in that notice by virtue of amended regulation 50(2)(a) of those Regulations includes the date and reference of the publication of the contract notice in the Official Journal because that publication occurred before exit day and, accordingly, amended regulation 50(2)(a)(iv) of those Regulations is to be disregarded in relation to that publication;
- (b) even in relation to a procurement that is commenced on or after exit day, the amendment made by regulation 5(8)(a) of these Regulations to regulation 9(1)(a) of the Public Contracts Regulations 2015 does not apply if the legal instrument referred to in regulation 9(1)(a) was concluded before exit day (and, in such circumstances, the test laid down by regulation 9(1)(a) accordingly continues to be whether the instrument had been concluded in accordance with “the Treaties” as defined in the unamended regulation 2(1) of those Regulations rather than whether the instrument had been concluded in accordance with “the Retained Treaties” as defined by the amended regulation 2(1) of those Regulations).

Savings in relation to procurements commenced before exit day

3.—(1) The amendments made by these Regulations described in sub-paragraph (2) do not affect any procurement commenced before exit day.

(2) The amendments are—

- (a) the amendments to the following provisions of the Public Contracts Regulations 2015—
 - (i) the definition of “ESPD” in regulation 2(1) (definitions);
 - (ii) regulation 25 (conditions relating to the GPA and other international agreements);
 - (iii) regulation 34(25) (which, as unamended, refers to a renewed ESPD as a means of proof in relation to dynamic purchasing systems);
 - (iv) regulation 42(9) (which, as unamended, refers to a legal act of the EU in relation to mandatory accessibility requirements in technical specifications);
 - (v) regulation 57 (exclusion grounds);
 - (vi) regulation 58 (selection criteria) and the related omission of Schedule 5 (professional and trade registers etc);
 - (vii) regulation 59 (European Single Procurement Document);
 - (viii) in regulation 62 (quality assurance standards and environmental management standards), paragraph (2) and the words after paragraph (4)(c);
 - (ix) regulation 71(5) (which, as unamended, refers to ESPDs in respect of subcontractors);
- (b) the amendments made to regulation 38 of the Concession Contracts Regulations 2015 (selection of and qualitative assessment of candidates);
- (c) the amendments made to the following provisions of the Utilities Contracts Regulations 2015—
 - (i) regulation 43 (conditions relating to the GPA and other international agreements);
 - (ii) regulation 60(8) (which, as unamended, refers to a legal act of the EU in relation to mandatory accessibility requirements in technical specifications);
 - (iii) in regulation 81 (quality assurance standards and environmental management standards), paragraph (2) and the words after paragraph (4)(c);
 - (iv) regulation 87(5) (which, as unamended, refers to ESPDs within the meaning of regulation 59 of the Public Contracts Regulations 2015).

(3) To the extent that it is saved by paragraphs (1) and (2)(a)(vii), regulation 59(11)(a) of the Public Contracts Regulations 2015 has effect as if the reference in it to “any member State” continued to include the United Kingdom.

Procurement involving contracting authorities or utilities from other member States

- 4.**—(1) This paragraph applies in relation to the omission, by these Regulations, of—
- (a) regulation 39 of the Public Contracts Regulations 2015 (procurement involving contracting authorities from other member States);
 - (b) regulation 57 of the Utilities Contracts Regulations 2016 (procurement involving utilities from other member States).
- (2) Those omissions do not imply—
- (a) any prohibition of the activities authorised by the omitted regulations (which activities might, accordingly, be carried on to any extent that would have been lawful if the omitted regulations had never existed); or
 - (b) that any matters provided for in those regulations are necessarily to have a different effect unless so required by applicable law (including rules for resolving any conflicts between the laws of different jurisdictions).

Saving with modification of certain references to compatibility with EU law

- 5.**—(1) The omission by these Regulations of the words “to the extent that they are compatible with EU law” from—
- (a) regulation 42(11) of the Public Contracts Regulations 2015 (technical specifications), and
 - (b) regulation 60(10) of the Utilities Contracts Regulations 2016 (technical specifications),
- does not affect any procurement commenced before exit day.
- (2) To the extent that those words are saved by paragraph (1), the reference to EU law is to be construed as referring to EU law as it had effect immediately before exit day.

Saving of implied power to terminate contracts

- 6.**—(1) This paragraph applies where—
- (a) a contract was awarded before exit day; and
 - (b) immediately before exit day, the contract contained a power—
 - (i) implied by regulation 73(3) of the Public Contracts Regulations 2015 to terminate the contract on the ground mentioned in regulation 73(1)(c) of those Regulations;
 - (ii) implied by regulation 44(3) of the Concession Contracts Regulations 2016 to terminate the contract on the ground mentioned in regulation 44(1)(c) of those Regulations; or
 - (iii) implied by regulation 89(3) of the Utilities Contracts Regulations 2016 to terminate the contract on the ground mentioned in regulation 89(1)(c) of those Regulations.
- (2) On and after exit day, that power continues despite the omission, by these Regulations, of regulation 73(1)(c), 44(1)(c) or 89(1)(c), as the case may be.

Saving with modification of certain references to design contests in relation to procurements commenced before exit day

- 7.**—(1) The omission by these Regulations of—
- (a) paragraph (2) of regulation 80 of the Public Contracts Regulations 2015 (rules on the organisation of design contests and the selection of participants), and
 - (b) paragraph (2) of regulation 96 of the Utilities Contracts Regulations 2015 (rules on the organisation of design contests and the selection of participants and the jury),
- does not affect any procurement commenced before exit day.

(2) To the extent that they are saved by sub-paragraph (1), the omitted paragraphs have effect on and after exit day as if each reference in them to a ‘member State’ continued to include the United Kingdom.

Saving, in relation to procurements commenced before exit day, of duty owed to economic operators from EEA states

8.—(1) The amendments made by these Regulations to—

- (a) paragraph (2) of regulation 89 of the Public Contracts Regulations 2015 (duty owed to economic operators from EEA states) and the heading to that regulation;
- (b) paragraph (2) of regulation 50 of the Concession Contracts Regulations 2016 (duty owed to economic operators from EEA states) and the heading to that regulation;
- (c) paragraph (2) of regulation 104 of the Utilities Contracts Regulations 2016 (duty owed to economic operators from EEA States) and the heading to that regulation,

do not affect any procurement commenced before exit day.

(2) To the extent that they are saved by sub-paragraph (1), the unamended paragraphs (2) have effect on and after exit day as if the word “another” read “an”.

Saving, in relation to procurements commenced before exit day, of duty owed to economic operators from states party to certain bilateral agreements

9.—(1) The omission by these Regulations of—

- (a) paragraphs (1)(b) and (3) of regulation 90 of the Public Contracts Regulations 2015 (duty owed to economic operators from certain other states);
- (b) paragraphs (1)(b) and (3) of regulation 51 of the Concession Contracts Regulations 2015 (duty owed to economic operators from certain other states);
- (c) paragraphs (1)(b) and (3) of regulation 105 of the Public Contracts Regulations 2015 (duty owed to economic operators from certain other States),

do not affect any procurement commenced before exit day.

(2) To the extent that they are saved by sub-paragraph (1) (and, subsequently, by paragraph 10), the unamended provisions referred to in sub-paragraph (1) have effect on and after exit day—

- (a) as if the United Kingdom were still an EEA state; and
- (b) as if, in each unamended paragraph (3)(a)—
 - (i) the words “there is” read “immediately before exit day there was”; and
 - (ii) the words “is bound” read “was bound”.

Saving in relation to procurements commenced before regulations 6, 8 and 10 come into force

10. The amendments made by regulations 6, 8 and 10 do not affect any procurement commenced before those regulations come into force.

Saving in relation to affiliated undertakings

11. Where—

- (a) a procurement was commenced before exit day, and
- (b) immediately before exit day, an undertaking fell within the definition of “affiliated undertaking” in regulation 13(5) of the Concessions Contracts Regulations 2016 or regulation 29(5) of the Utilities Contracts Regulations 2016,

the amendments made by these Regulations to those regulations do not prevent that undertaking from continuing, on and after exit day, to fall within that definition in relation to that procurement.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (b), (d), (e), (f) and (g) of section 8(2)) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments in the field of public procurement. Part 2 amends primary legislation. Part 3 amends subordinate legislation. In particular, Chapters 1, 2 and 3 of Part 3 amend the Public Contracts Regulations 2015 (S.I. 2015/102), the Concession Contracts Regulations 2016 (S.I. 2016/273) and the Utilities Contracts Regulations 2016 (S.I. 2016/274), respectively, and Chapter 4 amends other subordinate legislation. Part 4 amends, and in one case revokes, retained direct EU legislation. Part 5 provides for certain rights etc derived from certain international agreements to cease. The Schedule makes transitional and saving provision.

A full impact assessment has not been produced for this Instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

© Crown copyright 2018

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

EXPLANATORY MEMORANDUM TO
THE PUBLIC PROCUREMENT (AMENDMENT ETC.) (EU EXIT) REGULATIONS
2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Cabinet Office and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument is being made in order to address deficiencies in retained EU law in relation to public procurement arising from the withdrawal of the United Kingdom (UK) from the European Union (EU), ensuring the legislation continues to operate effectively after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The EU legal framework for the regulation of public procurement by public authorities and utilities consists of a package of directives (the EU Procurement Directives) that govern procedures for the award of public contracts over specified financial thresholds to suppliers of works, goods and services. They are aimed at ensuring that the EU public procurement market is open and competitive and that suppliers are treated equally and fairly.

The EU Procurement Directives were implemented for England, Wales and Northern Ireland by the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 (the Regulations).

This instrument also relates to certain directly applicable EU legislation in the field of public procurement, such as Regulation 2195/2002 on the Common Procurement Vocabulary that aims to standardise the references used by contracting authorities and entities to describe procurement contracts. Further information on this legislation can be found at section 7.23 to 7.27 of this Memorandum.

Why is it being changed?

- 2.3 This instrument addresses deficiencies in retained EU law that arise as a result of the withdrawal of the UK from the EU. It amends or removes provisions that are inoperable, inappropriate or would otherwise prevent the legislation from functioning effectively after exit day within the meaning of section 8 of European Union (Withdrawal) Act 2018. For example, provisions that relate to the publication of notices in the Official Journal of the EU (OJEU) and to the submission of reports to the European Commission (the Commission) would no longer be appropriate because they impose requirements and confer functions in respect of EU entities that no longer have such functions in relation to the UK after exit. These have been removed or replaced with provisions that relate to the functions of ‘domestic’ bodies and entities. Other examples are given in section 7 below.

What will it now do?

- 2.4 In most respects, the framework and principles underlying the procurement regime remain unchanged. Changes have been limited to those that are appropriate to reflect the UK's new status outside the EU and are made only to the extent permitted to correct deficiencies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

- 3.2 The territorial application of this instrument varies between provisions.
- 3.3 Parts 2 and 3 of the instrument make amendments to primary and secondary legislation. Those amendments are of the same territorial application as the underlying provision being amended so that, for example, the amendments to the Greater London Authority Act 1999 made by regulation 2 apply only in respect of England and Wales; the amendments to the Equality Act 2010 made by regulation 3 apply to England, Wales and Scotland; and the amendments to the Public Contracts Regulations 2015 effected by regulations 5 and 6 apply principally in respect of England, Wales and Northern Ireland only (the exception being paragraphs (61) to (63) of regulation 5 which amend provisions which extend to Scotland and apply in respect of contracting whose functions are not wholly or mainly Scottish devolved functions). Part 4 of the instrument makes amendments to retained direct EU legislation for the whole of the United Kingdom and therefore applies to England, Wales, Northern Ireland and Scotland. The same is the case in respect of Part 5.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is set out in Section 3.3 under "Matters relevant to Standing Orders No. 83P of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

- 5.1 Oliver Dowden, the Minister for Implementation, has made the following statement regarding Human Rights:
- "In my view the provisions of the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights".

6. Legislative Context

- 6.1 The Regulations implement a legal framework set out in EU Procurement Directives for procurement by contracting authorities, contracting entities and other contracting entities (Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (utilities), Directive 2014/23/EU on the award of concession contracts and Directive 89/665/EEC and Directive 92/13/EEC, as amended, on remedies and review

procedures for public procurement and on the procurement procedures of entities operating in the water, energy, transport and telecommunication sectors).

- 6.2 The EU Procurement Directives govern the procedures for the award of contracts over specified financial thresholds, subject to certain exclusions from their scope. The legal framework is based on the principles of transparency, non-discrimination, equal treatment and proportionality. Its intention is to create an open public procurement market that supports the free movement of supplies, services and works within the EU. The EU is a member of the WTO Agreement on Government Procurement (GPA), and is party to a number of international agreements with countries outside the EU that contain procurement provisions. The EU procurement regime reflects the obligations arising out of membership of these agreements as well as the EEA Agreement.
- 6.3 The Regulations apply principally to England, Wales and Northern Ireland. The Scottish Ministers transposed the EU Procurement Directives separately, in parallel sets of regulations. The Defence and Security Public Contract Regulations 2011 implements a related EU scheme for Defence procurement and are outside the scope of the present instrument (a separate draft instrument, to be made by the Secretary of State for Defence, is being laid on the same day as this instrument). The Public Contracts Regulations 2015 also include (in Part 4), a package of rules that are domestic in origin. Part 4 does not apply to contracting authorities with functions that are wholly or mainly devolved to Wales, Scotland and Northern Ireland.
- 6.4 Under the European Union (Withdrawal) Act 2018, EU-derived domestic legislation forms part of retained EU law. In order to ensure the legislation operates effectively after exit, this instrument makes amendments to fix deficiencies which arise from the UK's withdrawal, for example references that are based on the UK's status as a member State, and transfers certain powers that are currently exercisable by the Commission as regards the UK to UK public authorities.
- 6.5 This instrument primarily amends the Regulations. The instrument also amends (and in one case revokes) direct retained direct EU legislation that contains deficiencies arising out of the UK's exit (see paragraph 7.23-7.27). Further, amendments are made to primary and secondary legislation, in some cases because that legislation contains references to the EU procurement regime that are no longer appropriate in light of EU withdrawal and in other cases because it envisages a continued role for the EU Publications Office in publishing procurement notices submitted by UK authorities. These include the Greater London Authority Act 1999, the Equality Act 2010 and the Public Services (Social Value) Act 2012. Finally, the Regulations include saving provisions under which certain procurements remain governed by the revoked Public Contracts Regulations 2006 or the revoked Utilities Contracts Regulations 2006. Accordingly, amendments have been made to deal with the deficiencies that arise from exit where these provisions continue to apply.
- 6.6 There are some deficiencies in the Regulations that have not been fixed in this instrument. These require further review and discussion with other government departments, the devolved authorities or stakeholders.

7. Policy background

What is being done and why?

- 7.1 This instrument corrects deficiencies arising as a result of the UK's withdrawal from the EU. Changes have been made where they are appropriate and within the scope of section 8 of the European Union (Withdrawal) Act 2018. The aim is for the Regulations to reflect the UK's status as a non-member State at the same time as ensuring they continue to facilitate a functioning UK internal market and comply with the requirements of the GPA (which the UK intends to join in its own right after exit). Another goal is to maintain continuity for on-going procedures. Where possible, amendments support a level playing field between economic operators established outside the UK, whether or not they are member States.

The UK e-notification service

- 7.2 This instrument replaces the requirement to send notices to the EU Publications Office (for publication in OJEU via Tenders Electronic Daily (TED)), with a requirement to submit notices to a new UK e-notification service. This is intended to reflect the publication requirements in the GPA.
- 7.3 Contract opportunities that would have been published on OJEU/TED will be published on the new UK e-notification service. Publication will take place electronically and the service will be free for all users. Transitional provisions have been made in respect of procurement procedures which straddle exit day and in relation to which earlier notices have been published on OJEU/TED.
- 7.4 The instrument makes no substantive changes to the restriction on the publication of notices at a local level, for example, on Contracts Finder, Sell2Wales or e-TendersNI. Notices must not be published on such national portals before they are published on the UK e-notification service.

Transfer of functions

- 7.5 The EU Procurement Directives provide the Commission with a number of functions to fulfil its supervisory role over EU public procurement that are reflected in retained EU law and that it would not be appropriate to retain after exit. There are also a number of delegated powers to make tertiary legislation whose effects it is appropriate to recreate in the Regulations by conferring those powers on UK public authorities.
- 7.6 This instrument transfers the Commission's function to revalue the main financial thresholds to the Minister for the Cabinet Office (MCO). The Procurement Directives require the Commission to review these thresholds every two years to establish whether they continue to correspond to the relevant thresholds laid down by the GPA (see, for example, Article 6 of Directive 2014/24/EU). If they do not correspond, the Commission, by delegated act, makes the necessary amendment to the euro figures set out in the EU Directive to bring them back into line. At the same time, the Commission also determines the sterling value of these thresholds. The Regulations currently make ambulatory reference to the thresholds laid down in the relevant EU Directive (as determined in sterling by the Commission). This instrument replaces these ambulatory cross-references with the actual sterling figures and confers on MCO the power to make regulations following a biennial review. MCO will be required to conduct the reviews on the same basis as the Commission, however, rather than adopting the Commission's two-stage process, MCO must value the GPA

thresholds, which are expressed in special drawing rights, directly into the equivalent sterling values. The conversion rates to be used for this purpose are those published in the monthly International Financial Statistics published by the International Monetary Fund, which is the methodology applicable under the GPA.

- 7.7 The Commission has the power to update the exceptions to the circumstances in which contracting authorities are obliged to require the use of electronic means of communication in light of technological developments and to update the technical requirements relating to tools and devices for the electronic receipt of tenders and requests to participate to take account of technological developments. The instrument transfers these powers to MCO. The scope of MCO's powers to amend the Regulations has been closely based on the scope of the Commission's existing powers to amend the corresponding passages of the EU Procurement Directives (for example, new regulation 22A which this instrument inserts into the Public Contracts Regulations 2015, is based on the powers conferred by Article 22(7) of Directive 2014/24/EU). Regulations made pursuant to MCO's powers will be subject to the prior consent of Welsh Ministers or the relevant Northern Ireland Department in respect of devolved Welsh or Northern Ireland authorities.
- 7.8 Provision has been made to confer on MCO the power to treat the list of international agreements in the field of environmental, social and labour law set out in the annexes to the EU Directives as though certain international agreements were removed and others that are not covered were listed. An equivalent, delegated power to amend the list of international agreements in these annexes currently rests with the Commission.
- 7.9 This is relevant to the ability of a contracting authority to refuse to award a contract to the bidder submitting the most economically advantageous tender where the contracting authority has established that the bidder does not comply with certain applicable obligations in the field of social, environmental and labour law. The power can only be exercised by the MCO in relation to devolved authorities with the prior consent of Welsh Ministers or, as the case may be, the relevant Northern Ireland Department.
- 7.10 Requirements to provide the Commission with reports have been either removed or converted into an obligation to provide reports to MCO. Where the power to request reports has been transferred, a similar power has been created for the Welsh Ministers and the relevant Northern Ireland Department in respect of devolved Welsh and Northern Ireland authorities.

Article 346 of the Treaty on the Functioning of the European Union (TFEU)

- 7.11 The Regulations do not apply to contracts that fall within the scope of the Defence and Security Regulations 2011 (the 2011 Regulations). In addition, the Regulations are subject to the derogation set out in Article 346 of TFEU that has the effect of overriding the obligation to comply with the Regulations or particular requirements in them, where this would undermine EU member States' essential security interests.
- 7.12 To ensure that contracting authorities can continue to override particular requirements of the Regulations where necessary, this instrument inserts provisions (which are intended to correspond to provisions in the Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019), which replace the cross-reference to Article 346 TFEU with the text of Article 346 (with some minor adjustments to make it operable).

- 7.13 It is arguable that Article 346 TFEU has direct effect through section 2(1) of the European Communities Act 1972, and so is retained through section 4 of the European Union (Withdrawal) Act 2018 in some circumstances. However, given the Regulations are made under the alternative implementing powers in section 2(2) of the European Communities Act 1972, inserting the text of Article 346 is considered to provide the most legal certainty in ensuring the continued effect of Article 346 after exit.
- 7.14 Consideration was also given to whether Article 346(1)(a) should be replicated in the instrument. Regulation 15(2)(b) of the Public Contracts Regulations 2015 and parallel provisions in the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 (the parallel provisions), (which permit procurements to be excluded from the application of the Regulations where they would oblige a contracting authority to supply information which would be contrary to the UK's essential security interests), arguably already replicate its effect. However, the courts have not clarified the interaction between Article 346(1)(a) TFEU and regulation 15(2)(b) (or the parallel provisions) and a strict application of regulation 15(2)(b) (or the parallel provisions), disapplying the entirety of the Regulations in all circumstances could be considered disproportionate, so it was considered prudent to make the position entirely clear by replicating Article 346(1)(a) in the Regulations.
- 7.15 Article 346(1)(b) provides that a member State may take such measures as it considers necessary for the protection of the essential interests of its security that are connected with the production of, or trade in, arms, munitions and war material. The scope of products referred to is determined by a list that was drawn up by the Council of Ministers of the EEC (as it then was), in 1958 (the 1958 List). The amendments made by this instrument reproduce the significance of the 1958 List (for example, the new paragraphs (2) to (6) that this instrument substitutes for regulation 3(2) of the Public Contracts Regulations 2015). Article 346(2) empowers the Council to make changes to the 1958 List. This instrument confers an equivalent regulation-making power on the Secretary of State for the purposes of the Regulations (as the new paragraph (5) in the example quoted above). Given the nature of this power, and its potential to affect the scope of the Regulations, its exercise is made subject to the affirmative procedure (see, for example, the new regulation 84A(2) which this instrument inserts into the Public Contracts Regulations 2015).

Scope of duty owed by contracting authorities

- 7.16 Regulation 5(57) of the instrument includes amendments to Regulation 89 of the Public Contracts Regulations 2015 (and parallel provisions in the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016). It would no longer make sense to provide remedies for breaches of “enforceable EU obligations”, so the amendment refers instead to any retained EU obligation that is saved under section 4 of the European Union (Withdrawal) Act 2018. This would include directly effective rights and obligations that previously flowed through section 2(1) of the European Communities Act 1972 and which continue to be recognised in domestic law post exit.
- 7.17 It would also be inappropriate to retain the obligations under Part 2 and 3 of the Public Contracts Regulations 2015 in respect of economic operators from EEA States in circumstances where the UK is likely to be treated as a third country by contracting authorities in member States. After exit, and save in respect of procurements which

are on-going as of exit day, this duty is owed only to economic operators from the UK.

- 7.18 For the avoidance of doubt, Cabinet Office have added Gibraltar as an express reference to make clear that the duty owed to economic operators in the UK extends to those in Gibraltar. Prior to exit, Gibraltar came within the territorial scope of the EU Treaties in accordance with Article 355(3) of TFEU that applies the Treaties to European territories for whose external relations, a member State is responsible, subject to some exceptions that are material to public procurement (such as in relation to the Channel Islands), set out elsewhere in Article 355 but which are not relevant to Gibraltar. Since the UK is responsible for Gibraltar's external relations, the UK and Gibraltar are effectively treated as one member State under EU law. Contracting authorities in other member States owe the same duties to economic operators from Gibraltar as economic operators from the UK.
- 7.19 After the UK's exit, Gibraltar will no longer come within the scope of the EU Treaties. It may therefore, be treated by member States as having the same third country status as the UK. In order to preserve continuity and to reflect the UK's special relationship with Gibraltar, it is appropriate to continue to include Gibraltarian economic operators in the duties owed by contracting authorities.

The GPA and other international agreements

- 7.20 It is the intention of the UK to join the GPA in its own right (the UK currently participates in its capacity as an EU member State). If the UK does not accede to the GPA by exit, as a matter of international law economic operators established in territories and states which are GPA parties would no longer have the guaranteed access (and associated remedies) that they currently have in relation to UK public procurements. It has been decided that for procurements within the scope of the Regulations, economic operators established in territories and states which are party to the GPA (including EEA states) as at the point of the UK's withdrawal from the EU should continue to be afforded the same rights and remedies as the UK currently gives to economic operators established in territories and states which are party the GPA, on the basis of the EU's coverage schedules and for a period of eight months after exit. This is in anticipation of the UK's accession to the GPA on or shortly after exit. The eight-month timeline is in step with the meeting schedule of the GPA Committee. This instrument therefore modifies the relevant provisions of the Regulations from exit day so that they continue to accord guaranteed access and remedies to economic operators established in states which are GPA parties, including member States, despite the UK not being a member State or, until accession, a GPA party. Regulations 6, 8 and 10 of this instrument remove these provisions eight months from exit day.
- 7.21 Part 5 of the instrument disapplies the rights, powers, liabilities, obligations, restrictions, remedies and procedures in the field of public procurement which are derived from international agreements between the EU and third countries where those obligations could otherwise form part of retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018. Part 3 of the instrument also removes from the Regulations the provision that extends the application of the duties on contracting authorities and remedies to suppliers from third countries that have such an agreement with the EU.

Exclusion grounds

- 7.22 In respect of procurement procedures commenced after exit day, contracting authorities will not be bound by the mandatory requirement to exclude an economic operator established as having a conviction where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities. To avoid 'moving the goalposts' in ways that could produce unfairness in the context of procurements that are already underway, this ground of exclusion will, under the transitional provisions in the Schedule to this instrument, continue to apply to on-going procurement procedures commenced before exit.

Retained direct EU legislation

- 7.23 Section 3 of the European Union (Withdrawal) Act 2018 provides that "so far as operative immediately before exit day", direct EU legislation, with certain exemptions, forms part of domestic law on and after exit day. It incorporates legislation into domestic law that had legal effect prior to exit through s. 2(1) of the European Communities Act 1972.
- 7.24 This instrument modifies and in one case, revokes, for the whole of the UK, direct EU legislation in respect of which the Cabinet Office is the lead department.
- 7.25 The instrument modifies Regulation 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV), to transfer the powers of the Commission to amend the annexes to the Regulation to MCO.
- 7.26 The instrument also modifies Commission Decision 2006/211/EC (electricity generation in England, Scotland and Wales), Commission Decision 2007/141/EC (supply of electricity and gas in England, Scotland and Wales), and Commission Decision 2010/192/EC (exploration for and exploitation of oil and gas in England, Scotland and Wales). It replaces references to the application of Directive 2004/17/EC with references to the relevant provisions of domestic law and omits redundant Articles.
- 7.27 The instrument revokes Commission Implementing Regulation (EU) No 2015/1986 establishing standard forms for the publication of notices in the field of public procurement. That Regulation sets out the forms required for the publication of notices in OJEU. The forms will not be required for the purposes of the new UK e-notification service. The service itself will be designed to elicit the information in the form and manner in which it is to be submitted.

Consequential amendments to primary and secondary legislation

- 7.28 The instrument makes a number of amendments to primary and secondary legislation that arise as a consequence of the amendments to the Regulations.
- 7.29 The Greater London Authority Act 1999 is amended to replace references to the sending of notices to the Publications Office of the EU with references to the submission of notices to the new UK e-notification service. Section 355(8) now provides that where the Mayor revises the provisions of the London Environment Strategy dealing with municipal waste management after an authority has submitted a contract notice relating to the award of that contract to the UK e-notification service, then, in discharging their obligations under section 355, authorities are to disregard the amendments made to the London Environment Strategy. However, under the

general principles of the transitional provisions in the Schedule to this instrument, the amendment will not apply to the extent that section 355 of that Act relates to the sending of a notice before exit day. Similar considerations apply in respect of the power in section 356 for the Mayor to give directions to a waste collection or waste disposal authority.

- 7.30 The instrument amends the definition in the Equality Act 2010 of “public procurement functions”, reflecting the fact that after exit, public procurement functions exercised by UK contracting authorities will not be regulated by the EU Directive to which the Act currently refers. Instead, “public procurement functions” will be defined by reference to the domestic legislation that implements the Directive in the different parts of the UK. The statement in Part 2 Annex A confirms that these amendments have no wider policy impact on the Equality Act 2010.
- 7.31 The instrument amends the Social Value (Public Services) Act 2012 to replace a reference to a notice being sent to the Publications Office of the EU with a reference to a notice being submitted to the UK e-notification service.
- 7.32 This instrument amends the definition of 'public notice' in regulation 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 so as to refer to the UK e-notification service'.
- 7.33 The amendment to the Provision of Services Regulations 2009 reflects the omission of regulation 58(5) of, and Schedule 5 to, the Public Contracts Regulations 2015 relating to requirements on economic operators to be enrolled in one of the professional or trade registers kept in their member State of establishment, as described in Schedule 5 or to comply with any other request set out in that Schedule.
- 7.34 The instrument amends Schedule 2 to the Water Industry (Specified Infrastructure Projects)(English Undertakers) Regulations 2013. The 2013 Regulations modify specific provisions of the Utilities Contracts Regulations 2016 in their extended application for the purposes of the 2013 Regulations. The amendments that this instrument makes to Schedule 2 take account of the amendments that this Instrument makes to some of those specific provisions.

Specific amendments

- 7.35 The definition of affiliated undertaking in both the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 by reference to the requirements in Directive 2013/34/EU has been replaced with a reference to the domestic legislation which implements the Directive, namely, Part 15 of the Companies Act 2006.
- 7.36 Regulation 85 of the Utilities Contracts Regulations 2016 applies to tenders relating to products originating in third countries with which the EU has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for EU undertakings to the markets of those third countries. Utilities are entitled to reject any tender submitted for the award of a supply contract where the proportion of the products originating in third countries exceed 50% of the total value of the products constituting the tender. The origin of the products is determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code as amended from time to time. The instrument replaces the reference to the Community Customs Code with a suitable

reference that attracts the country of origin rules in the Taxation (Cross-Border Trade) Act 2018.

The 2006 Regulations

- 7.37 The effect of the original transitional provisions in the Regulations means that the Public Contract Regulations 2006 and Utilities Contract Regulations 2006 (the 2006 Regulations) continue to apply to contract award procedures commenced in accordance with the Public Contracts Regulations 2006 before 26th February 2015; to contract award procedures or design procedures commenced in accordance with the Utilities Contracts Regulations 2006 before 18 April 2016; and to concession contract award procedures commenced in accordance with the Public Contract Regulations 2006 before 18 April 2016.
- 7.38 Since the 2006 Regulations will only ever apply in respect of procedures commenced before exit day, the instrument modifies them to the extent that they continue to apply to subsequent stages of the procurement that have not been completed by exit day. Consistent with the transitional and savings provisions we are making in respect of amendments to the Regulations, references to a member State will be deemed to continue to include the UK whereas all requirements to send notices to OJEU are replaced with a requirement to submit a notice to the UK e-notification service.

Abnormally low tenders and State aid

- 7.39 In respect of abnormally low tenders submitted by bidders who may have been in receipt of state subsidies, the intention is to treat non-UK economic operators on a level playing field. Further, although a new UK State aid regime is envisaged in which the function for enforcement is to be conferred on the Competition and Markets Authority, in the area of public procurement, it would be inappropriate for economic operators established in the UK to be required to demonstrate that aid provided by the UK Government was compatible with the UK's State aid regime in contrast to economic operators not established in the UK. Accordingly, the provisions in the Regulations relating to State aid have been removed (for example, regulation 69(2)(f), (6) and (7) of the Public Contracts Regulations 2015).

E-Certis

- 7.40 E-Certis is the EU's free, online database that lists the eligibility criteria and documentary evidence needed in each EEA country to take part in public procurement. It helps companies and contracting authorities cope with the different forms of documentary evidence required for cross-border tenders for EU public contracts. It provides links to the bodies providing certificates and evidence that a supplier has not breached an exclusion ground such as for non-payment of taxes. After exit, it would be inappropriate to continue to require UK contracting authorities to have recourse to e-Certis. The instrument removes that requirement.

Joint procurement

- 7.41 The provisions in the Regulations relating to procurement involving contracting authorities or other contracting entities from other member States (for example, regulation 39 of the Public Contracts Regulations 2015) reflect rules introduced by the Commission to encourage cross-border joint procurements between member States. The omission of these provisions is not intended to imply that joint procedures should not be undertaken or that there should be any disruption to existing arrangements.

However, these provisions are premised on recognition by all the member States of the contracting authorities concerned that the contracting authorities' mutual rights and obligations will be as laid down by, or in accordance with, the arrangements referred to in these provisions (for example, that all the member States will respect the choice of national law made by contracting authorities who procure jointly under these provisions). After the UK ceases to be a member State, this common recognition will not necessarily apply. The corresponding provisions of the Directives (for example, Article 39 of Directive 2004/18/EC), which will continue to apply to member States, refers only to "contracting authorities from member States", a category that will no longer include contracting authorities from the UK. It is therefore appropriate to omit these provisions. Cross-border joint procedures may continue to be undertaken (as, in practice, they were to some extent before the Regulations were made, as the previous Procurement Directives and their transposing regulations did not contain such provisions), but on the same basis as cross-border joint procedures with contracting authorities from non-member States, without the legal clarity provided by these provisions which would be impossible to enforce after exit.

Transitional provisions

- 7.42 The Regulations, as amended by the instrument, will generally apply prospectively, even in relation to procurements that are already underway on exit day. However, there will be some exceptions to this, mainly in cases in which applying the amended provision to such procurements would 'move the goalposts' in ways that would, or could, produce unfairness. Some examples have been mentioned above. Further details of the transitional provisions are in the Schedule to the instrument.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 There has been no consultation on how to rectify the deficiencies arising from withdrawal. The changes made are intended to maintain the current legislative and policy framework in so far as this is possible after exit and are within the extent permitted by the European Union (Withdrawal) Act 2018 to correct deficiencies.
- 10.2 Regular discussions on the content of this instrument have been held with the devolved administrations throughout the drafting process in accordance with the Intergovernmental Agreement. In so far as this instrument makes provision that could be made by the Welsh Ministers, Scottish Ministers and a Northern Ireland Department, there has been regular engagement with the Welsh Government, Scottish

Government and Northern Ireland Civil Service throughout the drafting process and in accordance with the terms of the Intergovernmental Agreement on the EUWA¹.

11. Guidance

- 11.1 Guidance will be available for stakeholders by the time this instrument comes into force.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the framework and principles underlying the Regulations have not been substantially amended. Modifications contained in this instrument have been made to ensure the Regulations function effectively, once the UK withdraws from the EU. Contracting authorities and other contracting entities as well as private sector businesses will have to familiarise themselves with the amended provisions and the new UK e-notification service. UK economic operators will have to monitor opportunities on the new UK e-notification service on which UK procurement opportunities will be advertised. These impacts are, however, expected to be low and are below the threshold required to carry out a full impact assessment. It will be open to UK economic operators to continue to respond to contract notices published on OJEU by member States but in a no deal scenario where the UK is not participating in the GPA, it may be that economic operators would no longer have guaranteed access to the procurement markets of GPA parties (including the EU) or the remedies provided for by them. However, that is not an impact that arises from this statutory instrument. The most significant cost to the public sector that arises directly from this instrument relates to the development of the IT system for the UK e-notification service.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 We propose no specific action to minimise regulatory burdens on small businesses. The impact on small businesses arising from this instrument is expected to be low. Further guidance on the introduction of the UK e-notification service and in respect of on-going procurement procedures will be published.

14. Monitoring & review

- 14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Lois Devey at the Cabinet Office Telephone: 07834172021 or email: lois.devey@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702623/2018-04-24_UKG-DA_IGA_and_Memorandum.pdf

- 15.2 Edward Green at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Oliver Dowden, the Minister for Implementation, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 Oliver Dowden, the Minister for Implementation, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the [draft] Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate.
- 1.3 This is the case because it does no more than prevent, remedy or mitigate deficiencies in retained EU law arising from the withdrawal of the UK from the EU, examples of which are mentioned in paragraph 7.1 in the main body of this explanatory memorandum”.

2. Good reasons

- 2.1 Oliver Dowden, the Minister for Implementation, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view there are good reasons for the provisions in this [draft] instrument, and I have concluded they are a reasonable course of action. These reasons are set out in paragraph 7.1 to 7.42 of this explanatory memorandum”.

3. Equalities

- 3.1 Oliver Dowden, the Minister for Implementation, has made the following statements:
- 3.2 “The draft instrument does amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts. Equality Act 2010 Section 155 subsection 2 and 3 (power to impose specific duties in relation to public procurement: supplementary) will be amended to refer to provisions in the Public Contracts Regulations 2015 and Public Contracts (Scotland) Regulations instead of the Public Sector Directive 2014/24/EU. These amendments have no wider policy impact. We have engaged with the devolved authorities to discuss appropriate amendments to their parallel procurement regulations”.
- 3.3 Oliver Dowden, the Minister for Implementation, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.4 “In relation to the draft instrument, I, Oliver Dowden, the Minister for Implementation, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

4. Explanations

- 4.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

66 - The Public Procurement (Amendment Etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 18 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 21
SICM under SO 30A (because amends primary legislation)	Paper 22

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018.

The Regulations amend domestic legislation which implements EU legislation in the field of public procurement. The Regulations will to ensure this area of law continues to be operable after the withdrawal of the UK from the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 10 December 2018 regarding the effect of these Regulations. However, Members may wish to note the following additional information.

The Equality Act 2010 ("the Act") imposes a "public sector equality duty" on certain public authorities. That duty is to have due regard, in the exercise

of functions, to the need to do various things, including eliminating discrimination and advancing equality of opportunity.

The Act allows the Welsh Ministers to impose additional duties on certain “relevant Welsh authorities” for the purpose of enabling the better performance by them of the public sector equality duty in carrying out public procurement. Those authorities include the Welsh Government, local government and various providers of health care and education. The Regulations will change existing references so that they will refer to UK Public Procurement law rather than EU public procurement law.

Other changes made by the Regulations do not affect the functions of either the National Assembly for Wales or the Welsh Ministers. Members may wish to note, however, that the Explanatory Memorandum to the Regulations indicates (among other things) the following-

- (i) Some deficiencies are not being fixed by the Regulations and are subject to ongoing discussion between the UK Government and the Welsh Government (no further detail is given);
- (ii) The Welsh Government’s public procurement portal ‘Sell2Wales’ is unaffected by the Regulations;
- (iii) The UK Government will be given power to amend public procurement law in England and Wales so that certain international obligations may no longer apply in the fields of environmental, social and employment law. These powers may only be exercised with the consent of the Welsh Ministers, as far as they affect devolved authorities;
- (iv) The UK Government intends to join the World Trade Organisation’s agreement on public procurement (the “GPA”) on or shortly after the UK departs from the EU;
- (v) Separate regulations will be made to correct deficiencies in relation to defence procurement. Legal Advisers note that defence is a reserved matter. Those regulations are not, therefore, likely to give rise to a statement by the Welsh Government.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas. Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

The Welsh Government has indicated that a consent motion under Standing Order 30A.10 has been laid in relation to these Regulations.

Ein cyf/Our ref MA - L/LG/0798/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

19 December 2018

Dear Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of the Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019, as required by Standing Order 30A.

I am writing to inform you that I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis that our interest in this SI is restricted to operability amendments that will arise as a result of the UK leaving the EU.

The SI provision covers operability amendments in relation to The Farriers (Registration) Act 1975 and The Animal Health Act 1981, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.

Regards



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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019**

DATE **19 December 2018**

BY **Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs**

The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019

The law which is being amended

Domestic legislation

Primary

- The Farriers (Registration) Act 1975 ("The 1975 Act")
- The Animal Health Act 1981 ("The 1981 Act")

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Animal Health and Welfare, which includes farriery, is a devolved function.

The purpose of the amendments

The purpose of the SI (Affirmative procedure) is to remove the existing legislative provisions namely, the European Union (Recognition of Professional Qualifications) Regulations 2015 which transposed Directives 2005/36EC and 2013/55/EU - known as the Mutual Recognition of Professional Qualifications (MRPQ) Directive - from "The 1975 Act"

A separate instrument, namely, the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2018 amends the European Union (Recognition of Professional Qualification) Regulations 2015 so that farriers will not be in scope of the European Union (Recognition of Professional Qualifications) Regulations 2015.

Instead, the Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019 propose to amend the 1975 Act so as to give the Farriers Registration Council, established under the 1975 Act, wide discretion in relation to the registration of farriers."

The “1981 Act” will also be amended to reflect Retained EU law in devolved areas in terms of “ EU obligations” being substituted by “retained EU law”.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/MtHRLa9i>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK’s exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Farriers (Registration) Act 1975 and The Animal Health Act 1981.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019 (“2019 Regulations”) were laid before the sifting committees in the Houses of Parliament on 13 December 2018. The Regulations can be found at:

<https://beta.parliament.uk/work-packages/MtHRLa9i>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also covers operability amendments.
4. In addition, the SI makes amendments to:
 - The Farriers (Registration) Act 1975 (“The 1975 Act”).
 - the Animal Health Act 1981 (“The 1981 Act”)

Relevant provision to be made by the SI

5. The amendments made to the 1975 Act by the 2019 Regulations, are to the following provisions:
 1. The Act is amended as follows.
 - (1) In section 3, omit subsection (2A)(a).
 - (2) In section 4, omit subsection (5)(b).
 - (3) In section 7(c) —
 - (a) in subsection (1)—
 - (i) in paragraph (d), at the end, insert “or”;
 - (ii) in paragraph (e), for “a relevant European State” substitute “the United Kingdom”;
 - (iii) omit paragraphs (f) and (g);
 - (b) omit subsections (6) to (9).

- (4) In section 9 (d)—
 - (a) omit subsections (2) to (5);
 - (b) in subsection (6), omit “, (2), (3) or (4)”;
 - (c) in subsection (7), omit “, (2), (3) or (4)”.
 - (5) In section 10(1)(b)(e), for “, or Part IV or Part V” substitute “or Part IV”.
 - (6) In section 15(1)(f), omit paragraph (d) and the “or” before it.
 - (7) In section 15A(1) (g), omit sub-paragraph (iii) and the “or” before it.
In section 16(2) (h), omit paragraph (c) and the “or” before it.
6. The 2019 Regulations remove the existing legislative provisions which transposed Directives 2005/36EC and 2013/55/EU - known as the Mutual Recognition of Professional Qualifications (MRPQ) Directive - into the 1975 Act. The UK regulations that implement the MRPQ into the 1975 Act are set out in the European Recognition of Professional Qualifications Regulations 2015 (as amended). This facilitated the route to registration for EU/EEA nationals under the 1975 Act. The amendment ensures that any person holding a farriery qualification obtained outside the UK who wishes to register with the Farriers Registration Council (FRC) must have a qualification meeting their equivalent standards or take an examination. Qualifications held by non-EU/EEA nationals will have to be assessed by the FRC to ensure that they comply with their required standards – and failing that sit an appropriate examination.
 7. The amendments made to the 1981 Act by the 2019 Regulations, are to the following provisions:
 - (1) The Animal Health Act 1981 is amended as follows.
 - (2) In section 64A (b)—
 - (a) in the heading, for “EU obligations” substitute “retained EU law”;
 - (b) in paragraph (a), in the words after sub-paragraph (ii), for “in implementation of any EU obligation” substitute “which is retained EU law”.
 - (3) In Schedule 3(2A)(4)(c), omit paragraph (a).
 8. The second amendment (in terms of primary legislation) is to the 1981 Act. These amendments will ensure the current power of entry (which exists where there is secondary legislation made under the Act to give effect to an EU obligation) continues to exist.
 9. The changes identified in paragraphs 6 and 8 relate to functions that are within the legislative competence of the National Assembly for Wales, which could be the subject of a National Assembly Bill.
 10. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to animal health and welfare and farriery.

Why it is appropriate for the SI to make this provision

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

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

19 December 2018

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. 0000

EXITING THE EUROPEAN UNION

ANIMALS

FARRIERS

VETERINARY SURGEONS

**The Farriers and Animal Health (Amendment) (EU Exit)
Regulations 2019**

Made - - - -

Coming into force in accordance with regulation 1(1)

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

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

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Farriers and Animal Health (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(2) In these Regulations, “the Act” means the Farriers (Registration) Act 1975^(b).

^(a) 2018 c. 16.
^(b) 1975 c. 35.

PART 2

Amendment and transitional provision regarding the Farriers (Registration) Act 1975

Amendment of the Act

2.—(1) The Act is amended as follows.

(2) Omit sections 3(2A) and 4(5)(a).

(3) In section 7(b)—

(a) in subsection (1)—

(i) in paragraph (d), at the end, insert “or”;

(ii) in paragraph (e)(i), for “a relevant European State” substitute “Great Britain”;

(iii) omit paragraphs (f) and (g);

(b) omit subsections (6) to (9).

(4) In section 9(c)—

(a) omit subsections (2) to (5);

(b) in subsections (6) and (7), omit “(2), (3) or (4)”.

(5) In section 10(1)(b)(d), for “, Part IV or Part V” substitute “or Part 4”.

(6) Omit section 15(1)(d)(e) (together with the preceding “or”).

(7) Omit section 15A(1)(iii)(f) (together with the preceding “or”).

(8) Omit section 16(2)(c)(g) (together with the preceding “or”).

Applications before exit day: transitional provision

3.—(1) This regulation applies where before exit day—

(a) an application under Part 3 of the European Union (Recognition of Professional Qualifications) Regulations 2015(h) has been made but not determined, or

(b) an application under section 7(1)(g) of the Act has been made but not determined.

(2) The provisions of the Act continue to apply to that application as if the Act were not amended by regulation 2 of these Regulations, but as if in section 7—

(a) in subsection (1)—

(i) in paragraph (f)—

(aa) for “the European Union (Recognition of Professional Qualifications) Regulations 2015” there were substituted “the 2015 Regulations by virtue of the operation of paragraph 44 of Schedule 1 to the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019(i)”;

(bb) for “those Regulations” there were substituted “the 2015 Regulations”;

(ii) in paragraph (g), for “those Regulations” there were substituted “the 2015 Regulations, as they applied on the day before exit day”;

(a) Section 3(2A) and 4(5) were inserted by S.I. 2008/646.

(b) Section 7 was substituted by S.I. 2008/646 and amended by S.I. 2015/2072.

(c) Section 9 was substituted by S.I. 2008/646 and amended by S.I. 2015/2072.

(d) Section 10(1)(b) was amended by S.I. 2008/646.

(e) Section 15(1) was amended by S.I. 2008/646, 2015/2072.

(f) Section 15A was inserted by the Farriers (Registration) (Amendment) Act 1977 (c. 31), the Schedule and subsection 1(iii) was inserted by S.I. 2008/646.

(g) Section 16(2)(c) was inserted by S.I. 2008/646.

(h) S.I. 2015/2059, to which there are amendments not relevant to these Regulations.

(i) S.I. 2019/XXXX.

- (b) after subsection (1) there were inserted—

“(1A) In subsection (1), “the 2015 Regulations” means the European Union (Recognition of Professional Qualifications) Regulations 2015.”.

Temporary and occasional provision of services: transitional provision

- 4.**—(1) This Regulation applies to a declaration—

- (a) which has been submitted or renewed in accordance with regulation 15 of the European Union (Recognition of Professional Qualifications) Regulations 2015, and
- (b) in respect of which paragraph 42 of Schedule 1 to the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 applies.

(2) The provisions of the Act continue to apply to that declaration as if the Act were not amended by regulation 2 of these Regulations, but as if in section 7(6) after “if” it were inserted “, by virtue of the paragraph 42 of Schedule 1 to the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019,”.

PART 3

Amendment of the Animal Health Act 1981

Amendment of the Animal Health Act 1981

- 5.**—(1) The Animal Health Act 1981(a) is amended as follows.

- (2) In section 64A(b)—

- (a) in the heading, for “EU obligations” substitute “retained EU law”;
- (b) in paragraph (a), in the words after sub-paragraph (ii), for the words from “the provisions” to “or are” substitute “any retained EU law within an order made under this Act has been or is”.

- (3) In Schedule 3, omit paragraph 2A(4)(a)(c).

PART 4

Amendment of subordinate legislation

Amendment of the Veterinary Surgery (Rectal Ultrasound Scanning of Bovines) Order 2010

6.—(1) The Veterinary Surgery (Rectal Ultrasound Scanning of Bovines) Order 2010(d) is amended as follows.

(2) In Article 1(2), in the definition of “approved course”, omit paragraph (b) (together with the preceding “or”).

(3) In Article 4(2), omit the words from “or a person” to “the Act”.

Amendment of the Veterinary Surgery (Epidural Anaesthesia of Bovines) Order 2010

7.—(1) The Veterinary Surgery (Epidural Anaesthesia of Bovines) Order 2010(e) is amended as follows.

(a) 1981 c. 22.

(b) Section 64A was inserted by S.I. 1992/3293 and amended by S.I. 2011/1043.

(c) Paragraph 2A was inserted, in England and Wales, by S.I. 2005/3475 and amended by S.I. 2011/1043.

(d) S.I. 2010/2056.

(e) S.I. 2010/2058.

- (2) In Article 3—
- (a) in the definition of “approved course”, omit paragraph (b) (together with the preceding “or”);
 - (b) in the definition of “embryo collection or embryo transfer team”—
 - (i) for “Secretary of State,” substitute “Secretary of State or”;
 - (ii) omit “or by the competent authority of a relevant European State”.
- (3) Omit Article 4(2)(b)(ii)(bb) (together with the preceding “or”).

Amendment of the Veterinary Surgery (Artificial Insemination) Order 2010

8.—(1) The Veterinary Surgery (Artificial Insemination) Order 2010(a) is amended as follows.

(2) In Article 1(2), in the definition of “veterinary surgeon”, omit the words from “or who holds” to the end.

(3) In Article 3—

- (a) in paragraph (2)(c)—
 - (i) in paragraph (ii), at the end, insert “or”;
 - (ii) omit paragraph (iv) (together with the preceding “or”);
- (b) in paragraph (3), omit sub-paragraph (b) (together with the preceding “or”).

(4) In Article 4(3), omit sub-paragraph (b) (together with the preceding “or”).

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of domestic legislation to operate effectively and other deficiencies (in particular under section 8(2)(c) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to domestic legislation in the fields of mutual recognition of professional qualifications, in particular farriers, and animal health. Part 2 amends the Farriers (Registration) Act 1975 (c. 35) and makes transitional provision; Part 3 amends the Animal Health Act 1981 (c. 22); Part 4 amends subordinate legislation.

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

© Crown copyright 2018

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

(a) S.I. 2010/2059.

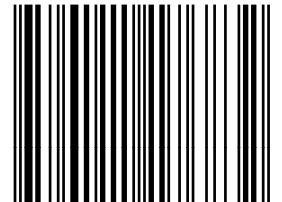
£4.90

UK201812121008 12/2018 19585

<http://www.legislation.gov.uk/id/ukdsi/2019/9780111176832>

Pack Page 360

ISBN 978-0-11-117683-2



9 780111 176832

EXPLANATORY MEMORANDUM TO
THE FARRIERS AND ANIMAL HEALTH (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This SI makes amendments to the Farriers (Registration) Act 1975, the Animal Health Act 1981 and three pieces of secondary legislation made under the Veterinary Surgeons Act 1966, in order to address deficiencies arising from the United Kingdom's withdrawal from the European Union.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The relevant parts of the Farriers (Registration) Act 1975 transposed Directives 2005/36/EC and 2013/55/EU, providing the means by which EEA farriers could register and practise in Great Britain. Section 64A of the Animal Health Act 1981 provides a power of entry to check compliance with any secondary legislation made under the Act in implementation of an EU obligation. Paragraph 2A (4) of Schedule 4 to that Act requires a relevant authority, before deciding not to slaughter susceptible animals on premises infected with foot and mouth disease, to be satisfied that EU interests would not be endangered by that decision. The relevant provisions of the three pieces of secondary legislation made under the Veterinary Surgeons Act 1966 permit certain minor procedures to be carried out by persons other than veterinary surgeons, provided those persons have undertaken relevant appropriate training in a Member State.

Why is it being changed?

- 2.3 Amendments to the Farriers (Registration) Act 1975, secondary legislation made under the Veterinary Surgeons Act 1966 and paragraph 2A (4) of Schedule 4 are being made because, after exit day, reciprocal arrangements with the EU will cease to exist. In the circumstances, it is no longer considered appropriate to provide more favourable treatment to EEA States. The amendment to section 64A of the Animal Health Act 1981 is necessary to ensure existing powers of entry remain available.

What will it now do?

- 2.4 After exit day:
- a. persons with farriery qualifications obtained in the EEA who wish to register and practice in the UK will need to meet the same conditions as those with farriery qualifications obtained in third countries;

- b. powers of entry which exist in respect of secondary legislation made under the Animal Health Act 1981 will continue to be available;
- c. a relevant authority will no longer need to be satisfied that EU interests would not be endangered before deciding not to slaughter susceptible animals on premises infected with foot and mouth disease;
- d. a person who is not a veterinary surgeon who wishes to perform certain minor veterinary procedures will first have to have undertaken a course approved by the Secretary of State or, in respect of certain procedures, the Department of Agriculture, Environment and Rural Affairs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

- 3.2 The territorial application of this instrument varies between provisions.
- 3.3 The territorial application mirrors the extent of the instruments being amended. Part 2 of these regulations applies to Scotland, England and Wales. Part 3 applies to England and Wales. Part 4 applies to the United Kingdom.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is different for each part of the Regulation, mirroring the legislation being amended. Part 2 of these regulations applies to Scotland, England and Wales. Part 3 applies to England and Wales. Part 4 applies to the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:

“In my view the provisions of the Farriers and Animal Health (EU Exit) (Amendment) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This SI makes amendments to the Farriers (Registration) Act 1975, the Animal Health Act 1981 and three pieces of legislation made under the Veterinary Surgeons Act 1966 in order to address deficiencies arising from the United Kingdom’s withdrawal from the European Union.
- 6.2 The Farriers (Registration) Act 1975, together with the European Recognition of Professional Qualifications Regulations 2015 (SI 2015/2059), transposed Directives 2005/36EC and 2013/55/EU in so far as they applied to the profession of farriery. SI 2015/2059 will, on exit day, be amended by the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019. Those regulations

contain transitional and saving provisions of relevance to these Regulations (see regulation 3(2)(i)(aa) and regulation 4(1)(b) and (c)).

7. Policy Background

What is being done and why?

- 7.1 Farriery is defined in the Farriers (Registration) Act 1975 as ‘any work in connection with the preparation or treatment of the foot of a horse for the immediate reception of a shoe thereon, the fitting by nailing or otherwise of a shoe to the foot or the finishing off of such work to the foot’. The Farriers (Registration) Act 1975, together with the European Recognition of Professional Qualifications Regulations 2015 (SI 2015/2059), transpose Directives 2005/36EC and 2013/55/EU in so far as they applied to the profession of farriery in Great Britain. Farriery is not regulated in Northern Ireland.
- 7.2 The purpose of the Directives is to facilitate free movement of persons with professional qualifications in the EU. Implementation of the Directives gave farriers with EEA qualifications or experience more favourable access to practice in Great Britain than those with qualifications from the rest of the world. When the UK leaves the EU, the EU will no longer recognise UK qualifications and experience. In those circumstances, it is no longer considered appropriate to provide more favourable treatment to EEA States. EEA nationals will still be able to register to practice in Great Britain, but will need to satisfy the same conditions as any third country.
- 7.3 These amendments do not affect the rights of those already registered to practice farriery in Great Britain. Transitional arrangements ensure that those who are in the process of registering with the Farriers Registration Council on exit day are entitled to have their application (and any related appeal) considered under the rules as they applied before exit day.
- 7.4 This SI also makes two minor amendments to the Animal Health Act 1981 (AHA) that:
- a. ensure that, where a power of entry currently exists so that an inspector can assess compliance with secondary legislation under the Animal Health Act that implements an EU obligation, that power of entry remains. The power of entry would not apply in respect of secondary legislation made under the Act after exit day;
 - b. removes the express requirement to take European Community interests into account when deciding whether or not to slaughter susceptible animals. These considerations are adequately covered by the requirement to put measures in place to prevent further spread of foot-and-mouth disease.
- 7.5 The Veterinary Surgery (Rectal Ultrasound Scanning of Bovines) Order 2010, Veterinary Surgery (Epidural Anaesthesia of Bovines) Order 2010 and Veterinary Surgery (Artificial Insemination) Order 2010 all permit minor veterinary surgery procedures to be carried out by persons other than veterinary surgeons provided that they have successfully undertaken an “approved course”. At present an “approved course” includes a course approved in a Member State. As reciprocal arrangements with the EU will come to an end on exit day, this is no longer considered to be appropriate. In future, it will be for the relevant authority (be it the Secretary of State or the Department of Agriculture, Environment and Rural Affairs) to determine whether training undertaken outside the UK should be approved.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failure of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also being made under paragraph 21(b) of Schedule 7 to the Act. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 Consolidation is not being done at this time.

10. Consultation Outcome

- 10.1 The Scottish, Welsh and Northern Irish administrations have been consulted about these proposed amendments and their views have been taken into account in the drafting of this instrument. The Farriers Registration Council have also been consulted about amendments to the Farriers (Registration) Act 1975.

11. Guidance

- 11.1 The Farriers Registration Council will produce any necessary guidance ahead of the UK leaving the EU on 29 March 2019.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because this will have a very low/negligible level of impact on business.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is continued dialogue with stakeholders.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Gary Eldon at the Department of Environment, Food and Rural Affairs Telephone: 0208 026 3159 or email Gary.Eldon@defra.gov.uk
- 15.2 Catherine Harrold, Deputy Director for Future Animal, Plant Health Endemic and Traceability at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

- 15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Farriers and Animal Health Act (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because these amendments address deficiencies in the Farriers (Registration) Act 1975, Animal Health Act 1981 and three pieces of secondary legislation made under the Veterinary Surgeons Act 1966 arising from the United Kingdom’s withdrawal from the European Union.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding the use of legislative powers in the European Union (Withdrawal Act 2018):

“In my view there are good reasons for the provisions in this instrument and I have concluded they are a reasonable course of action”.

- 2.2 These are that they give the statutory regulator, the Farriers Registration Council more power to evaluate whether or not a farriery qualification from other European countries is of a comparable standard to UK approved farriery qualifications.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 3.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

- 3.3 Given the subject matter of the instruments being amended and the technical nature of the instrument, no opportunities to advance the matters set out in section 149(1) of the Equality Act 2010 arise.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

67 - The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 19 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 27
SICM under SO 30A (because amends primary legislation)	Paper 28

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations make amendments to the Farriers (Registration) Act 1975, the Animal Health Act 1981 and three pieces of secondary legislation made under the Veterinary Surgeons Act 1966, in order to address deficiencies arising from the United Kingdom's withdrawal from the European Union. After exit day, reciprocal arrangements with the EU will cease to exist.

The Explanatory Memorandum states at paragraph 2.3 that "in the circumstances, it is no longer considered appropriate to provide more favourable treatment to EEA states". Persons with farriery qualifications obtained in the EEA, who wish to register and practice in the UK will need to meet the same conditions as those

with farriery qualifications obtained in third countries. Paragraph 7.3 of the Explanatory Memorandum confirms that “these amendments do not affect the rights of those already registered to practice farriery in Great Britain”.

The amendments made to the three pieces of secondary legislation made under the Veterinary Surgeons Act 1966, will mean that a person who is not a veterinary surgeon who wishes to perform certain minor veterinary procedures will first have to have undertaken a course approved by the Secretary of State, or, in respect of certain procedures, the Department of Agriculture, Environment and Rural Affairs. Currently, the training required is relevant appropriate training in a Member State. The amendment to the Animal Health Act 1981 is to ensure that existing powers of entry remain available. The amendments also provide that a relevant authority will no longer need to be satisfied that EU interests would not be endangered before deciding not to slaughter susceptible animals on premises infected with foot and mouth disease.

Legal Advisers agree with the statement laid by the Welsh Government dated 19 December 2018 regarding the effect of these Regulations.

The Welsh Government’s statement provides a link to the Regulations on the UK Parliament’s website. However, these Regulations and their accompanying Explanatory Memorandum were not available to download from that website at the time of writing. Legal Advisers were able to access the relevant documentation from legislation.gov.uk. The title of the Regulations on the UK Government’s website, and on legislation.gov.uk, and the UK Parliament’s website, is provided as “The Farriers and Animal Health (Amendment) (EU Exit) Regulations 2019” whereas the title provided on the Welsh Government’s written statement is “The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019”.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA - L/LG/0853/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

18 December 2018

Dear Mick,

This letter is to inform you I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019, as required by Standing Order 30A.

I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis our interest in this SI is restricted to operability amendments that will arise as a result of the UK leaving the EU.

The SI provision covers operability amendments in relation to the Veterinary Surgeons Act 1966 and the Animal Health Act 2006, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Given the volume of legislation the Assembly is considering, I do not believe a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI and I would be happy to participate in a debate, should one be held.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

Regards

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is written in a cursive style with a large, sweeping 'L' and a long, flowing 's' at the end.

Lesley Griffiths AC/AM

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019**

DATE **19 December 2018**

BY **Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs**

The Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019 (the “2019 Regulations”)

Domestic legislation

Primary

- The Veterinary Surgeons Act 1966
- The Animal Welfare Act 2006

Any impact the SI may have on the Assembly’s legislative competence and/or the Welsh Ministers’ executive competence

No functions are being transferred by this instrument.

The purpose of the amendments

The purpose of the SI (Affirmative procedure) is to remove the existing legislative provisions namely, the European Union (Recognition of Professional Qualifications) Regulations 2015 which transposed Directives 2005/36EC and 2013/55/EU - known as the Mutual Recognition of Professional Qualifications (MRPQ) Directive - from the Veterinary Surgeons Act 1966. The regulation of veterinary surgeons is a reserved matter under section G1 of Part 2 of Schedule 7A to the Government of Wales Act 2006.

The profession of Veterinary Surgeons is ‘regulated’ under regulation 35 of the MRPQ Regulations. In order to provide a veterinary surgeons service, individuals must be able to evidence they are sufficiently competent and accredited by a professional body.

A separate instrument, namely, the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2018 amends the European Union (Recognition of Professional Qualification) Regulations 2015 so that vets will not be in scope of the European Union (Recognition of Professional Qualifications) Regulations 2015.

Instead, the 2019 Regulations will amend the 1966 Act so as to remove the current distinction between EU/EEA and non EU/EEA nationals. The registration of veterinary surgeons will continue to be regulated on a GB basis under the 1966 Act. The amendments will permit a holder of non-UK veterinary surgeon qualification to register in the UK.

In relation to the Animal Welfare Act 2006, animal health and welfare is devolved. The amendments to section 29 of the Animal Welfare Act 2006 make corrections so that the law is operable after the exit date by referring to “retained EU law” instead of the current reference to “implementation of an “EU obligation.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://beta.parliament.uk/work-packages/wn36fV6A>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK’s exit from the EU.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Animal Welfare Act 2006

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019 ("Regulations") were laid before the sifting committees in the Houses of Parliament on 13 December 2018. The Regulations can be found at:

<https://beta.parliament.uk/work-packages/wn36fV6A>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2019. It also covers operability amendments.
4. The SI makes amendments to:
 - The Animal Welfare Act 2006.

Relevant provision to be made by the SI

5. Section 29 of the Animal Welfare Act 2006 makes provision for an inspector to carry out an inspection in order to check compliance with regulations under section 12 of the Act (regulations to promote welfare) which implement an EU obligation. The amendments make corrections so that the law is operable after exit date by substituting the words "are retained EU law" for the current words, "implement an EU obligation".
6. The changes identified above relate to functions that are within the legislative competence of the National Assembly for Wales, which could be the subject of a National Assembly Bill.
7. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to the environment.

Why it is appropriate for the SI to make this provision

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

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

19 December 2018

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

ANIMALS

VETERINARY SURGEONS

The Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019

Made - - - -

Coming into force in accordance with regulation 1(1)

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

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

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(2) In these Regulations, “the Act” means the Veterinary Surgeons Act 1966^(b).

^(a) 2018 c. 16.

^(b) 1966 c. 36.

PART 2

Amendment and transitional provision regarding the Veterinary Surgeons Act 1966

Amendment of the Act

- 2.**—(1) The Act is amended as follows.
- (2) Omit section 1A(**a**) (together with the preceding italic heading).
- (3) In section 2(2)(**b**)—
- (a) in paragraph (a), for “, 4, 5A or 5B” substitute “or 4”;
- (b) in paragraph (e), after “persons”, insert “who, immediately before exit day, were”.
- (4) Omit section 3(1)(b)(ii)(**c**) (together with the preceding “and”).
- (5) Omit section 4(1)(b)(**d**) (together with the preceding “and”).
- (6) In section 5(1)(**e**), omit the words from “and will” to “that Directive”.
- (7) Omit sections 5A and 5B(**f**).
- (8) In section 5ZBA(1)(**g**)—
- (a) omit “section 5A(1)(e), section 5B(1)(f) and”;
- (b) omit paragraph (b) (together with the preceding “or”).
- (9) Omit sections 5BA to 5D(**h**).
- (10) In section 6(**i**), omit—
- (a) subsection (1)(b)(ii) (together with the preceding “or”);
- (b) subsections (1A) and (6).
- (11) Omit sections 7A, 10(3) and 11(7)(**j**).
- (12) Omit section 16(1)(d)(**k**) (together with the preceding “or”).
- (13) In section 27(**l**)—
- (a) in the definition of “Commonwealth qualification”, for “not within a relevant European State” substitute “outside the United Kingdom”;
- (b) in the definition of “foreign qualification”, for “neither within a relevant European State nor” substitute “not”;
- (c) omit the following definitions—

-
- (a) Section 1A was inserted by S.I. 2008/1824.
- (b) Section 2(2) was amended by S.I. 2003/2919, 2008/1824.
- (c) Section 3(1)(b) was amended by S.I. 2008/1824.
- (d) Section 4(1) was amended by S.I. 2008/1824.
- (e) Section 5(1) was amended by S.I. 2008/1824.
- (f) Section 5A was inserted by S.I. 1980/1951, substituted by S.I. 2008/1824 and subsequently amended by S.I. 2013/2985, 2015/2073. Section 5B was inserted by S.I. 1980/1951, substituted by S.I. 2008/1824 and subsequently amended by S.I. 2015/2073.
- (g) Section 5ZBA was inserted by S.I. 2015/2073.
- (h) Section 5BA was substituted, together with section 5B, by S.I. 2008/1824 for section 5B as originally enacted. Section 5C was inserted by S.I. 1980/1824 and substituted by S.I. 2008/1824. Section 5CA was substituted, together with sections 5C, 5CB, 5CD and 5CE, by S.I. 2008/1824 for section 5C as originally enacted and subsequently amended by S.I. 2015/2073. Section 5CB was substituted, together with sections 5C, 5CA, 5CC, 5CD and 5CE, by S.I. 2008/1824 for section 5C as originally enacted. Section 5CC was substituted, together with sections 5C, 5CA, 5CB, 5CD and 5CE, by S.I. 2008/1824 for section 5C as originally enacted. Section 5CCA was inserted by S.I. 2015/2073. Section 5CD was substituted, together with sections 5C, 5CA, 5CB, 5CC and 5CE, by S.I. 2008/1824 for section 5C as originally enacted and subsequently amended by S.I. 2015/2073. Section 5CE was substituted, together with sections 5C, 5CA, 5CB, 5CC and 5CD, by S.I. 2008/1824 for section 5C as originally enacted and subsequently amended by S.I. 2015/2073. Section 5D was inserted by S.I. 2003/2919 and amended by S.I. 2008/1824, 2015/2073.
- (i) Section 6 was amended by S.I. 2003/2919, 2008/1824, 2015/2073.
- (j) Sections 7A, 10(3) and 11(7) were inserted by S.I. 2008/1824.
- (k) Section 16(1) was amended by S.I. 2008/1824.
- (l) Relevant amendments to section 27 were made by S.I. 1980/1951, 2003/2919, 2007/1348, 2008/1824, 2011/1043, 2013/2985, 2015/2073.

- (i) “Community rights entitled person”;
 - (ii) “competent authority”;
 - (iii) “Directive 2005/36/EC”;
 - (iv) “the Directive table”;
 - (v) “national”;
 - (vi) “registration appeals committee”;
 - (vii) “relevant European State”.
- (14) Omit Schedules 1A and 1B(a).

Applications under the Act: transitional provision

3.—(1) This regulation applies where before exit day an application under section 5A of the Act has been made but not determined.

(2) The provisions of the Act continue to apply to that application as if the Act were not amended by regulation 2 of these Regulations, but as if in section 27—

- (a) for the definition of “Community rights entitled person” there were substituted—
 - ““Community rights entitled person” means—
 - (a) a person who on the day before exit day was a national of a relevant European State,
 - (b) a person who on the day before exit day fell to be treated as a national of the United Kingdom for the purposes of the EU Treaties and who was seeking access to, or was pursuing, the profession of veterinary surgeon by virtue of an enforceable EU right, or
 - (c) a person who on the day before exit day was not a national of a relevant European State but who was, by virtue of an enforceable EU right, entitled to be treated, for the purposes of access to and pursuit of the profession of veterinary surgeon, no less favourably than a national of a relevant European State,

but does not include a person who on the day before exit day was, by virtue of Article 2 of Protocol 3 to the Treaty of Accession (Channel Islands and Isle of Man), not entitled to benefit from EU provisions relating to the free movement of persons and services;”;
- (b) in the definitions of “Directive 2005/36/EC” and “the Directive table”, for “amended from time to time” there were substituted “it applied on the day before exit day”;
- (c) for the definition of “national” there were substituted—
 - ““national”, in relation to a relevant European State, includes any person who on the day before exit day was, by virtue of any enforceable EU right, entitled to be treated, for the purposes of access to the veterinary profession, no less favourably than a national of such a State, but does not include a person who, by virtue of Article 2 of Protocol 3 to the Treaty of Accession (Channel Islands and Isle of Man), was not entitled to benefit from EU provisions relating to the free movement of persons and services;”.

Applications under the European Union (Recognition of Professional Qualifications) Regulations 2015: transitional provision

4.—(1) This regulation applies where before exit day an application under Part 3 of the European Union (Recognition of Professional Qualifications) Regulations 2015(b) has been made but not determined.

(a) Schedule 1A was inserted by S.I. 1980/1951, substituted by 2008/1824 and amended by S.I. 2013/2985, 2015/2073.
 Schedule 1B was inserted by S.I. 2008/1824 and amended by S.I. 2015/2073.
 (b) S.I. 2015/2059.

(2) The provisions of the Act continue to apply to that application as if the Act were not amended by regulation 2 of these Regulations, but as if—

(a) in section 5B(1)—

(i) for paragraph (b) there were substituted—

“(b) on the day before exit day—

(i) the person’s case fell within regulation 3(8)(a), (c) or (e) of the European Union (Recognition of Professional Qualifications) Regulations 2015, and

(ii) regulations 27 to 34 of those Regulations applied to the person by reason of the operation of regulation 3(5) of those Regulations;”;

(ii) paragraph (c) were omitted;

(iii) for paragraph (d) there were substituted—

“(d) the person—

(i) on the day before exit day was permitted to pursue the profession of veterinary surgeon in the United Kingdom by virtue of Part 3 of the European Union (Recognition of Professional Qualifications) Regulations 2015 (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the person may be required to undertake pursuant to that Part of those Regulations), or

(ii) is permitted to pursue the profession of veterinary surgeon in the United Kingdom by virtue of the operation of paragraph 43 of Schedule 1 to the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019^(a) (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the person may be required to undertake pursuant to Part 3 of the European Union (Recognition of Professional Qualifications) Regulations 2015);”;

(b) in section 27—

(i) for the definition of “Community rights entitled person” there were substituted—

““Community rights entitled person” means—

(a) a person who on the day before exit day was a national of a relevant European State,

(b) a person who on the day before exit day fell to be treated as a national of the United Kingdom for the purposes of the EU Treaties and who was seeking access to, or was pursuing, the profession of veterinary surgeon by virtue of an enforceable EU right, or

(c) a person who on the day before exit day was not a national of a relevant European State but who was, by virtue of an enforceable EU right, entitled to be treated, for the purposes of access to and pursuit of the profession of veterinary surgeon, no less favourably than a national of a relevant European State,

but does not include a person who on the day before exit day was, by virtue of Article 2 of Protocol 3 to the Treaty of Accession (Channel Islands and Isle of Man), not entitled to benefit from EU provisions relating to the free movement of persons and services;”;

(ii) in the definitions of “Directive 2005/36/EC” and “the Directive table”, for “amended from time to time” there were substituted “it applied on the day before exit day”;

(iii) for the definition of “national” there were substituted—

““national”, in relation to a relevant European State, includes any person who on the day before exit day was, by virtue of any enforceable EU right, entitled to be treated, for the purposes of access to the veterinary profession, no less favourably than a national of such a State, but does not include a person who, by virtue of Article 2 of Protocol 3 to the Treaty

(a) S.I. 2019/XXXX.

of Accession (Channel Islands and Isle of Man), was not entitled to benefit from EU provisions relating to the free movement of persons and services;”.

Temporary and occasional provision of services: transitional provision

5.—(1) This regulation applies where, before exit day, a visiting practitioner—

- (a) has complied with paragraph 5(1) or 6(1) of Schedule 1B to the Act and is entitled to be registered in accordance with paragraph 3(1) of that Schedule, and
- (b) has not been so registered.

(2) The provisions of the Act continue to apply as if the Act were not amended by regulation 2 of these Regulations, but as if —

(a) in section 27—

(i) for the definition of “Community rights entitled person” there were substituted—

““Community rights entitled person” means—

- (a) a person who on the day before exit day was a national of a relevant European State,
- (b) a person who on the day before exit day fell to be treated as a national of the United Kingdom for the purposes of the EU Treaties and who was seeking access to, or was pursuing, the profession of veterinary surgeon by virtue of an enforceable EU right, or
- (c) a person who on the day before exit day was not a national of a relevant European State but who was, by virtue of an enforceable EU right, entitled to be treated, for the purposes of access to and pursuit of the profession of veterinary surgeon, no less favourably than a national of a relevant European State,

but does not include a person who on the day before exit day was, by virtue of Article 2 of Protocol 3 to the Treaty of Accession (Channel Islands and Isle of Man), not entitled to benefit from EU provisions relating to the free movement of persons and services;”;

(ii) in the definitions of “Directive 2005/36/EC” and “the Directive table”, for “amended from time to time” there were substituted “it applied on the day before exit day”;

(iii) for the definition of “national” there were substituted—

““national”, in relation to a relevant European State, includes any person who on the day before exit day was, by virtue of any enforceable EU right, entitled to be treated, for the purposes of access to the veterinary profession, no less favourably than a national of such a State, but does not include a person who, by virtue of Article 2 of Protocol 3 to the Treaty of Accession (Channel Islands and Isle of Man), was not entitled to benefit from EU provisions relating to the free movement of persons and services;”;

(b) in Schedule 1B—

(i) in paragraph 2(1)(b), the words “other than the United Kingdom” were omitted;

(ii) in paragraph 4(b)—

(aa) after “where” there were inserted “on the day before exit day”;

(bb) for “falls” there were substituted “fell”;

(cc) for “is in” there were substituted “would have been in”.

(3) In paragraph (1), “visiting practitioner” means a person to whom, on the day before exit day, Schedule 1B to the Act applied.

PART 3

Amendment of the Animal Welfare Act 2006

Amendment of the Animal Welfare Act 2006

- 6.—(1) Section 29 of the Animal Welfare Act 2006(a) is amended as follows.
- (2) In the heading, for “EU obligations” substitute “retained EU law”.
- (3) In subsection (1), for “implement an EU obligation” substitute “are retained EU law”.

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(c)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to domestic legislation in the fields of mutual recognition of professional qualifications and animal welfare. Part 2 amends the Veterinary Surgeons Act 1966 (c. 36) and makes transitional provision; Part 3 amends the Animal Welfare Act 2006 (c. 45).

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

© Crown copyright 2018

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

(a) 2006 c. 45. Section 29 was amended by S.I. 2011/1043.

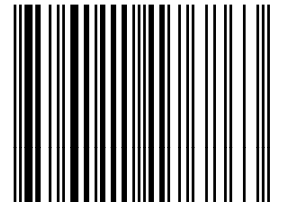
£6.90

UK201812121028 12/2018 19585

<http://www.legislation.gov.uk/id/ukdsi/2019/9780111176863>

Pack Page 385

ISBN 978-0-11-117686-3



9 780111 176863

EXPLANATORY MEMORANDUM TO
THE VETERINARY SURGEONS AND ANIMAL WELFARE (AMENDMENT) (EU
EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This SI makes amendments to the Veterinary Surgeons Act 1966 and the Animal Welfare Act 2006 in order to address deficiencies arising from the United Kingdom's withdrawal from the European Union.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The relevant parts of the Veterinary Surgeons Act transposed Directives 2005/36/EC and 2013/55/EU, changing the way in which EEA veterinary surgeons could register to practice in the United Kingdom.
- 2.3 Section 29 of the Animal Welfare Act 2006 provides a power to entry in England and Wales in order to check compliance with regulations made under section 12 of the Animal Welfare Act 2006 which implement EU obligations.

Why is it being changed?

- 2.4 Amendments to the Veterinary Surgeons Act are being made because, after exit day, reciprocal arrangements with the EU will cease to exist. In the circumstances, it is no longer considered appropriate to provide more favourable treatment to EEA States.
- 2.5 The amendment to section 29 of the Animal Welfare Act 2006 is necessary to ensure that existing powers of entry remain available after the UK's withdrawal from the European Union.

What will it now do?

- 2.6 After exit day:
- a. Persons with veterinary qualifications obtained in the EEA who wish to register and practice in the UK will need to have a qualification that satisfies the Royal College of Veterinary Surgeons (RCVS) that they have the requisite knowledge or skill, or successfully pass a statutory examination set by the RCVS.
 - b. Powers of entry under section 29 of the Animal Welfare Act 2006 will continue to be available in England and Wales, ensuring inspectors can continue to assess compliance with certain regulations made under section 12 of that Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

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

3.2 The territorial application of the instrument varies between provisions.

3.3 The territorial application mirrors the extent of the instruments being amended. Part 2 applies to the United Kingdom. Part 3 applies to England and Wales.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is different for each part of the regulation. Part 2 applies to the United Kingdom. Part 3 applies to England and Wales.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:

“In my view the provisions of the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

6.1 The SI makes amendments to the Veterinary Surgeons Act 1966 and the Animal Welfare Act 2006 in order to address deficiencies arising from the United Kingdom’s withdrawal from the European Union.

6.2 The Veterinary Surgeons Act 1966, together with the European Recognition of Professional Qualifications Regulations 2015 (SI 2015/2059), transposed Directives 2005/36EC and 2013/55/EU in so far as they applied to the profession of veterinary surgeons. SI 2015/2059 will, on exit day, be amended by the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019. Those regulations contain transitional and saving provisions of relevance to these Regulations (see regulation 4(2) (a) (iii)).

7. Policy background

What is being done and why?

7.1 The Veterinary Surgeons Act 1966, together with the European Recognition of Professional Qualifications Regulations 2015 (SI 2015/2059), transpose Directives 2005/36EC and 2013/55/EU in so far as they apply to the veterinary profession in the United Kingdom.

7.2 The purpose of the Directives is to facilitate free movement of persons with professional qualifications in the EU. Implementation of the Directives gave veterinary surgeons with EEA qualifications more favourable access to practice in the United Kingdom than those with qualifications from the rest of the world. When the UK leaves the EU, the EU will no longer recognise UK qualifications. In those

circumstances, it is no longer considered appropriate to provide more favourable treatment to EEA States. EEA nationals will still be able to register to practice in the United Kingdom, but will need to satisfy the same conditions as any third country.

- 7.3 These amendments do not affect the rights of those already registered to practice veterinary surgery in the United Kingdom. Transitional arrangements ensure that those who are in the process of registering with the Royal College of Veterinary Surgeons on exit day are entitled to have their application (and any related appeal) considered under the rules as they applied before exit day.
- 7.4 This SI also makes a minor amendment to the Animal Welfare Act 2006 to ensure that, where a power of entry currently exists, an inspector can continue to enter premises to assess compliance with regulations under section 12 of the Act in implementation of an EU obligation. The power of entry would not apply in respect of secondary legislation made under section 12 of the Act after exit day.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 (b) of Schedule 7 of the Act. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 Consolidation is not being done at this time.

10. Consultation outcome

- 10.1 The Scottish, Welsh and Northern Irish administrations have been consulted about these proposed amendments and their views have been taken into account in the drafting of this instrument.

11. Guidance

- 11.1 The Royal College of Veterinary Surgeons will prepare any necessary guidance ahead of the UK leaving the EU on 29 March 2019.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because this will have a very low/negligible level of impact on business.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is continued dialogue with stakeholders.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Gary Eldon at the Department of Environment, Food and Rural Affairs Telephone: 0208 026 3159 or email Gary.Eldon@defra.gov.uk
- 15.2 Catherine Harrold, Deputy Director for Future Animal, Plant Health Endemic and Traceability at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement.

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because the amendment addresses deficiencies in the Veterinary Surgeons Act 1966 and Animal Welfare Act 2006 arising from the United Kingdom’s withdrawal from the European Union.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding the use of legislative powers in the European Union (Withdrawal Act 2018:

“In my view there are good reasons for the provisions in this instrument and I have concluded they are a reasonable course of action”.

- 2.2 These are that they give the statutory regulator, the Royal College of Veterinary Surgeons the power to evaluate whether or not veterinary qualifications from other European countries are of equivalent standards to UK approved veterinary degrees.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 3.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

- 3.3 Given the subject matter of the instruments being amended and the technical nature of the instrument, no opportunities to advance the matters set out in section 149(1) of the Equality Act 2010 arise.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

68 - The Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 19 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Paper xx

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government under section 8 of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

This SI makes amendments to the Veterinary Surgeons Act 1966 and the Animal Welfare Act 2006 in order to address deficiencies arising from the United Kingdom's withdrawal from the European Union.

After exit day:

a. Persons with veterinary qualifications obtained in the EEA who wish to register and practice in the UK will need to have a qualification that satisfies the Royal College of Veterinary Surgeons (RCVS) that they have the requisite knowledge or skill, or successfully pass a statutory examination set by the RCVS.

b. Powers of entry under section 29 of the Animal Welfare Act 2006 will continue to be available in England and Wales, ensuring inspectors can continue to assess compliance with certain regulations made under section 12 of that Act.

A Statutory Instrument Consent Memorandum was laid because powers of entry under the Animal Welfare Act 2006 are devolved.

(The changes made in respect of recognising the veterinary qualifications obtained in the EEA are not devolved, therefore the Statutory Instrument Consent Memorandum does not cover those changes.)

Legal Advisers agree with the statement laid by the Welsh Government dated 19 December 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Ein cyf/Our ref MA - L/LG/0844/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

18 December 2018

Dear Mick

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019, as required by Standing Order 30A.

I am writing to inform you that I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis that our interest in this SI is restricted to updating out of date references to EU law prior to, and operability amendments that will arise as a result of, the UK leaving the EU.

The SI provision covers operability amendments in relation to the Control of Pollution (Amendment) Act 1989, the Environmental Protection Act 1990 and the Waste and Emissions Trading Act 2003, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

Regards

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is fluid and cursive, with the first name 'Lesley' and the last name 'Griffiths' clearly distinguishable.

Lesley Griffiths AC/AM

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



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019**

DATE **19 December 2018**

BY **Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs**

The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 makes amendments to three waste-related Acts of Parliament, 14 waste related EU Regulations and Decisions and the Environmental Permitting Regulations 2016, to enable their continued operability as retained EU law under the European Union (Withdrawal) Act 2018, following the UK's withdrawal from the European Union. It also revokes some EU directly applicable legislation relating to waste which it is not necessary to retain in a domestic context, following exit.

The law which is being amended

Amended EU Legislation:

Regulations

1. Commission Regulation (EU) No 1103/2010 establishing, pursuant to Directive 2006/66/EC of the European Parliament and of the Council, rules as regards capacity labelling of portable secondary (rechargeable) and automotive batteries and accumulators
2. Council Regulation (EU) No 333/2011 establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC of the European Parliament and of the Council
3. Commission Regulation (EU) No 493/2012 laying down detailed rules regarding the calculation of recycling efficiencies of the recycling processes of waste batteries and accumulators
4. Commission Regulation (EU) No 1179/2012 establishing criteria determining when glass cullet ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council
5. Commission Regulation (EU) No 715/2013 establishing criteria determining when copper scrap ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council

Decisions

1. Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of waste pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste.
2. Commission Decision 2001/171/EC establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste.
3. Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills.
4. Commission Decision 2009/292/EC establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste.
5. Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries.
6. Commission Decision 2009/337/EC on the definition of the criteria for the classification of waste facilities in accordance with Annex III of Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries.
7. Commission Decision 2009/359/EC completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries.
8. Commission Decision 2009/360/EC completing the technical requirements for waste characterisation laid down by Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries.
9. Commission Decision 2011/753/EU establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC.

Amended Domestic Legislation

1. Environmental Permitting (England and Wales) Regulations 2016
2. Environmental Protection Act 1990
3. Waste and Emissions Trading Act 2003
4. Control of Pollution (Amendment) Act 1989

Revocations

1. Commission Regulation (EU) No 1357/2014 replacing Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives.
2. Council Regulation (EU) 2017/997 amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 'Ecotoxic'
3. It also revokes the following EC Decisions on waste:
4. Commission Decision 76/431/EEC setting up a Committee on Waste Management.
5. Commission Decision 94/741/EC concerning questionnaires for Member States reports on the implementation of Directives in the waste sector.

6. Commission Decision 97/129/EC establishing the identification system for packaging materials pursuant to European Parliament and Council Directive 94/62/EC on packaging and packaging waste.
7. Commission Decision 97/622/EC concerning questionnaires for Member States reports on the implementation of certain Directives in the waste sector.
8. Commission Decision 2000/738/EC concerning a questionnaire for Member States reports on the implementation of Directive 1999/31/EC on the landfill of waste.
9. Commission Decision 2001/753/EC concerning a questionnaire for Member States reports on the implementation of Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles.
10. Commission Decision 2002/151/EC on minimum requirements for the certificate of destruction issued in accordance with Article 5(3) of Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles.
11. Commission Decision 2003/138/EC establishing component and material coding standards for vehicles pursuant to Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles.
12. Commission Decision 2004/249/EC concerning a questionnaire for Member States reports on the implementation of Directive 2002/96/EC of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE).
13. Commission Decision 2005/270/EC establishing the formats relating to the database system pursuant to European Parliament and Council Directive 94/62/EC on packaging and packaging waste.
14. Commission Decision 2005/293/EC laying down detailed rules on the monitoring of the reuse/recovery and reuse/recycling targets set down in Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles.
15. Commission Decision 2005/369/EC laying down rules for monitoring compliance of Member States and establishing data formats for the purposes of Directive 2002/96/EC of the European Parliament and of the Council on waste electrical and electronic equipment.
16. Commission Decision 2007/151/EC amending Decisions 94/741/EC and 97/622/EC as regards the questionnaires for the report on the implementation of Directive 2006/12/EC of the European Parliament and of the Council on waste and on the implementation of Council Directive 91/689/EEC on hazardous waste.
17. Commission Decision 2008/350/EC on the rules of England, Wales, Northern Ireland and Scotland concerning permit exemptions for undertakings and establishments recovering hazardous waste under Article 3 of Council Directive 91/689/EEC.
18. Commission Decision 2008/763/EC establishing, pursuant to Directive 2006/66/EC of the European Parliament and of the Council, a common methodology for the calculation of annual sales of portable batteries and accumulators to end-users.
19. Commission Decision 2009/358/EC on the harmonisation, the regular transmission of the information and the questionnaire referred to in Articles 22(1)(a) and 18 of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries.
20. Commission Decision 2009/851/EC establishing a questionnaire for Member States reports on the implementation of Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators.

21. Council Decision (EU) 2015/1156 on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement (Batteries and Accumulators).

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The National Assembly for Wales and Welsh Ministers have legislative and executive competence respectively in relation to waste. With the exception of the regulations that relate to product standards and safety and technical standards and requirements in relation to products, which are reserved matters, the other areas in relation to waste are devolved.

Amendments are made to three waste-related Acts of Parliament, the Environmental Protection Act 1990, the Waste and Emissions Trading Act 2003 and the Control of Pollution (Amendment) Act 1989, and a number of waste related EU Regulations and Decisions.

Due to the exceptional circumstances of EU exit, on this occasion, it has been agreed that the relevant amendments can be made in a UK SI.

The purpose of the amendments

The purpose of this SI (affirmative procedure) is to ensure retained EU law continues to operate effectively and to correct other deficiencies arising from the withdrawal of the UK from the EU on the basis of a no-deal scenario.

This instrument will address deficiencies in the converted EU law known as retained EU law and ensure that protections relating to: waste batteries and accumulators, end of waste criteria, packaging waste, end-of-life vehicle destruction certification, landfill acceptance criteria, the management of waste from extractive industries, and calculation methods for verifying recycling target compliance are maintained and continue to be operative once the United Kingdom has left the European Union.

The SI and accompanying Explanatory Memorandum, setting out the effect of the SI is available here: <https://beta.parliament.uk/work-packages/bQ6Qmvky>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Environmental Protection Act 1990; The Waste and Emissions Trading Act 2003 and The Control of Pollution (Amendment) Act 1989

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 ("2019 Regulations") were laid before the Houses of Parliament on 17 December 2018. The Regulations can be found at:

<https://beta.parliament.uk/work-packages/bQ6Qmvky>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union under powers in the European Union (Withdrawal) Act 2019..
4. As part of addressing the failures and other deficiencies, the SI makes amendments to the following primary legislation:
 - Control of Pollution (Amendment) Act 1989
 - The Environment Protection Act 1990
 - Waste and Emissions Trading Act 2003

Relevant provision to be made by the SI

5. The amendments made by the 2019 Regulations, to the above mentioned primary legislation, are as follows:

Control of Pollution (Amendment) Act 1989

The Environmental Protection Act 1990

Waste and Emissions Trading Act 2003

6. The changes identified in paragraphs 5 relate to a subject matter that is within the legislative competence of the National Assembly for Wales, and which could be the subject of a National Assembly Bill.
7. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to waste and the environment.

Why it is appropriate for the SI to make this provision

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

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

19 December 2018

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 000

EXITING THE EUROPEAN UNION

ENVIRONMENTAL PROTECTION

WASTE

**The Waste (Miscellaneous Amendments) (EU Exit) Regulations
2019**

Made - - - -

Coming into force in accordance with regulation 1(2)

CONTENTS

PART 1

Introductory

1.	Citation and commencement	3

PART 2

Amendment of out of date references

2.	Environmental Protection Act 1990	4
3.	Waste and Emissions Trading Act 2003	4

PART 3

Amendment of primary legislation

4.	Control of Pollution (Amendment) Act 1989	5
5.	Environmental Protection Act 1990	5
6.	Waste and Emissions Trading Act 2003	7
7.	Saving: regulations under section 1(1) or 23(2) of the Waste and Emissions Trading Act 2003	11

PART 4

Amendment and revocation of retained direct EU legislation

CHAPTER 1

Regulations

8.	Commission Regulation (EU) No 1103/2010 establishing, pursuant to Directive 2006/66/EC of the European Parliament and of the Council, rules as regards capacity labelling of portable secondary (rechargeable) and automotive batteries and accumulators	11
9.	Council Regulation (EU) No 333/2011 establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC of the European Parliament and of the Council	13
10.	Commission Regulation (EU) No 493/2012 laying down detailed rules regarding the calculation of recycling efficiencies of the recycling processes of waste batteries and accumulators	18
11.	Commission Regulation (EU) No 1179/2012 establishing criteria determining when glass cullet ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council	20
12.	Commission Regulation (EU) No 715/2013 establishing criteria determining when copper scrap ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council	23

CHAPTER 2

Decisions

13.	Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of waste pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste	28
14.	Commission Decision 2001/171/EC establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste	32
15.	Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills	34
16.	Commission Decision 2009/292/EC establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste	40
17.	Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries	41
18.	Commission Decision 2009/337/EC on the definition of the criteria for the classification of waste facilities in accordance with Annex III of Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries	47
19.	Commission Decision 2009/359/EC completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries	51
20.	Commission Decision 2009/360/EC completing the technical requirements for waste characterisation laid down by Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries	53
21.	Commission Decision 2011/753/EU establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC of the European Parliament and of the Council	56

CHAPTER 3

Consequential amendment and revocations

22.	Amendment of the Environmental Permitting (England and Wales) Regulations 2016	59
23.	Revocations	60

SCHEDULE — Revocations	60

The Secretary of State makes these Regulations in exercise of the powers conferred by—

- (a) in relation to Part 1, the powers mentioned in paragraphs (b) and (c);
- (b) in relation to Part 2, section 2(2) of the European Communities Act 1972(a);
- (c) in relation to the remainder of the Regulations, section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(b).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste(c).

In accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019.

(2) They come into force as follows—

- (a) as regards this Part and Part 2, 21 days after the day on which they are made;
- (b) as regards the remainder, on exit day.

(a) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), the Schedule, Part 1. It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (see section 20 of that Act). Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and was amended by the European Union (Amendment) Act 2008, the Schedule, Part 1 and S.I. 2007/1388. It is prospectively repealed by the European Union (Withdrawal) Act 2018, section 1 from exit day (see section 20 of that Act). Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales. The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794.

(b) 2018 c. 16.

(c) S.I. 1992/2870, to which there are amendments not relevant to these Regulations.

PART 2

Amendment of out of date references

Environmental Protection Act 1990

2.—(1) The Environmental Protection Act 1990(a) is amended as follows.

(2) In section 33(13)(b), as it extends to England and Wales, for the words from “Directive 2008/98/EC(c)” to the end substitute “the Waste Framework Directive”.

(3) In section 34(2A)(d), as it extends to Scotland, for “Waste Directive” substitute “Waste Framework Directive”.

(4) In section 57(8)(e), as it extends to England and Wales, in the definition of “waste”, for “Directive 2008/98/EC of the European Parliament and of the Council on waste” substitute “the Waste Framework Directive”.

(5) In section 62A(1)(b) and (2)(b)(f), “Directive 2008/98/EC, as last amended by Council Regulation (EU) 2017/997(g)” substitute “the Waste Framework Directive”.

(6) In section 75(h)—

(a) after subsection (1), insert—

“(1A) “Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997.”;

(b) in subsection (2)—

(i) as it extends to England and Wales, for “Directive 2008/98/EC of the European Parliament and of the Council on waste” substitute “the Waste Framework Directive”;

(ii) as it extends to Scotland, in paragraph (a), for “Waste Directive” substitute “Waste Framework Directive”;

(c) omit subsection (12) as it extends to Scotland.

Waste and Emissions Trading Act 2003

3.—(1) Section 37 of the Waste and Emissions Trading Act 2003(i) is amended as follows.

(2) In subsection (2), as it extends to England and Wales and Scotland, at the end insert “, as last amended by Council Regulation (EU) 2017/997”.

(3) For subsection (2), as it extends to Northern Ireland, substitute—

“(2) For the purposes of this section, “the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997.”.

(a) 1990 c. 43.

(b) Section 33(13) was inserted in relation to England and Wales by S.I. 2007/3538, and amended by S.I. 2016/738.

(c) OJ No L 312, 22.11.2008, p 3.

(d) Section 34(2A) was inserted in relation to Scotland by S.S.I. 2011/226.

(e) Section 57(8) was substituted in relation to England and Wales by S.I. 2005/3026, and amended by S.I. 2011/988.

(f) Section 62A was inserted by S.I. 2005/894, and amended by S.I. 2011/988, 2015/1360, 2018/721 (W. 140) and 942.

(g) OJ No L 150, 14.6.2017, p 1.

(h) Section 75(2) as it extends to England and Wales, was substituted by S.I. 2011/988; section 75(2) as it extends to Scotland was amended by S.S.I. 2018/219. Section 75(12) as it extends to Scotland was substituted by S.S.I. 2015/188.

(i) 2003 c. 33. Section 37, as it extends to England and Wales, was amended by S.I. 2011/988; section 37, as it extends to Scotland, was substituted by S.S.I. 2011/226.

PART 3

Amendment of primary legislation

Control of Pollution (Amendment) Act 1989

4. Section 1(3) of the Control of Pollution (Amendment) Act 1989(a) is amended as follows—

- (a) after paragraph (a), omit the final “or”;
- (b) omit paragraph (b).

Environmental Protection Act 1990

5.—(1) The Environmental Protection Act 1990 is amended as follows.

(2) In section 57(8), as it extends to England and Wales, in the definition of “waste”, after “Waste Framework Directive” (as substituted by regulation 2(4)), insert “, as read with Articles 5 and 6 of that Directive,”.

(3) In section 75(1A) (as inserted by regulation 2(6)(a)), at the end insert “, and read in accordance with section 75A”.

(4) After section 75 insert—

“Modification of the Waste Framework Directive

75A.—(1) For the purposes of this Part, the Waste Framework Directive is to be read in accordance with this section.

(2) A reference to one or more member States in a provision of the Waste Framework Directive imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, waste regulation authority or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of England, Wales or Scotland.

(3) Article 2 is to be read as if—

(a) in paragraph 2—

- (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
- (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
- (iii) in point (d), as it extends to England and Wales, for the words from “Directive 2006/21/EC(b)” to the end there were substituted “the Mining Waste Directive”;
- (iv) for point (d), as it extends to Scotland, there were substituted—
“(d) extractive waste, which has the same meaning as in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010 (S.S.I. 2010/60)(c).”;

(b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;

(c) paragraph 4 were omitted.

(4) Article 5 is to be read as if paragraph 2 were omitted.

(a) 1989 c. 14.

(b) OJ No L 102, 11.4.2006, p 15, as last amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ No L 188, 18.7.2009, p 14).

(c) S.S.I. 2010/60.

(5) Article 6 is to be read as if—

- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
 - (ii) the second sentence were omitted.

(6) Article 7 is to be read as if—

- (a) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
- (b) after paragraph 1, there were inserted—

“**1A.** Paragraph 1 is subject to—

- (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894)(**a**), or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W.138))(**b**), that a specific batch of waste is to be treated as hazardous waste;
- (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, that a specific batch of waste is to be treated as non-hazardous waste;
- (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, or regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;
- (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties);
- (e) a determination by the Scottish Ministers that a specific batch or type of waste—
 - (i) is to be treated as hazardous waste because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex 3;
 - (ii) is to be treated as non-hazardous waste because the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex 3.”;
- (c) paragraphs 2, 3 and 5 were omitted;
- (d) after paragraph 6, there were inserted—

“**6A.** In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;

- (e) paragraph 7 were omitted.

(a) S.I. 2005/894; relevant amending instruments are S.I. 2011/988 and 2015/1360.

(b) S.I. 2005/1806 (W. 138); relevant amending instruments are S.I. 2011/971 (W. 141) and 2015/1417 (W. 141).

(7) Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

(8) In subsection (2)—

“appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers;

“local authority” means—

- (a) in England outside Greater London—
 - (i) a district council,
 - (ii) a county council, or
 - (iii) the Council of the Isles of Scilly;
- (b) in Greater London—
 - (i) the council of a London borough,
 - (ii) the Common Council of the City of London,
 - (iii) the Sub-Treasurer of the Inner Temple, or
 - (iv) the Under-Treasurer of the Middle Temple;
- (c) in Wales—
 - (i) a county council, or
 - (ii) a county borough council;
- (d) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a).”.

Waste and Emissions Trading Act 2003

6.—(1) The Waste and Emissions Trading Act 2003 is amended as follows.

(2) In section 1—

- (a) in subsection (1), for “must” substitute “may”;
- (b) omit subsection (2);
- (c) for subsection (4) substitute—

“(4) The power under subsection (1)(a) is exercisable only with the agreement of the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

(4A) The power under subsection (1)(c) is exercisable only with the agreement of the Scottish Ministers.

(4B) The power under subsection (1)(d) is exercisable only with the agreement of the Welsh Ministers.

(4C) The power under subsection (1)(e) is exercisable only with the agreement of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.”;

- (d) omit subsection (5).

(3) In section 23, for subsection (3) substitute—

“(3) The power under subsection (2) is exercisable only with the agreement of the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.”.

(a) 1994 c. 39.

(4) In section 37—

(a) in subsection (2)—

- (i) after “section” insert “and section 37A”;
- (ii) at the end (and, in that subsection as it extends to England and Wales and Scotland, after the insertion made by regulation 3(2)) insert “, and read in accordance with subsections (3) to (9)”;

(b) after subsection (2) insert—

“(3) A reference to one or more member States in a provision of the Waste Directive imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of England, Wales, Scotland or Northern Ireland.

(4) Article 2 is to be read as if—

(a) in paragraph 2—

- (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
- (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
- (iii) in point (d), as it extends to England and Wales, for the words from “Directive 2006/21/EC” to the end there were substituted “the Mining Waste Directive” (see section 37A);
- (iv) for point (d), as it extends to Scotland, there were substituted—

“(d) extractive waste, which has the same meaning as in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010 (S.S.I. 2010/60).”;
- (v) for point (d), as it extends to Northern Ireland, there were substituted—

“(d) extractive waste, which has the same meaning as in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 (S.R. 2015 No. 85)(a).”;

(b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;

(c) paragraph 4 were omitted.

(5) Article 5 is to be read as if paragraph 2 were omitted.

(6) Article 6 is to be read as if—

(a) paragraphs 1 to 3 were omitted;

(b) in paragraph 4—

- (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
- (ii) the second sentence were omitted.

(7) Article 7 is to be read as if—

(a) in paragraph 1—

- (i) the first and second sentences were omitted;

(a) S.R. 2015 No. 85.

(ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;

(b) after paragraph 1, there were inserted—

“**1A.** Paragraph 1 is subject to—

(a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894), or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W.138)), or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 9(1) of the Hazardous Waste Regulations (Northern Ireland) 2005 (S.R. 2005 No. 300)(a), that a specific batch of waste is to be treated as hazardous waste;

(b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 10(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as non-hazardous waste;

(c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005 or regulation 9(2) or 10(2) of the Hazardous Waste Regulations (Northern Ireland) 2005;

(d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties);

(e) a determination by the Scottish Ministers that a specific batch or type of waste—

(i) is to be treated as hazardous waste because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex 3;

(ii) is to be treated as non-hazardous waste because the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex 3.”;

(c) paragraphs 2, 3 and 5 were omitted;

(d) after paragraph 6, there were inserted—

“**6A.** In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;

(e) paragraph 7 were omitted.

(8) Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

(9) In this section—

“appropriate agency” means—

(a) in relation to England, the Environment Agency;

(b) in relation to Wales, the Natural Resources Body for Wales;

(c) in relation to Scotland, the Scottish Environment Protection Agency;

(a) S.R. 2005 No. 300; relevant amending instruments are S.R. 2005 No. 301, S.R. 2011 No. 127 and S.R. 2015 No. 288.

- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

“appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers;
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

“local authority” means—

- (a) in England outside Greater London—
 - (i) a district council,
 - (ii) a county council, or
 - (iii) the Council of the Isles of Scilly;
- (b) in Greater London—
 - (i) the council of a London borough,
 - (ii) the Common Council of the City of London,
 - (iii) the Sub-Treasurer of the Inner Temple, or
 - (iv) the Under-Treasurer of the Middle Temple;
- (c) in Wales—
 - (i) a county council, or
 - (ii) a county borough council;
- (d) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
- (e) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972(a).”.

(5) After section 37 insert—

“Meaning of “the Mining Waste Directive” in section 37: England and Wales

37A.—(1) In section 37(4)(a)(iii), “the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries, read in accordance with subsections (2) to (5).

(2) Article 2 is to be read as if—

- (a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC(b) were a reference to that Article read in accordance with subsection (4);
- (b) paragraphs 3 and 4 were omitted.

(3) Article 3(1) is to be read as if, for “Article 1(a) of Directive 75/442/EC(c)” there were substituted “Article 3(1) of the Waste Directive, as read with Articles 5 and 6 of that Directive”.

(4) For the purposes of subsection (2)(a), Article 11(3)(j) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy is to be read as if—

(a) 1972. c. 9 (N.I.); section 1 was amended by the Local Government (Boundaries) Act (Northern Ireland) 2008 (c. 7) (N.I.), section 3(1) and S.I. 1985/454.

(b) OJ No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

(c) OJ No L 194, 25.7.1975, p 47, repealed by Directive 2006/12/EC of the European Parliament and of the Council (OJ No L 114, 27.4.2006, p 9).

- (a) the reference to “Member States” were a reference to the appropriate authority or appropriate agency;
 - (b) in the words after the final indent, “environmental objectives”—
 - (i) in relation to the Northumbria River Basin District, means the environmental objectives referred to in the WFD Regulations as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245)(a);
 - (ii) in relation to the Solway Tweed River Basin District, has the same meaning as in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99)(b);
 - (iii) in relation to a river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations.
- (5) In subsection (4)—
- “appropriate agency” and “appropriate authority” have the meanings given in section 37(9);
- “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407)(c).”.

Saving: regulations under section 1(1) or 23(2) of the Waste and Emissions Trading Act 2003

7. The amendments made by regulation 6(2) or 6(3) do not affect any regulations made under section 1(1) or 23(2) of the Waste and Emissions Trading Act 2003 before the coming into force of this Part.

PART 4

Amendment and revocation of retained direct EU legislation

CHAPTER 1

Regulations

Commission Regulation (EU) No 1103/2010 establishing, pursuant to Directive 2006/66/EC of the European Parliament and of the Council, rules as regards capacity labelling of portable secondary (rechargeable) and automotive batteries and accumulators

8.—(1) Commission Regulation (EU) No 1103/2010 establishing, pursuant to Directive 2006/66/EC of the European Parliament and of the Council, rules as regards capacity labelling of portable secondary (rechargeable) and automotive batteries and accumulators is amended as follows.

(2) In Article 1—

- (a) in paragraph 1, for “the date referred to in Article 5” substitute “30th November 2010”;
- (b) after paragraph 1, insert—

“1A. In paragraph 1, ‘placed on the market’ means supplied or made available, whether in return for payment or free of charge, to a third party within the United Kingdom and includes import into the United Kingdom.”.

(3) Omit Article 5.

(4) After Article 5, omit the words from “This Regulation” to “Member States”.

(a) S.I. 2003/3245, amended by S.I. 2016/139 and 2017/407.

(b) S.I. 2004/99, amended by S.I. 2016/139; there are other amending instruments but none is relevant.

(c) S.I. 2017/407.

(5) In Annex 1, after point (1) insert—

“(2) In point (1), “Directive 2006/66/EC” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators^(a) as last amended by Directive 2013/56/EU of the European Parliament and of the Council^(b), and read as if—

(a) in Article 3—

- (i) in paragraph 7, for “Article 1(1)(a) of Directive 2006/12/EC^(c)” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
- (ii) in paragraph 11, for “Directive 2002/96/EC^(d)” there were substituted “Article 3(1)(a) of Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE)^(e), as it had effect immediately before 4th July 2018”;

(b) in Article 11—

- (i) in the first sentence, for “Member States” there were substituted “The Secretary of State”;
- (ii) in the second sentence, for “Member States” there were substituted “the Secretary of State”.

(3) In point (2)(a)(i), “the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read as if—

(a) Article 5(2) were omitted;

(b) in Article 6—

- (i) paragraphs 1 to 3 were omitted;
- (ii) in paragraph 4—

— in the first sentence, for the words from “Where criteria” to “, Member States” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies, the appropriate agency”;

— the second sentence were omitted.

(4) In point (3)(b)(iii), “appropriate agency” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”.

(6) In Annex 4, in Part A, after point (4) insert—

“(5) In point (3), ‘appliance’ means any electrical or electronic equipment, as defined by Article 3(1)(a) of Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE), as it had effect immediately before 4th July 2018, which is fully or partly powered by batteries or accumulators or is capable of being so.”.

(a) OJ No L 266, 26.9.2006, p 1.

(b) OJ No L 329, 10.12.2013, p 5.

(c) OJ No L 114, 27.4.2006, p 9, repealed by Directive 2008/98/EC of the European Parliament and of the Council (OJ No L 312, 22.11.2008, p 3).

(d) OJ No L 37, 13.2.2003, p 24, repealed by Directive 2012/19/EU of the European Parliament and of the Council (OJ No L 197, 24.7.2012, p 38).

(e) OJ No L 197, 24.7.2012, p 38.

Council Regulation (EU) No 333/2011 establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC of the European Parliament and of the Council

9.—(1) Council Regulation (EU) No 333/2011 establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC of the European Parliament and of the Council is amended as follows.

(2) In Article 2—

- (a) the existing text becomes paragraph 1;
- (b) in that paragraph—
 - (i) in point (e), in the definition of “importer”—
 - (aa) for “Union” in the first place it occurs substitute “United Kingdom”;
 - (bb) for “customs territory of the Union” substitute “United Kingdom”;
 - (ii) after point (h), insert—

“(i) “competent authority” means—

 - (i) in relation to England, the Environment Agency;
 - (ii) in relation to Wales, the Natural Resources Body for Wales;
 - (iii) in relation to Scotland, the Scottish Environment Protection Agency;
 - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
- (j) “EU-derived domestic legislation” has the meaning given by section 2(2) of the European Union (Withdrawal) Act 2018;
- (k) “local authority” means—
 - (i) in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - (ii) in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - (iii) in Wales—
 - a county council, or
 - a county borough council;
 - (iv) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
 - (v) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972.”.

(3) After Article 2 insert—

“Article 2A

Modification of Directive 2008/98/EC of the European Parliament and of the Council

1. For the purposes of this Regulation, a reference to Directive 2008/98/EC is a reference to Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with this Article.

2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the competent authority, appropriate authority or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion.

3. Article 2 is to be read as if—

(a) in paragraph 2—

(i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;

(ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;

(iii) in point (d), as it extends to England and Wales, for the words from “Directive 2006/21/EC” to the end there were substituted “the Mining Waste Directive”;

(iv) for point (d), as it extends to Scotland, there were substituted—

“(d) extractive waste, which has the same meaning as in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010.”;

(v) for point (d), as it extends to Northern Ireland, there were substituted—

“(d) extractive waste, which has the same meaning as in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.”;

(b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;

(c) paragraph 4 were omitted.

4. Article 3(20) is to be read as if for “Article 2(11) of Directive 96/61/EC(a)” there were substituted “Article 3(10) of the Industrial Emissions Directive”.

5. Article 5 is to be read as if paragraph 2 were omitted.

6. Article 6 is to be read as if—

(a) paragraphs 1 to 3 were omitted;

(b) in paragraph 4—

(i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;

(ii) the second sentence were omitted.

7. Article 7 is to be read as if—

(a) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;

(b) after paragraph 1, there were inserted—

“1A. Paragraph 1 is subject to—

(a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under

(a) OJ No L 257, 10.10.1996, p 26, repealed by Directive 2008/1/EC of the European Parliament and of the Council (OJ No L 24, 29.1.2008, p 8).

regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 9(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as hazardous waste;

- (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 10(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005 or regulation 9(2) or 10(2) of the Hazardous Waste Regulations (Northern Ireland) 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties);
 - (e) a determination by the Scottish Ministers that a specific batch or type of waste—
 - (i) is to be treated as hazardous waste because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex 3;
 - (ii) is to be treated as non-hazardous waste because the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex 3.”;
- (c) paragraphs 2, 3 and 5 were omitted;
- (d) after paragraph 6 there were inserted—

“6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;

- (e) paragraph 7 were omitted.

8. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

9. In paragraph 2, “the appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

Article 2B

Meaning of “the Mining Waste Directive” and “the Industrial Emissions Directive”

1. In Article 2A(3)(a)(iii), “the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs 2 and 3.

2. Article 2 is to be read as if—

- (a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with paragraph 7 of this Article;

(b) paragraphs 3 and 4 were omitted.

3. Article 3(1) is to be read as if, for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of Directive 2008/98/EC, as read with Articles 5 and 6 of that Directive”.

4. In Article 2A(4), “the Industrial Emissions Directive” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control(a), read in accordance with paragraphs 5 and 6.

5. Article 3 is to be read as if—

(a) in point (1)(a), for the words from “Article 1” to the end there were substituted “Article 4(78) of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation(b)”;

(b) in point (10)(b), for “Member State in question” there were substituted “United Kingdom”;

(c) in point (23), for the words from “point 1” to the end there were substituted “point 1 of the second subparagraph of Article 2 of Council Directive 2009/158/EC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs(c)”;

(d) in point (37), for the words from “of the European” to the end there were substituted “, read with Articles 5 and 6 of that Directive”.

6. Annex 1 is to be read as if—

(a) in the words before point 1, the second paragraph were omitted;

(b) in point 5.3—

(i) in point (a), in the words before point (i), for “Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment(d)” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994(e)”;

(ii) in point (b), in the words before point (i), for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;

(c) in point 5.4, the reference to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste(f) were a reference to the Landfill Directive;

(d) in point 6.9, for “Directive 2009/31/EC(g)” there were substituted “the EU-derived domestic legislation which transposed Directive 2009/31/EC in respect of England and Wales(h)”;

(e) in point 6.11, for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”.

7. For the purposes of paragraph 2(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(a) the reference to “Member States” were a reference to the appropriate authority or the competent authority;

(b) in the words after the final indent, “environmental objectives”—

(a) OJ L No. 334, 17.12.2010, p 17, as corrected by a corrigendum (OJ No L 158, 19.6.2012, p 25).

(b) OJ No L 13, 17.1.2014, p 1, as corrected by a corrigendum (OJ No L 72, 17.3.2016, p 69).

(c) OJ No L 343, 22.12.2009, p 74, as last amended by Commission Implementing Decision 2011/879/EU (OJ No L 343, 23.12.2011, p 105).

(d) OJ No L 135, 30.5.1991, p 40, as last corrected by a corrigendum (OJ No L 189, 17.7.2015, p 41).

(e) S.I. 1994/2841, amended by S.I. 2003/1788, 2005/2035, 2010/675, 2011/556, 2013/755 (W. 90) and 2016/1154.

(f) OJ No L 182, 16.7.1999, p 1.

(g) OJ No L 140, 5.6.2009, p 114, as last amended by Decision (EU) 2018/853 of the European Parliament and of the Council (OJ No L 150, 14.6.2018, p 155).

(h) See for example: S.I. 2010/1513, 2221, 2011/1483, 2305, 2453, 2012/461, 2013/2696, 2016/1154, 2017/571.

- (i) in relation to the Northumbria River Basin District, means the environmental objectives referred to in the WFD Regulations as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
- (ii) in relation to the Solway Tweed River Basin District, has the same meaning as in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;
- (iii) in relation to a river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations.

8. In paragraph 6(c), “the Landfill Directive” means Council Directive 1999/31/EC on the landfill of waste, as last amended by Council Directive 2011/97/EU(a), and read as if, in Article 2—

(a) for point (a) there were substituted—

“(a) “waste” means anything that—

- (i) is waste within the meaning of Article 3(1) of Directive 2008/98/EC, as read with Articles 5 and 6 of that Directive, and
- (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;

(b) for point (c) there were substituted—

“(c) “hazardous waste” has the meaning given in Article 3(2) of Directive 2008/98/EC;”.

9. In paragraph 7—

- (a) in point (a), “the appropriate authority” has the meaning given by Article 2A(9);
- (b) in point (b), “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.”.

(4) In Article 6—

- (a) in paragraph 5, in the first sentence, omit the words from “, or any other” to “(EMAS)”;
- (b) after paragraph 6 insert—

“6A. In paragraph 6, “independent external verifier” means—

- (a) a conformity assessment body as defined in Regulation (EC) No 765/2008;
- (b) a conformity assessment body as defined in Regulation (EC) No 765/2008 as it has effect in EU law(b);
- (c) any other environmental verifier as defined in Article 2(20)(b) of Regulation (EC) No 1221/2009 as it has effect in EU law(c).”.

(5) After Article 6, insert—

“Article 6A

EU exit: transitional provision

1. Paragraph 3 applies to verification obtained in compliance with Article 6 as it had effect immediately before exit day.

2. Paragraph 3 also applies where—

- (a) before exit day, a producer or supplier has submitted a management system to a conformity assessment body or an environmental verifier for verification in compliance with Article 6 as it had effect immediately before exit day, and

(a) OJ No L 328, 10.12.2011, p 49.

(b) OJ No L 218, 13.8.2008, p 30.

(c) OJ No L 342, 22.12.2009, p 1, as last amended by Commission Regulation (EU) 2017/1505 (OJ No L 222, 29.8.2017, p 1).

(b) after exit day, the producer or supplier obtains that verification.

3. Where this paragraph applies, the verification obtained is deemed to be verification for the purposes of Article 6.

4. In paragraph 2, “supplier” means the supplier of a producer or of an importer.”.

(6) Omit Article 7.

(7) After Article 7, omit the words from “This Regulation shall” to “Member States”.

(8) In Annexes 1 and 2, in the first column—

(a) in Section 1.5, omit the second sentence;

(b) in Section 3.3(a), for the words from “Article 6” in the first place it occurs to the end substitute—

“the EU-derived domestic legislation that transposed—

(i) Article 6 of Directive 2000/53/EC of the European Parliament and of the Council on end-of life vehicles(a), as last amended by Commission Directive (EU) 2017/2096(b), and

(ii) Article 8 of Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE), as it had effect immediately before 4th July 2018(c).”.

(9) In Annex 3, in the sixth entry of the table, in the second column, for “customs territory of the Union” substitute “United Kingdom”.

Commission Regulation (EU) No 493/2012 laying down detailed rules regarding the calculation of recycling efficiencies of the recycling processes of waste batteries and accumulators

10.—(1) Commission Regulation (EU) No 493/2012 laying down detailed rules regarding the calculation of recycling efficiencies of the recycling processes of waste batteries and accumulators is amended as follows.

(2) In Article 2—

(a) the existing text becomes paragraph 1;

(b) in that paragraph, after point (4) insert—

“(4A) “waste battery or accumulator” means any battery or accumulator which is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive;

(4B) “disposal” means any of the applicable operations provided for in Annex 1 to the Waste Framework Directive;

(4C) “Directive 2006/66/EC” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators, as last amended by Directive 2013/56/EU of the European Parliament and of the Council;”;

(c) after that paragraph, insert—

“2. In paragraph 1, “the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, read in accordance with paragraphs 3 and 4.

3. Article 5 is to be read as if paragraph 2 were omitted.

(a) OJ No L 269, 21.10.2000, p 34.

(b) OJ No L 299, 16.11.2017, p 24. See for example: generally, S.I. 2003/2635, 2005/263; in relation to England and Wales, S.I. 2016/1154; in relation to Scotland, S.S.I. 2003/593; in relation to Northern Ireland, S.R. 2003 No. 493.

(c) See for example S.I. 2013/3113 and S.R. 2014 No 202.

4. Article 6 is to be read as if—

- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “, Member States” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies, the appropriate agency”;
 - (ii) the second sentence were omitted.

5. In paragraph 4(b)(i), “appropriate agency” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”.

(3) In Article 3(4) and (6), for “Member State’s competent authorities” substitute “competent authority”.

(4) Omit Article 4.

(5) After Article 4, omit from “This Regulation” to “Member States”.

(6) In Annex 1, after point 6 insert—

“7. For the purposes of point 1, Directive 2006/66/EC is to be read as if “waste battery or accumulator” had the meaning given by Article 2(1)(4A).

8. In point 3, “producer” means any person in the United Kingdom that, irrespective of the selling technique used, including by distance contract, places batteries or accumulators, including those incorporated into appliances or vehicles, on the market for the first time within the United Kingdom on a professional basis.

9. In point 8—

- (a) “appliance” means any electrical or electronic equipment, as defined by Article 3(1)(a) of Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) as it had effect immediately before 4th July 2018, which is fully or partly powered by batteries or accumulators or is capable of being so;
- (b) “distance contract” has the meaning given in regulation 5 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013(a);
- (c) “placing on the market” means supplying or making available, whether in return for payment or free of charge, to a third party within the United Kingdom and includes import into the United Kingdom.”.

(7) In Annexes 2 and 3, after point 2 insert—

“3. For the purposes of point 1, Directive 2006/66/EC is to be read as if “waste battery or accumulator” had the meaning given by Article 2(1)(4A).”.

(a) S.I. 2013/3134, to which there are amendments not relevant to these Regulations.

Commission Regulation (EU) No 1179/2012 establishing criteria determining when glass cullet ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council

11.—(1) Commission Regulation (EU) No 1179/2012 establishing criteria determining when glass cullet ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council is amended as follows.

(2) In Article 2, in the second paragraph—

(a) after point (1) insert—

“(1A) “competent authority” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;”;

(b) in point (4)—

- (i) for “Union” in the first place it occurs substitute “United Kingdom”;
- (ii) for “customs territory of the Union” substitute “United Kingdom”.

(3) After Article 2 insert—

“Article 2A

Modification of Directive 2008/98/EC of the European Parliament and of the Council

1. For the purposes of this Regulation, a reference to Directive 2008/98/EC is a reference to Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with this Article.

2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the competent authority, appropriate authority or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion.

3. Article 5 is to be read as if paragraph 2 were omitted.

4. Article 6 is to be read as if—

(a) paragraphs 1 to 3 were omitted;

(b) in paragraph 4—

- (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
- (ii) the second sentence were omitted.

5. Article 7 is to be read as if—

(a) in paragraph 1—

- (i) the first and second sentences were omitted;
- (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;

(b) after paragraph 1, there were inserted—

“1A. Paragraph 1 is subject to—

- (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 9(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as hazardous waste;
 - (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 10(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005 or regulation 9(2) or 10(2) of the Hazardous Waste Regulations (Northern Ireland) 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties);
 - (e) a determination by the Scottish Ministers that a specific batch or type of waste—
 - (i) is to be treated as hazardous waste because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex 3;
 - (ii) is to be treated as non-hazardous waste because the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex 3.”;
 - (c) paragraphs 2, 3 and 5 were omitted;
 - (d) after paragraph 6 there were inserted—

“6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;
 - (e) paragraph 7 were omitted.
6. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
7. In paragraph 2—
- (a) “appropriate authority” means—
 - (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
 - (iii) in relation to Scotland, the Scottish Ministers;
 - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
 - (b) “local authority” means—
 - (i) in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - (ii) in Greater London—

- the council of a London borough,
- the Common Council of the City of London,
- the Sub-Treasurer of the Inner Temple, or
- the Under-Treasurer of the Middle Temple;
- (iii) in Wales—
- a county council, or
- a county borough council;
- (iv) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
- (v) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972.”.

(4) In Article 5—

(a) in paragraph 4—

- (i) in the first sentence, omit the words from “, or an environmental” to “with that Regulation” in the second place it occurs;
- (ii) in the third sentence, for the words from “NACE codes” to the end substitute “UK Standard Industrial Classification (SIC) by Economic Activity, issued under section 9 of the Statistics and Registration Service Act 2007(a), as updated from time to time(b)”;
- (iii) in the first and second indents, for “* NACE” substitute “UKSICEA”;

(b) in paragraph 5—

- (i) in the second subparagraph, omit the words from “; or by” to the end;
- (ii) in the third subparagraph, omit the words from “or Regulation (EC)” to the end;

(c) after paragraph 6, insert—

“7. In paragraph 5, “independent external verifier” means—

- (a) a conformity assessment body as defined in Regulation (EC) No 765/2008;
- (b) a conformity assessment body as defined in Regulation (EC) No 765/2008 as it has effect in EU law which is accredited by an accreditation body successfully peer evaluated for this activity by the body recognised in Article 14 of that Regulation as it has effect in EU law;
- (c) any other environmental verifier as defined in Article 2(20)(b) of Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) as it has effect in EU law, which is accredited or licensed by an accreditation or licensing body which is subject to peer evaluation according to Article 31 of that Regulation as it has effect in EU law.”.

(5) After Article 5 insert—

“Article 5A

EU exit: transitional provision

1. Paragraph 3 applies to verification obtained in compliance with Article 5 as it had effect immediately before exit day.
2. Paragraph 3 also applies where—

(a) 2007 c. 18.

(b) A copy of the UK Standard Industrial Classification by Economic activity can be found at: <https://www.ons.gov.uk/methodology/classificationsandstandards/ukstandardindustrialclassificationofeconomicactivities>.

- (a) before exit day, a producer or supplier of an importer has submitted a management system to a conformity assessment body or an environmental verifier for verification in compliance with Article 5 as it had effect immediately before exit day, and
- (b) after exit day, the producer or supplier obtains that verification.

3. Where this paragraph applies, the verification obtained is deemed to be verification for the purposes of Article 5.”.

(6) Omit Article 6.

(7) After Article 6, omit the words from “This Regulation shall” to “Member States”.

(8) In Annex 2, in the fifth entry in the table, in the second column, omit the words from “or by an environmental verifier” to the end.

Commission Regulation (EU) No 715/2013 establishing criteria determining when copper scrap ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council

12.—(1) Commission Regulation (EU) No 715/2013 establishing criteria determining when copper scrap ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council is amended as follows.

(2) In Article 2—

- (a) the existing text becomes paragraph 1;
- (b) in that paragraph, in the second subparagraph—

- (i) after point (1) insert—

“(1A) “appropriate authority” means—

- (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
 - (iii) in relation to Scotland, the Scottish Ministers;
 - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

(1B) “competent authority” means—

- (i) in relation to England, the Environment Agency;
 - (ii) in relation to Wales, the Natural Resources Body for Wales;
 - (iii) in relation to Scotland, the Scottish Environment Protection Agency;
 - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

(1C) “EU-derived domestic legislation” has the meaning given by section 2(2) of the European Union (Withdrawal) Act 2018;

(1D) “local authority” means—

- (i) in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - (ii) in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - (iii) in Wales—

- a county council, or
- a county borough council;
- (iv) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
- (v) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972.”;
- (ii) in point (4)—
 - (aa) for “Union” in the first place it occurs substitute “United Kingdom”;
 - (bb) for “customs territory of the Union” substitute “United Kingdom”.

(3) After Article 2 insert—

“Article 2A

Modification of Directive 2008/98/EC of the European Parliament and of the Council

1. For the purposes of this Regulation, a reference to Directive 2008/98/EC is a reference to Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with this Article.
2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the competent authority, appropriate authority or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion.
3. Article 2 is to be read as if—
 - (a) in paragraph 2—
 - (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
 - (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
 - (iii) in point (d), as it extends to England and Wales, for the words from “Directive 2006/21/EC” to the end there were substituted “the Mining Waste Directive”;
 - (iv) for point (d), as it extends to Scotland, there were substituted—

“(d) extractive waste, which has the same meaning as in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010.”;
 - (v) for point (d), as it extends to Northern Ireland, there were substituted—

“(d) extractive waste, which has the same meaning as in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.”;
 - (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
 - (c) paragraph 4 were omitted.
4. Article 3(20) is to be read as if for “Article 2(11) of Directive 96/61/EC” there were substituted “Article 3(10) of the Industrial Emissions Directive”.
5. Article 5 is to be read as if paragraph 2 were omitted.
6. Article 6 is to be read as if—
 - (a) paragraphs 1 to 3 were omitted;
 - (b) in paragraph 4—

- (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
 - (ii) the second sentence were omitted.
- 7. Article 7 is to be read as if—
 - (a) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
 - (b) after paragraph 1, there were inserted—
 - “1A. Paragraph 1 is subject to—
 - (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 9(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as hazardous waste;
 - (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 10(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005 or regulation 9(2) or 10(2) of the Hazardous Waste Regulations (Northern Ireland) 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties);
 - (e) a determination by the Scottish Ministers that a specific batch or type of waste—
 - (i) is to be treated as hazardous waste because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex 3;
 - (ii) is to be treated as non-hazardous waste because the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex 3.”;
 - (c) paragraphs 2, 3 and 5 were omitted;
 - (d) after paragraph 6 there were inserted—
 - “6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;
 - (e) paragraph 7 were omitted.
- 8. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

Article 2B

Meaning of “the Mining Waste Directive” and “the Industrial Emissions Directive”

1. In Article 2A(3)(a)(iii), “the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs 2 and 3.
2. Article 2 is to be read as if—
 - (a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with paragraph 7 of this Article;
 - (b) paragraphs 3 and 4 were omitted.
3. Article 3(1) is to be read as if, for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of Directive 2008/98/EC, as read with Articles 5 and 6 of that Directive”.
4. In Article 2A(4), “the Industrial Emissions Directive” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), read in accordance with paragraphs 5 and 6.
5. Article 3 is to be read as if—
 - (a) in point (1)(a), for the words from “Article 1” to the end there were substituted “Article 4(78) of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation”;
 - (b) in point (10)(b), for “Member State in question” there were substituted “United Kingdom”;
 - (c) in point (23), for the words from “point 1” to the end there were substituted “point 1 of the second subparagraph of Article 2 of Council Directive 2009/158/EC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs”;
 - (d) in point (37), for the words from “of the European” to the end there were substituted “, read with Articles 5 and 6 of that Directive”.
6. Annex 1 is to be read as if—
 - (a) in the words before point 1, the second paragraph were omitted;
 - (b) in point 5.3—
 - (i) in point (a), in the words before point (i), for “Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;
 - (ii) in point (b), in the words before point (i), for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;
 - (c) in point 5.4, the reference to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste were a reference to the Landfill Directive;
 - (d) in point 6.9, for “Directive 2009/31/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2009/31/EC in respect of England and Wales”;
 - (e) in point 6.11, for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”.
7. For the purposes of paragraph 2(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—
 - (a) the reference to “Member States” were a reference to the competent authority or appropriate authority;

- (b) in the words after the final indent, “environmental objectives”—
 - (i) in relation to the Northumbria River Basin District, means the environmental objectives referred to in the WFD Regulations as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
 - (ii) in relation to the Solway Tweed River Basin District, has the same meaning as in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;
 - (iii) in relation to a river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations.

8. In paragraph 6(c), “the Landfill Directive” means Council Directive 1999/31/EC on the landfill of waste, as last amended by Council Directive 2011/97/EU, and read as if, in Article 2—

- (a) for point (a) there were substituted—
 - “(a) “waste” means anything that—
 - (i) is waste within the meaning of Article 3(1) of Directive 2008/98/EC, as read with Articles 5 and 6 of that Directive, and
 - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;
- (b) for point (c) there were substituted—
 - “(c) “hazardous waste” has the meaning given in Article 3(2) of Directive 2008/98/EC;”;

9. In paragraph 7(b), “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.”.

(4) In Article 5—

- (a) in paragraph 5—
 - (i) in the first subparagraph, in the first sentence omit the words from “or an environmental” to “with that Regulation;”;
 - (ii) in the second subparagraph—
 - (aa) in the words before point (a), for the words “NACE Codes” to the end substitute “UK Standard Industrial Classification (SIC) by Economic Activity, issued under section 9 of the Statistics and Registration Services Act 2007, as updated from time to time”;
 - (bb) in points (a) and (b), for “* NACE” substitute “UKSICEA”;
- (b) in paragraph 6—
 - (i) in the second subparagraph, omit point (b);
 - (ii) in the third subparagraph omit the words “or Regulation (EC) No 1221/2009” to end.

(5) After Article 5 insert—

“Article 6A

EU exit: transitional provision

1. Paragraph 3 applies to verification obtained in compliance with Article 5 as it had effect immediately before exit day.
2. Paragraph 3 also applies where—
 - (a) before exit day, a producer or supplier has submitted a management system to a conformity assessment body or an environmental verifier for verification in compliance with Article 5 as it had effect immediately before exit day, and
 - (b) after exit day, the producer or supplier obtains that verification.

3. Where this paragraph applies, the verification obtained is deemed to be verification for the purposes of Article 5.

4. In paragraph 2, “supplier” means the supplier of a producer or of an importer.”.

(6) Omit Article 6.

(7) After Article 6, omit the words from “This Regulation shall” to “Member States”.

(8) In Annex 1, in the first column of the table—

(a) in Section 1.5, omit the second sentence;

(b) in Section 3.3, in the first indent, for the words from “Article 6” in the first place it occurs to the end substitute “the EU-derived domestic legislation that transposed Article 6 of Directive 2000/53/EC of the European Parliament and of the Council on end-of life vehicles, as last amended by Commission Directive (EU) 2017/2096, and Article 8 of Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE), as it had effect immediately before 4th July 2018”.

(9) In Annex 2, in the sixth entry in the table, in the second column, for “customs territory of the Union” substitute “United Kingdom”.

CHAPTER 2

Decisions

Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of waste pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste

13.—(1) Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of waste pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste is amended as follows.

(2) Omit Articles 4 and 6.

(3) In the Annex—

(a) after the “Definitions” Section, insert—

“Definition: Directive 2008/98/EC

1. In this Annex, “Directive 2008/98/EC” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with paragraphs 2 to 10.

2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion.

3. Article 2 is to be read as if—

(a) in paragraph 2—

(i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;

(ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;

(iii) in point (d), as it extends to England and Wales, for the words from “Directive 2006/21/EC” to the end there were substituted “the Mining Waste Directive”;

(iv) for point (d), as it extends to Scotland, there were substituted—

- “(d) extractive waste, which has the same meaning as in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010.”;
- (v) for point (d), as it extends to Northern Ireland, there were substituted—
- “(d) extractive waste, which has the same meaning as in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.”;
- (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
- (c) paragraph 4 were omitted.
4. Article 3(20) is to be read as if for “Article 2(11) of Directive 96/61/EC” there were substituted “Article 3(10) of the Industrial Emissions Directive”.
5. Article 5 is to be read as if paragraph 2 were omitted.
6. Article 6 is to be read as if—
- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—
- (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
- (ii) the second sentence were omitted.
7. Article 7 is to be read as if—
- (a) in paragraph 1—
- (i) the first and second sentences were omitted;
- (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
- (b) after paragraph 1, there were inserted—
- “1A. Paragraph 1 is subject to—
- (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 9(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as hazardous waste;
- (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 10(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as non-hazardous waste;
- (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005 or regulation 9(2) or 10(2) of the Hazardous Waste Regulations (Northern Ireland) 2005;
- (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties);

- (e) a determination by the Scottish Ministers that a specific batch or type of waste—
 - (i) is to be treated as hazardous waste because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex 3;
 - (ii) is to be treated as non-hazardous waste because the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex 3.”;
 - (c) paragraphs 2, 3 and 5 were omitted;
 - (d) after paragraph 6 there were inserted—

“6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;
 - (e) paragraph 7 were omitted.
8. Article 19 is to be read as if—
- (a) in paragraph 1, for “Community” there was substituted “national”;
 - (b) in paragraph 2, for “a Member State” there was substituted “the United Kingdom”.
9. Article 23(5) is to be read as if “or Community” were omitted.
10. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
11. In paragraph 2—
- (a) “appropriate agency” means—
 - (i) in relation to England, the Environment Agency;
 - (ii) in relation to Wales, the Natural Resources Body for Wales;
 - (iii) in relation to Scotland, the Scottish Environment Protection Agency;
 - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
 - (b) “appropriate authority” means—
 - (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
 - (iii) in relation to Scotland, the Scottish Ministers;
 - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
 - (c) “local authority” means—
 - (i) in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - (ii) in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - (iii) in Wales—
 - a county council, or

- a county borough council;
- (iv) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
- (v) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972.

Definition: the Mining Waste Directive and the Industrial Emissions Directive

1. In this Annex, “the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs 2 and 3.
2. Article 2 is to be read as if—
 - (a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with paragraph 7 of this Article;
 - (b) paragraphs 3 and 4 were omitted.
3. Article 3(1) is to be read as if, for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of Directive 2008/98/EC, as read with Articles 5 and 6 of that Directive”.
4. In this Annex, “the Industrial Emissions Directive” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), read in accordance with paragraphs 5 and 6.
5. Article 3 is to be read as if—
 - (a) in point (1)(a), for the words from “Article 1” to the end there were substituted “Article 4(78) of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation”;
 - (b) in point (10)(b), for “Member State in question” there were substituted “United Kingdom”;
 - (c) in point (23), for the words from “point 1” to the end there were substituted “point 1 of the second subparagraph of Article 2 of Council Directive 2009/158/EC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs”;
 - (d) in point (37), for the words from “of the European” to the end there were substituted “, read with Articles 5 and 6 of that Directive”.
6. Annex 1 is to be read as if—
 - (a) in the words before point 1, the second paragraph were omitted;
 - (b) in point 5.3—
 - (i) in point (a), in the words before point (i), for “Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;
 - (ii) in point (b), in the words before point (i), for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;
 - (c) in point 5.4, the reference to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste were a reference to the Landfill Directive;
 - (d) in point 6.9, for “Directive 2009/31/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2009/31/EC in respect of England and Wales”;
 - (e) in point 6.11, for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”.

7. For the purposes of paragraph 2(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

- (a) the reference to “Member States” were a reference to the competent authority or appropriate agency;
- (b) in the words after the final indent, “environmental objectives”—
 - (i) in relation to the Northumbria River Basin District, means the environmental objectives referred to in the WFD Regulations as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
 - (ii) in relation to the Solway Tweed River Basin District, has the same meaning as in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;
 - (iii) in relation to a river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations.

8. In paragraph 6(c), “the Landfill Directive” means Council Directive 1999/31/EC on the landfill of waste, as last amended by Council Directive 2011/97/EU, and read as if, in Article 2—

- (a) for point (a) there were substituted—
 - “(a) “waste” means anything that—
 - (i) is waste within the meaning of Article 3(1) of Directive 2008/98/EC, as read with Articles 5 and 6 of that Directive, and
 - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;
- (b) for point (c) there were substituted—
 - “(c) “hazardous waste” has the meaning given in Article 3(2) of Directive 2008/98/EC;”.

9. In paragraph 6(d), “EU-derived domestic legislation” has the meaning given by section 2(2) of the European Union (Withdrawal) Act 2018.

10. In paragraph 7—

- (a) “appropriate agency” and “appropriate authority” have the meanings given in paragraph 11 of the “Definition: Directive 2008/98/EC” Section;
- (b) “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.”;
- (b) in the “Assessment and Classification” Section, in paragraph 2—
 - (i) in the first subparagraph, after “pursuant to” insert “Article 3(2) and 7(1) of”;
 - (ii) in the second subparagraph, in the first indent, in the second sentence, omit “in the Member States”.

Commission Decision 2001/171/EC establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste

14.—(1) Commission Decision 2001/171/EC establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste is amended as follows.

- (2) Before Article 1, insert—

“Article A1

1. In this Decision, “Directive 94/62/EC” means European Parliament and Council Directive 94/62/EC on packaging and packaging waste^(a), as last amended by Directive (EU) 2015/720 of the European Parliament and of the Council^(b), and read in accordance with paragraphs 2 to 4.
 2. Article 2 is to be read as if—
 - (a) in paragraph 1, for “Community” there were substituted “United Kingdom”;
 - (b) paragraph 2 were omitted.
 3. Article 3 is to be read as if—
 - (a) in paragraph 1, the fourth subparagraph were omitted;
 - (b) in paragraph 2, for “Directive 75/442/EEC” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”.
 4. In paragraph 3(b), the “Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with paragraphs 5 and 6.
 5. Article 5 is to be read as if paragraph 2 were omitted.
 6. Article 6 is to be read as if—
 - (a) paragraphs 1 to 3 were omitted;
 - (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “Member States” there were substituted “Except where waste ceases to be waste in accordance with Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013, the appropriate agency”;
 - (ii) the second sentence were omitted.
 7. In paragraph 6(b)(i), “appropriate agency” means—
 - (a) in relation to England, the Environment Agency;
 - (b) in relation to Wales, the Natural Resources Body for Wales;
 - (c) in relation to Scotland, the Scottish Environment Protection Agency;
 - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”.
- (3) In Article 1, omit the words from “, and aims” to the end.
- (4) In Article 3, omit “established in Article 11 of Directive 94/62/EC”.
- (5) In Article 5—
- (a) in the first paragraph, in the words before the first indent, in the first sentence, omit “in the Member States”;
 - (b) in the second paragraph—
 - (i) for “European Union” substitute “United Kingdom”;
 - (ii) omit “Community”.
- (6) Omit Article 7.

^(a) OJ No L 365, 31.12.1994, p 10.

^(b) OJ No L 115, 6.5.2015, p 11.

Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills

15.—(1) Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills is amended as follows.

(2) Before Article 1 insert—

“Article 1

1. In this Decision—

(a) “appropriate agency” means—

- (i) in relation to England, the Environment Agency;
- (ii) in relation to Wales, the Natural Resources Body for Wales;
- (iii) in relation to Northern Ireland—

— for the purposes of this Article, the Department of Agriculture, Environment and Rural Affairs;

— otherwise, the Department for Infrastructure;

(b) “appropriate authority” means—

- (i) in relation to England, the Secretary of State;
- (ii) in relation to Wales, the Welsh Ministers;
- (iii) in relation to Northern Ireland—

— for the purposes of this Article, the Department of Agriculture, Environment and Rural Affairs;

— otherwise, the Department for Infrastructure;

(c) “local authority” means—

- (i) in England outside Greater London—

— a district council,

— a county council, or

— the Council of the Isles of Scilly;

- (ii) in Greater London—

— the council of a London borough,

— the Common Council of the City of London,

— the Sub-Treasurer of the Inner Temple, or

— the Under-Treasurer of the Middle Temple;

- (iii) in Wales—

— a county council, or

— a county borough council;

- (iv) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972.

2. In this Decision, “the Landfill Directive” means Council Directive 1999/31/EC on the landfill of waste, as last amended by Council Directive 2011/97/EU, and read in accordance with paragraphs 3 to 12.

3. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of England, Wales or Northern Ireland.

4. Article 1 is to be read as if—

- (a) in paragraph 1, the words from “With a view” to “thereof,” were omitted;
 - (b) in paragraph 2, for “Directive 96/61/EC”, in both places it occurs, there were substituted “Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions”.
5. Article 2 is to be read as if—
- (a) for point (a) there were substituted—
 - “(a) “waste” means anything that—
 - (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive, and
 - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;
 - (b) in point (c), for the words from “Article 1(4)” to the end there were substituted “Article 3(2) of the Waste Framework Directive”;
 - (c) for point (l) there were substituted—
 - “(l) “operator”—
 - (i) in relation to England and Wales, has the meaning given in regulation 7 of the Environmental Permitting (England and Wales) Regulations 2016(a);
 - (ii) in relation to Northern Ireland, has the meaning given in regulation 2(1) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(b);”.
6. Article 5(3) is to be read as if—
- (a) in point (b), for “Annex III to Directive 91/689/EEC(c)” there were substituted “Annex 3 to the Waste Framework Directive”;
 - (b) in point (c), for the words from “(property H9” to the end there were substituted “Annex 3 to the Waste Framework Directive”;
 - (c) in point (d)—
 - (i) for “two years from the date laid down in Article 18(1)” there were substituted “16th July 2001”;
 - (ii) for “five years from the date laid down in Article 18(1)” there were substituted “from 16th July 2004”.
7. Article 9 is to be read as if, in the words before point (a), the words from “Specifying” to “Directive 96/61/EC,” were omitted.
8. Article 11(1)(b) is to be read as if—
- (a) in the first indent—
 - (i) for “Article 5(3) of Directive 91/689/EEC” there were substituted “Article 19(2) of the Waste Framework Directive”;
 - (ii) for the words from “Council Regulation (EEC) No 259/93” to the end there were substituted “Regulation (EC) 1013/2006 of the European Parliament and of the Council on shipments of waste”;
 - (b) in the third indent, in the second sentence, “and Community” was omitted.
9. Article 13(d) is to be read as if the words from “and without prejudice” to “waste holder” were omitted.

(a) S.I. 2016/1154, amended by S.I. S.I. 2017/1012, 2018/110, 428, 575, 721 (W.140).

(b) S.R. 2013 No 160, to which there are amendments not relevant to these Regulations.

(c) OJ No L 377, 31.12.1991, p 20, repealed by Directive 2008/98/EC of the European Parliament and of the Council (OJ No L 312, 22.11.2008, p 3).

10. Annex 1 is to be read as if—

- (a) in point 3.4, for “Directive 80/68/EEC(a)”, there were substituted “Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(b)”;
- (b) point 3.5 were omitted.

11. Annex 2 is to be read as if—

- (a) point 1 were omitted;
- (b) in point 2, in the second paragraph, the third sentence were omitted;
- (c) in point 4, in the fourth and fifth paragraphs, for “covered by Directive 91/689/EEC” there were substituted “classified as hazardous waste”;
- (d) in point 5, the second and third sentences were omitted.

12. Annex 3 is to be read as if—

- (a) in point 2—
 - (i) the first paragraph were omitted;
 - (ii) in the table, for “14.00h CET” in both places it occurs there were substituted “1 p.m.”;
- (b) in point 3, in the fourth paragraph, in the table, in table footnote (7), the words from “, and will report” to the end were omitted.

Article A2

1. In this Decision, “the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with paragraphs 2 to 8.

2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of England, Wales or Northern Ireland.

3. Article 2 is to be read as if—

- (a) in paragraph 2—
 - (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
 - (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
 - (iii) in point (d), as it extends to England and Wales, for the words from “Directive 2006/21/EC” to the end there were substituted “the Mining Waste Directive”;
 - (iv) for point (d), as it extends to Northern Ireland, there were substituted—

“(d) extractive waste, which has the same meaning as in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.”;
- (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;
- (c) paragraph 4 were omitted.

4. Article 5 is to be read as if paragraph 2 were omitted.

(a) OJ No L 20, 26.1.1980, p 43, repealed by Directive 2000/60/EC of the European Parliament and of the Council (OJ No L 327, 22.12.2000, p 1).

(b) OJ No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

5. Article 6 is to be read as if—
- (a) paragraphs 1 to 3 were omitted;
 - (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
 - (ii) the second sentence were omitted.
6. Article 7 is to be read as if—
- (a) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
 - (b) after paragraph 1, there were inserted—
 - “1A. Paragraph 1 is subject to—
 - (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 9(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as hazardous waste;
 - (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 10(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005 or regulation 9(2) or 10(2) of the Hazardous Waste Regulations (Northern Ireland) 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties).”
 - (c) paragraphs 2, 3 and 5 were omitted;
 - (d) after paragraph 6 there were inserted—
 - “6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;
 - (e) paragraph 7 were omitted.
7. Article 19(2) is to be read as if, for “a Member State” there was substituted “the United Kingdom”.
8. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

Article A3

1. In Article A2(3)(a)(iii), the “Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs 2 and 3.
 2. Article 2 is to be read as if—
 - (a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with paragraph 7 of this Article;
 - (b) paragraphs 3 and 4 were omitted.
 3. Article 3(1) is to be read as if, for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of Directive 2008/98/EC, as read with Articles 5 and 6 of that Directive”.
 4. For the purposes of paragraph 2(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—
 - (a) the reference to “Member States” were a reference to the competent authority or appropriate agency;
 - (b) in the words after the final indent, “environmental objectives”—
 - (i) in relation to the Northumbria River Basin District, means the environmental objectives referred to in the WFD Regulations as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
 - (ii) in relation to the Solway Tweed River Basin District, has the same meaning as in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;
 - (iii) in relation to a river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations.
 5. In paragraph 4(b), “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.”.
- (3) In Article 1—
- (a) the existing text becomes paragraph 1;
 - (b) after that paragraph insert—
- “2. This Decision does not extend to Scotland.”.
- (4) In Articles 2 and 3 for “Member States” substitute “The appropriate agency”.
- (5) In Article 5—
- (a) in the first sentence, omit “Without prejudice to existing Community legislation,”;
 - (b) omit the second sentence.
- (6) Omit Articles 6 to 8.
- (7) In the Annex—
- (a) in the introduction, omit the second and seventh paragraphs;
 - (b) in section 1—
 - (i) in section 1.1.1, in the final paragraph, for “Member State” substitute “appropriate authority”;
 - (ii) in section 1.1.2—
 - (aa) in point (f), for “the European waste list (Commission Decision 2001/118/EC)” substitute “Commission Decision 2000/532/EC”;
 - (bb) in point (g), for the words from “Annex III” to the end, substitute “Annex 3 to the Waste Framework Directive”;

- (iii) in section 1.2, in the seventh paragraph, for “Member State” substitute “appropriate authority”;
- (c) in section 1.3—
 - (i) in the fourth paragraph, for “Member States” substitute “The appropriate authority”;
 - (ii) in the fifth paragraph, in the second sentence—
 - (aa) for “Member State” substitute “appropriate authority”;
 - (bb) for “Article 11(b)” substitute “Article 11(1)(b)”;
- (d) in section 2—
 - (i) in the words before section 2.1—
 - (aa) for the third paragraph substitute—

“The Secretary of State must publish information on the annual number of permits issued in relation to England under this provision. The Welsh Ministers must publish information on the annual number of permits issued in relation to Wales under this provision. The first information under the first and second sentences must be published before 1st April 2022. Subsequent information must be published at intervals not exceeding 3 years.”;
 - (bb) in the fourth paragraph, for “Member States” substitute “The appropriate authority”;
 - (ii) in section 2.1.2.1, for “Member States” substitute “The appropriate authority”;
 - (iii) in section 2.1.2.2, in the table, in the fifth entry (PAHs), for “Member States” substitute “The appropriate authority”;
 - (iv) in section 2.2, for “Member States” substitute “The appropriate authority”;
 - (v) in section 2.2.1, in the first paragraph, for “the European waste list” substitute “Commission Decision 2000/532/EC”;
 - (vi) in section 2.2.2 and 2.3.1—
 - (aa) in the first paragraph, in the second sentence, for “Member States” substitute “The appropriate authority”;
 - (bb) in the sentence after the table, for “Member States” substitute “The appropriate authority”;
 - (vii) in section 2.3.2, in the second and third paragraphs, for “Member States” substitute “The appropriate authority”;
 - (viii) in section 2.4.1—
 - (aa) in the first paragraph, in the third sentence, for “Member States” substitute “The appropriate authority”;
 - (bb) in the sentence after the table, for “Member States” substitute “The appropriate authority”;
- (e) in section 3—
 - (i) in the second paragraph, for “Member States” substitute “The appropriate authority”;
 - (ii) in the third paragraph, for “Member States” substitute “the appropriate authority”.
- (8) In Appendix A—
 - (a) in section 1.1, omit the second paragraph;
 - (b) in section 2.2, in the second paragraph, for “Member States” substitute “The appropriate agency”;
 - (c) in section 4.1, omit the fourth paragraph.
- (9) Omit Appendix B.

Commission Decision 2009/292/EC establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste

16.—(1) Commission Decision 2009/292/EC establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste is amended as follows.

(2) After Article 1 insert—

“Article 1A

1. In this Decision, “Directive 94/62/EC” means European Parliament and Council Directive 94/62/EC on packaging and packaging waste, as last amended by Directive (EU) 2015/720 of the European Parliament and of the Council, and read in accordance with paragraphs 2 and 3.

2. Article 3 is to be read as if—

- (a) in paragraph 1, the fourth subparagraph were omitted;
- (b) in paragraph 2, for “Directive 75/442/EEC” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”.

3. Article 11(1) is to be read as if—

- (a) in the words before the first indent, for “Member States” there were substituted “The Secretary of State”;
- (b) in the first, second and third indents, for “the date referred to in Article 22(i)” there were substituted “30th June 1996”.

4. In paragraph 2(b), the “Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with paragraphs 5 and 6.

5. Article 5 is to be read as if paragraph 2 were omitted.

6. Article 6 is to be read as if—

- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “Member States” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies, the appropriate agency”;
 - (ii) the second sentence were omitted.

7. In paragraph 6(b)(i), “appropriate agency” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”.

(3) In Article 4—

- (a) in paragraph 2, for “Member States” substitute “The Secretary of State”;
- (b) in paragraph 3, omit “of the Member State concerned”.

(4) In Article 5—

- (a) in paragraph 1, in the first subparagraph, for “Member States” substitute “The Secretary of State”;

- (b) in paragraph 2, in the first sentence, for “Member States” substitute “the Secretary of State”;
- (c) in paragraph 3—
 - (i) in the first subparagraph, for “Member States” substitute “The Secretary of State”;
 - (ii) in the second subparagraph—
 - (aa) for “Community” in the first place it occurs substitute “United Kingdom”;
 - (bb) omit “Community” in the second place it occurs.
- (5) In Article 6, for “Member States” substitute “The Secretary of State”.
- (6) In Article 7—
 - (a) the existing text becomes paragraph 1;
 - (b) in that paragraph—
 - (i) for the words from “Member States” to “Article 17 of Directive 94/62/EC” substitute “The Secretary of State must publish, in a manner which the Secretary of State considers appropriate,”;
 - (ii) at the end, insert “in respect of the United Kingdom”;
 - (c) after that paragraph insert—
 - “2. The first report under paragraph 1 must be published before the end of the period of 3 years beginning with exit day.
 - 3. Subsequent information must be published at intervals not exceeding 3 years.”.
- (7) Omit Articles 8 and 9.

Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries

17.—(1) Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries is amended as follows.

- (2) In Article 1—
 - (a) in paragraph 1, in the words before point (a)—
 - (i) omit “Member States and”;
 - (ii) omit “referred to in Article 14 of Directive 2006/21/EC”;
 - (b) after paragraph 2 insert—
 - “3. In paragraph 1—
 - (a) in so far as it extends to England and Wales, “financial guarantee” means the financial guarantee referred to in Article 14 of Directive 2006/21/EC;
 - (b) in so far as it extends to Scotland, “financial guarantee”, “rehabilitation”, “treatment”, “waste facility” have the meanings given in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010;
 - (c) in so far as it extends to Northern Ireland, “financial guarantee”, “rehabilitation”, “treatment” and “waste facility” have the meanings given in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.”.
- (3) After Article 1, insert—

“Article 1A

1. For the purposes of this Decision, Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries is to be read in accordance with paragraphs 2 to 12.

2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of England or Wales.

3. Article 2 is to be read as if—

- (a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with Article 1C;
- (b) paragraphs 3 and 4 were omitted.

4. Article 3 is to be read as if—

- (a) in point (1), for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
- (b) in point (2), for “Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste” there were substituted “Article 3(2) of the Waste Framework Directive”;
- (c) in point (4), for the words from “the national law” to the end there were substituted “national law”;
- (d) in point (17), for “Directive 67/548/EEC(a) or Directive 1999/45/EC(b)” there were substituted “Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures”;
- (e) in point (18), for “Article 2(11) of Directive 96/61/EC” there were substituted “Article 3(10) of the Industrial Emissions Directive”;
- (f) in point (24), for the words from “the national law” to “takes place” there were substituted “national law”;
- (g) in point (26), for the words from “the national law” to “operates” there were substituted “national law”;
- (h) in point (27), for “which a Member State designates” there were substituted “designated”.

5. Article 5 is to be read as if—

- (a) in paragraph 2(a)(iii) and (b), “at Community level” were omitted;
- (b) in paragraph 3(g), for “Directive 2000/60/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy in respect of England and Wales(c)”;
- (c) in paragraph 5, “national or Community” were omitted.

-
- (a) OJ No 196, 16.8.1967, p 1 (Special Edition Series I Volume 1967 p 234), repealed by Regulation (EC) No 1272/2008 of the European Parliament and of the Council (OJ No L 353, 31.12.2008, p 1).
 - (b) OJ No L 200, 30.7.1999, p 1, repealed by Regulation (EC) No 1272/2008 of the European Parliament and of the Council (OJ No L 353, 31.12.2008, p 1).
 - (c) See for example the Coastal Protection Act 1949 (c. 74), the Salmon and Freshwater Fisheries Act 1975 (c. 51), the Food and Environment Protection Act 1985 (c. 48), the Environmental Protection Act 1990 (c. 43), the Water Industry Act 1991 (c. 56), the Water Resources Act 1991 (c. 57), the Land Drainage Act 1991 (c. 59), the Environment Act 1995 (c. 25), the Water Act 2003 (c. 37), the Marine and Coastal Access Act 2009 (c. 23), and S.I. 1986/1510, 1989/1263, 1994/2941, 2001/2954, 2003/3245, 2004/99, 2007/1518, 2009/995 (W. 81), 3104, 2010/639, 740, 1493 (W. 136), 2011/735, 2015/483, 668, 810, 2016/614, 2017/407, 2018/151.

6. Article 6(2) is to be read as if the words from “Without prejudice” to “92/104/EEC,” were omitted.
7. Article 7 is to be read as if—
 - (a) in paragraph 1, in the second subparagraph, “national or Community” were omitted;
 - (b) in paragraph 2(e), the reference to Directive 85/337/EEC(a) were a reference to the EU-derived domestic legislation which transposed Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(b) in respect of England and Wales(c);
 - (c) in paragraph 3(b), for “Article 7 of Directive 75/442/EEC” there were substituted “Article 13 of the Waste Framework Directive”;
 - (d) in paragraph 4, the third indent were omitted;
 - (e) in paragraph 5, “and Community” were omitted.
8. Article 10 is to be read as if paragraph 2 were omitted.
9. Article 11(2)(a) is to be read as if—
 - (a) “Community or” were omitted;
 - (b) for “Directives 76/464/EEC(d), 80/68/EEC and 2000/60/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2000/60/EC in respect of England and Wales”.
10. Article 12 is to be read as if—
 - (a) in paragraph 4, “national or Community” were omitted;
 - (b) in paragraph 5, for the words from “Community” to “2000/60/EC” there were substituted “retained EU law, in particular the EU-derived domestic legislation which transposed Directive 2000/60/EC in respect of England and Wales”.
11. Article 13 is to be read as if—
 - (a) in paragraph 1, the words before point (a)—
 - (i) “Community” were omitted;
 - (ii) for “Directive 2000/60/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2000/60/EC in respect of England and Wales”;
 - (b) in paragraph 3, for “Directives 76/464/EEC, 80/68/EEC or 2000/60/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2000/60/EC in respect of England and Wales”;
 - (c) in paragraph 4, for “Directives 76/464/EEC, 80/68/EEC and 2000/60/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2000/60/EC in respect of England and Wales”;
 - (d) in paragraph 5, in the second sentence—
 - (i) for “Community” there were substituted “retained EU law”;
 - (ii) for “Directive 2000/60/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2000/60/EC in respect of England and Wales”.

(a) OJ No L 175, 5.7.1985, p 40, repealed by Directive 2011/92/EU of the European Parliament and of the Council (OJ No L 26, 28.1.2012, p 1).

(b) OJ No L 26, 28.1.2012, p 1, as amended by Directive 2014/52/EU of the European Parliament and of the Council (OJ No L 124, 25.4.2014, p 1).

(c) See for example S.I. 2012/698, 2014/557, 615, 2015/398, 446, 660, 810, 1937 (W. 291), 2017/280 (W. 74), 407, 565 (W. 134), 567 (W. 136), 571, 572, 580, 582, 583, 585, 588, 592, 593, 1070, 2018/695, 798, 834.

(d) OJ No L 129, 18.5.1976, p 23, repealed by Directive 2006/11/EC of the European Parliament and of the Council (OJ No L 64, 4.3.2006, p 52).

12. Annex 3 is to be read as if—
- (a) in the second indent, for “Directive 91/689/EEC” there were substituted “the Waste Framework Directive”;
 - (b) in the third indent, for “Directives 67/548/EEC or 1999/45/EC” there were substituted “Regulation (EC) 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures”.
13. In this Decision—
- (a) “appropriate authority” means—
 - (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
 - (b) “appropriate agency” means—
 - (i) in relation to England, the Environment Agency;
 - (ii) in relation to Wales, the Natural Resources Body for Wales;
 - (c) “EU-derived domestic legislation” has the meaning given in section 2(2) of the European Union (Withdrawal) Act 2018;
 - (d) “local authority” means—
 - (i) in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - (ii) in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - (iii) in Wales—
 - a county council, or
 - a county borough council.

Article 1B

1. In this Decision, the “Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with paragraphs 2 to 7.
2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of England or Wales.
3. Article 2 is to be read as if—
- (a) in paragraph 2—
 - (i) in the words before point (a), for “other Community legislation” there were substituted “retained EU law”;
 - (ii) in points (b) and (c), for “Regulation (EC) No 1774/2002” there were substituted “Regulation (EC) No 1069/2009”;
 - (b) in paragraph 3, the words from “Without prejudice” to “Community legislation,” were omitted;

- (c) paragraph 4 were omitted.
- 4. Article 5 is to be read as if paragraph 2 were omitted.
- 5. Article 6 is to be read as if—
 - (a) paragraphs 1 to 3 were omitted;
 - (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
 - (ii) the second sentence were omitted.
- 6. Article 7 is to be read as if—
 - (a) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
 - (b) after paragraph 1, there were inserted—
 - “1A. Paragraph 1 is subject to—
 - (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, that a specific batch of waste is to be treated as hazardous waste;
 - (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, or regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties).”;
 - (c) paragraphs 2, 3 and 5 were omitted;
 - (d) after paragraph 6 there were inserted—
 - “6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;
 - (e) paragraph 7 were omitted.
- 7. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

Article 1C

- 1. For the purposes of Article 1A(3)(a), Article 11(3)(j) of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy is to be read as if—
 - (a) the reference to “Member States” were a reference to the appropriate authority or appropriate agency;
 - (b) in the words after the final indent, “environmental objectives”—

- (i) in relation to the Northumbria River Basin District, means the environmental objectives referred to in the WFD Regulations as applied by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
- (ii) in relation to the Solway Tweed River Basin District, has the same meaning as in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;
- (iii) in relation to a river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations.

2. In paragraph 1(b), “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

Article 1D

1. In Article 1A(4)(e), the “Industrial Emissions Directive” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, read in accordance with paragraphs 2 and 3.

2. Article 3 is to be read as if—

- (a) in point (1)(a), for the words from “Article 1” to the end there were substituted “Article 4(78) of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation”;
- (b) in point (10)(b), for “Member State in question” there were substituted “United Kingdom”;
- (c) in point (23), for the words from “point 1” to the end there were substituted “point 1 of the second subparagraph of Article 2 of Council Directive 2009/158/EC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs”;
- (d) in point (37), for “Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste” there were substituted “the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
- (e) in point (38), for “Directive 2008/98/EC” there were substituted “the Waste Framework Directive”.

3. Annex 1 is to be read as if—

- (a) in the words before point 1, the second paragraph were omitted;
- (b) in point 5.3—
 - (i) in point (a), in the words before point (i), for “Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;
 - (ii) in point (b), in the words before point (i), for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”;
- (c) in point 5.4, the reference to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste were a reference to the Landfill Directive;
- (d) in point 6.9, for “Directive 2009/31/EC” there were substituted “the EU-derived domestic legislation which transposed Directive 2009/31/EC in respect of England and Wales”;
- (e) in point 6.11, for “Directive 91/271/EEC” there were substituted “the Urban Waste Water Treatment (England and Wales) Regulations 1994”.

4. In paragraph 3(c), “the Landfill Directive” means Council Directive 1999/31/EC on the landfill of waste, as last amended by Council Directive 2011/97/EU, and read as if, in Article 2—

- (a) for point (a) there were substituted—
 - “(a) “waste” means anything that—
 - (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive, and
 - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”;
- (b) for point (c) there were substituted—
 - “(c) “hazardous waste” has the meaning given in Article 3(2) of the Waste Framework Directive;”.
- (4) Omit Article 2.

Commission Decision 2009/337/EC on the definition of the criteria for the classification of waste facilities in accordance with Annex III of Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries

18.—(1) Commission Decision 2009/337/EC on the definition of the criteria for the classification of waste facilities in accordance with Annex III of Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries is amended as follows.

- (2) Before Article 1 insert—

“Article A1

1. In this Decision, “appropriate agency” means—
 - (a) in relation to England, the Environment Agency;
 - (b) in relation to Wales, the Natural Resources Body for Wales;
 - (c) in relation to Scotland—
 - (i) a planning authority, or
 - (ii) a national park authority within the meaning of section 35(1) of the National Parks (Scotland) Act 2000^(a) (as the case may be);
 - (d) in relation to Northern Ireland—
 - (i) a district council established under section 1 of the Local Government Act (Northern Ireland) 1972, or
 - (ii) the Department for Infrastructure (as the case may be).
2. A term which is used in this Decision—
 - (a) as it extends to Scotland and which is defined in regulation 2(1) of the 2010 Scotland Regulations has the meaning given in that regulation;
 - (b) as it extends to Northern Ireland and which is defined in regulation 2(2) of the 2015 NI Regulations has the meaning given in that regulation.
3. In this Decision—
 - (a) “the 2010 Scotland Regulations” means the Management of Extractive Waste (Scotland) Regulations 2010;
 - (b) “the 2015 NI Regulations” means the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.

^(a) 2000 asp 10.

Article A2

1. For the purposes of this Decision, Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries is to be read in accordance with this Article.
2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of England or Wales.
3. Article 3 is to be read as if—
 - (a) in point (1), for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
 - (b) in point (2), for “Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste” there were substituted “Article 3(2) of the Waste Framework Directive”;
 - (c) in point (4), for the words from “the national law” to the end there were substituted “national law”;
 - (d) in point (24), for the words from “the national law” to “takes place” there were substituted “national law”.
4. Annex 3 is to be read as if—
 - (a) in the second indent, “under Directive 91/689/EEC” were omitted;
 - (b) in the third indent, for “Directives 67/548/EEC or 1999/45/EC” there were substituted “Regulation (EC) 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures”.

Article A3

1. In Article A2(3), the “Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with this Article.
2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of England or Wales.
3. Article 5 is to be read as if paragraph 2 were omitted.
4. Article 6 is to be read as if—
 - (a) paragraphs 1 to 3 were omitted;
 - (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
 - (ii) the second sentence were omitted.
5. Article 7 is to be read as if—
 - (a) in paragraph 1—
 - (i) the first and second sentences were omitted;

- (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
- (b) after paragraph 1, there were inserted—

“1A. Paragraph 1 is subject to—

- (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, that a specific batch of waste is to be treated as hazardous waste;
- (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, that a specific batch of waste is to be treated as non-hazardous waste;
- (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, or regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;
- (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties).”;
- (c) paragraphs 2, 3 and 5 were omitted;
- (d) after paragraph 6 there were inserted—

“6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;

- (e) paragraph 7 were omitted.

6. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.

Article A4

In Articles A2 and A3—

- (a) “appropriate authority” means—
 - (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
- (b) “local authority” means—
 - (i) in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - (ii) in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - (iii) in Wales—
 - a county council, or
 - a county borough council.”.

- (3) In Article 1—

- (a) in paragraph 1, in the words before point (a), for “indent of Annex III of Directive 2006/21/EC” substitute “part of the categorisation legislation”;
- (b) after paragraph 2 insert—
 - “3. In paragraph 1, “first part of the categorisation legislation”—
 - (a) as it extends to England and Wales, means the first indent of Annex 3 to Directive 2006/21/EC;
 - (b) as it extends to Scotland, means paragraph (a) of the definition of “Category A waste facility” in regulation 2(1) of the 2010 Scotland Regulations;
 - (c) as it extends to Northern Ireland, means paragraph 1 of Schedule 3 to the 2015 NI Regulations.”.
- (4) In Article 3(2), omit “under Council Directive 91/689/EEC”.
- (5) In Article 4(1), for “Member States” substitute “The appropriate agency”.
- (6) In Article 7—
 - (a) in paragraph 1—
 - (i) in the words before point (a), for “indent of Annex III of Directive 2006/21/EC” substitute “part of the categorisation legislation”;
 - (ii) in point (a), omit “in accordance with Directive 91/689/EEC”;
 - (b) after paragraph 4 insert—
 - “5. In paragraph 1, “second part of the categorisation legislation”—
 - (a) as it extends to England and Wales, means the second indent of Annex 3 to Directive 2006/21/EC;
 - (b) as it extends to Scotland, means paragraph (b) of the definition of “Category A waste facility” in regulation 2(1) of the 2010 Scotland Regulations;
 - (c) as it extends to Northern Ireland, means paragraph 2 of Schedule 3 to the 2015 NI Regulations.”.
- (7) In Article 8—
 - (a) in paragraph 1—
 - (i) for “Member States” substitute “The appropriate agency”;
 - (ii) for “indent of Annex III of Directive 2006/21/EC” substitute “part of the categorisation legislation”;
 - (b) in paragraph 2—
 - (i) in the first subparagraph, in point (c) for the words from “Council Directive 67/548/EEC” to the end substitute “Regulation (EC) No 1272/2008 of the European Parliament and of the Council”;
 - (ii) in the second subparagraph, for “Directives 1999/45/EC or 67/548/EEC” substitute “Regulation (EC) No 1272/2008 of the European Parliament and of the Council”;
 - (c) in paragraph 3, for “Directive 1999/45/EC or 67/548/EEC” substitute “Regulation (EC) No 1272/2008 of the European Parliament and of the Council”;
 - (d) in paragraph 4—
 - (i) in the first sentence, for “Member States” substitute “the appropriate agency”;
 - (ii) in the second sentence, for “Directives 1999/45/EC or 67/548/EEC” substitute “Regulation (EC) No 1272/2008 of the European Parliament and of the Council”;
 - (e) after paragraph 4 insert—
 - “5. In paragraph 1, “third part of the categorisation legislation”—
 - (a) as it extends to England and Wales, means the third indent of Annex 3 to Directive 2006/21/EC;

- (b) as it extends to Scotland, means paragraph (c) of the definition of “Category A waste facility” in regulation 2(1) of the 2010 Scotland Regulations;
- (c) as it extends to Northern Ireland, means paragraph 3 of Schedule 3 to the 2015 NI Regulations.”.

(8) Omit Article 11.

Commission Decision 2009/359/EC completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries

19.—(1) Commission Decision 2009/359/EC completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries is amended as follows.

(2) In Article 1—

- (a) in paragraph 1, for “Article 3(3) of Directive 2006/21/EC” substitute “the relevant definition provision”;
- (b) in paragraph 3, for “Member States” substitute “appropriate agency”;
- (c) after paragraph 3 insert—

“4. In paragraph 1, “the relevant definition provision”—

- (a) as it extends to England and Wales, means Article 3(3) of Directive 2006/21/EC;
- (b) as it extends to Scotland, means regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010;
- (c) as it extends to Northern Ireland, means regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.

5. In paragraph 3, “appropriate agency” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland—
 - (i) a planning authority, or
 - (ii) a national park authority within the meaning of section 35(1) of the National Parks (Scotland) Act 2000 (as the case may be);
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

6. A term which is used in this Article—

- (a) as it extends to Scotland and which is defined in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010 has the meaning given by that regulation;
- (b) as it extends to Northern Ireland and which is defined in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 has the meaning given by that regulation.”.

(3) After Article 1 insert—

“Article 1A

1. For the purposes of Article 1, Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries is to be read in accordance with paragraphs 2 and 3.

2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before

exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of England or Wales.

3. Article 3 is to be read as if—

- (a) in point (1), for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
- (b) in point (2), for “Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste” there were substituted “Article 3(2) of the Waste Framework Directive”;
- (c) in point (4), for the words from “the national law” to the end there were substituted “national law”;
- (d) in point (24), for the words from “the national law” to “takes place” there were substituted “national law”.

4. In paragraph 2—

- (a) “appropriate agency” has the meaning given in Article 1(5);
- (b) “appropriate authority” means—
 - (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
- (c) “local authority” means—
 - (i) in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - (ii) in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - (iii) in Wales—
 - a county council, or
 - a county borough council.

Article 1B

1. In Article 1A(3), the “Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with this Article.

2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of England or Wales.

3. Article 5 is to be read as if paragraph 2 were omitted.

4. Article 6 is to be read as if—

- (a) paragraphs 1 to 3 were omitted;
- (b) in paragraph 4—

- (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
 - (ii) the second sentence were omitted.
- 5. Article 7 is to be read as if—
 - (a) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
 - (b) after paragraph 1, there were inserted—
 - “1A. Paragraph 1 is subject to—
 - (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, that a specific batch of waste is to be treated as hazardous waste;
 - (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, or regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties).”;
 - (c) paragraphs 2, 3 and 5 were omitted;
 - (d) after paragraph 6 there were inserted—
 - “6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;
 - (e) paragraph 7 were omitted.
- 6. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
- 7. In paragraph 2—
 - (a) “appropriate agency” has the meaning given in Article 1(5);
 - (b) “appropriate authority” and “local authority” have the meanings given in Article 1A(4).”.
- (4) Omit Article 3.

Commission Decision 2009/360/EC completing the technical requirements for waste characterisation laid down by Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries

20.—(1) Commission Decision 2009/360/EC completing the technical requirements for waste characterisation laid down by Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries is amended as follows.

- (2) Before Article 1 insert—

“Article A1

1. A term which is used in this Decision—
 - (a) as it extends to Scotland and which is defined in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010 has the meaning given in that regulation;
 - (b) as it extends to Northern Ireland and which is defined in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 has the meaning given in that regulation.
2. For the purposes of this Decision, Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries is to be read as if, in Article 3—
 - (a) in point (1), for “Article 1(a) of Directive 75/442/EEC” there were substituted “Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive”;
 - (b) in point (2), for “Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste” there were substituted “Article 3(2) of the Waste Framework Directive”;
 - (c) in point (4), for the words from “the national law” to the end there were substituted “national law”;
 - (d) in point (24), for the words from “the national law” to “takes place” there were substituted “national law”.
3. In paragraph 2, the “Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with paragraphs 4 to 8.
4. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion in respect of England or Wales.
5. Article 5 is to be read as if paragraph 2 were omitted.
6. Article 6 is to be read as if—
 - (a) paragraphs 1 to 3 were omitted;
 - (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
 - (ii) the second sentence were omitted.
7. Article 7 is to be read as if—
 - (a) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
 - (b) after paragraph 1, there were inserted—

“1A. Paragraph 1 is subject to—

 - (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under

- regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, that a specific batch of waste is to be treated as hazardous waste;
- (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, or regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties).”;
- (c) paragraphs 2, 3 and 5 were omitted;
- (d) after paragraph 6 there were inserted—
- “6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;
- (e) paragraph 7 were omitted.
8. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
9. In paragraph 4—
- (a) “appropriate authority” means—
 - (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
 - (b) “local authority” means—
 - (i) in England outside Greater London—
 - a district council,
 - a county council, or
 - the Council of the Isles of Scilly;
 - (ii) in Greater London—
 - the council of a London borough,
 - the Common Council of the City of London,
 - the Sub-Treasurer of the Inner Temple, or
 - the Under-Treasurer of the Middle Temple;
 - (iii) in Wales—
 - a county council, or
 - a county borough council.
10. In this Decision, “appropriate agency” means—
- (a) in relation to England, the Environment Agency;
 - (b) in relation to Wales, the Natural Resources Body for Wales;
 - (c) in relation to Scotland—
 - (i) a planning authority, or
 - (ii) a national park authority within the meaning of section 35(1) of the National Parks (Scotland) Act 2000 (as the case may be);
 - (d) in relation to Northern Ireland—

- (i) a district council established under section 1 of the Local Government Act (Northern Ireland) 1972, or
- (ii) the Department for Infrastructure (as the case may be).”.
- (3) In Article 1(1), for “Member States” substitute “The appropriate agency”.
- (4) In Article 2(2), omit “European”.
- (5) Omit Article 3.

Commission Decision 2011/753/EU establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC of the European Parliament and of the Council

21.—(1) Commission Decision 2011/753/EU establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC of the European Parliament and of the Council is amended as follows.

- (2) In Article 1, after point (6) insert—
 - “(7) ‘appropriate authority’ means—
 - (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
 - (iii) in relation to Scotland, the Scottish Ministers;
 - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”.
- (3) After Article 1 insert—

“Article 1A

Modification of Directive 2008/98/EC of the European Parliament and of the Council

1. In this Decision, “Directive 2008/98/EC” means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997, and read in accordance with paragraphs 2 to 9.
2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion.
3. Article 5 is to be read as if paragraph 2 were omitted.
4. Article 6 is to be read as if—
 - (a) paragraphs 1 to 3 were omitted;
 - (b) in paragraph 4—
 - (i) in the first sentence, for the words from “Where criteria” to “paragraphs 1 and 2” there were substituted “Except where Council Regulation (EU) No 333/2011, Commission Regulation (EU) No 1179/2012 or Commission Regulation (EU) No 715/2013 applies”;
 - (ii) the second sentence were omitted.
5. Article 7 is to be read as if—
 - (a) in paragraph 1—
 - (i) the first and second sentences were omitted;
 - (ii) in the third sentence, for “shall be binding” there were substituted “shall, subject to paragraph 1A, be binding”;
 - (b) after paragraph 1, there were inserted—

“1A. Paragraph 1 is subject to—

- (a) a determination by the Secretary of State under regulation 8(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 8(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 9(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as hazardous waste;
 - (b) a decision made by the Secretary of State under regulation 9(1) of the Hazardous Waste (England and Wales) Regulations 2005, or by the Welsh Ministers under regulation 9(1) of the Hazardous Waste (Wales) Regulations 2005, or by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under regulation 10(1) of the Hazardous Waste Regulations (Northern Ireland) 2005, that a specific batch of waste is to be treated as non-hazardous waste;
 - (c) the treating of a specific batch of waste as hazardous or, as the case may be, non-hazardous, in accordance with regulation 8(2) or 9(2) of the Hazardous Waste (England and Wales) Regulations 2005, regulation 8(2) or 9(2) of the Hazardous Waste (Wales) Regulations 2005 or regulation 9(2) or 10(2) of the Hazardous Waste Regulations (Northern Ireland) 2005;
 - (d) regulations (if any) made by the Secretary of State under section 62A(1) of the Environmental Protection Act 1990 or by the Welsh Ministers under section 62A(2) of that Act (lists of waste displaying hazardous properties);
 - (e) a determination by the Scottish Ministers that a specific batch or type of waste—
 - (i) is to be treated as hazardous waste because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex 3;
 - (ii) is to be treated as non-hazardous waste because the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex 3.”;
- (c) paragraphs 2, 3 and 5 were omitted;
- (d) after paragraph 6 there were inserted—
- “6A. In this Article, the “list of waste” means the list established by Commission Decision 2000/532/EC.”;
- (e) paragraph 7 were omitted.
6. Article 11(2) is to be read as if, in the words before point (a), for “European” there were substituted “United Kingdom”.
7. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
8. In paragraph 2—
- (a) “appropriate agency” means—
 - (i) in relation to England, the Environment Agency;
 - (ii) in relation to Wales, the Natural Resource Body for Wales;
 - (iii) in relation to Scotland, the Scottish Environment Protection Agency;
 - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
 - (b) “local authority” means—
 - (i) in England outside Greater London—
 - a district council,

- a county council, or
- the Council of the Isles of Scilly;
- (ii) in Greater London—
- the council of a London borough,
- the Common Council of the City of London,
- the Sub-Treasurer of the Inner Temple, or
- the Under-Treasurer of the Middle Temple;
- (iii) in Wales—
- a county council, or
- a county borough council;
- (iv) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
- (v) in Northern Ireland, a district council established under section 1 of the Local Government Act (Northern Ireland) 1972.”.

(4) In Article 2—

- (a) in point (1), for “Member States” substitute “The appropriate authority”;
- (b) omit point (4);
- (c) in point (5), omit “out of the Union”.

(5) In Article 3—

- (a) in paragraph 1, in the words before point (a) for “Member States” substitute “the appropriate authority”;
- (b) in paragraph 2, for “Member State” substitute “appropriate authority”;
- (c) in paragraph 3—
 - (i) for “Member States” substitute “The appropriate authority”;
 - (ii) for “Member State” substitute “appropriate authority”;
- (d) in paragraph 4, for “Member States’ implementation reports on” substitute “The progress report under Article 5 in respect of”;
- (e) omit paragraphs 5 and 6.

(6) In Article 4—

- (a) in paragraph 1, for “Member States” substitute “the appropriate authority”;
- (b) in paragraph 2, for “Member States’ implementation reports on” substitute “The progress report under Article 5 in respect of”.

(7) In Article 5—

- (a) for the heading substitute “Progress report for England”;
- (b) for paragraph 1 substitute—

“1. The Secretary of State must publish a report (“the progress report”) on whether the targets set in Article 11(2) of Directive 2008/98/EC have been met in respect of England.

1A. The progress report must be published on or before 1st January 2022 in a manner which the Secretary of State considers appropriate.”;

- (c) in paragraph 2—

- (i) for the words from “Member States” to “reports” substitute “The progress report must include data”;
- (ii) for the words from “either each year” to the end substitute “2019 and 2020”;
- (d) in paragraph 3, for “implementation report covering the year 2020, Member States” substitute “progress report for 2020, the Secretary of State”;

- (e) omit paragraph 4.
- (8) Omit Article 6.
- (9) In Annex 1, the third column of the table is amended in accordance with paragraphs (10) to (14).
- (10) In the column heading, for “Member State implementation reports” substitute “the progress report”.
- (11) In the first entry—
 - (a) for “Member States” in both places it occurs substitute “The Secretary of State”;
 - (b) in the third sentence, omit the words from “and how” to the end.
- (12) In the second entry—
 - (a) in the first paragraph—
 - (i) for “Member States” in both places it occurs substitute “The Secretary of State”;
 - (ii) in the fourth sentence—
 - (aa) for “a Member State” substitute “the Secretary of State”;
 - (bb) for “it” substitute “the Secretary of State”;
 - (b) omit the second paragraph.
- (13) In the third entry—
 - (a) in the first paragraph—
 - (i) in the first sentence, for “Member States” substitute “The Secretary of State”;
 - (ii) in the second sentence, for “They” substitute “The Secretary of State”;
 - (b) omit the second and third paragraphs.
- (14) Omit the fourth entry.
- (15) In Annex 3, the second column of the table is amended in accordance with paragraphs (16) and (17).
- (16) In the column heading, for “Member State implementation reports” substitute “the progress report”.
- (17) In the first entry—
 - (a) in point (1), in the second paragraph, for “Member States” substitute “The Secretary of State”;
 - (b) omit point (2);
 - (c) in point (3)—
 - (i) in the first sentence, for “Member States” substitute “The Secretary of State”;
 - (ii) in the second sentence—
 - (aa) for “they” substitute “The Secretary of State”;
 - (bb) omit the words from “and how” to the end;
 - (iii) omit the third sentence.

CHAPTER 3

Consequential amendment and revocations

Amendment of the Environmental Permitting (England and Wales) Regulations 2016

22.—(1) Schedule 10 to the Environmental Permitting (England and Wales) Regulations 2016 is amended as follows.

- (2) In paragraph 7(a), for “member State” substitute “appropriate authority”.

Revocations

23.—(1) The retained direct EU legislation listed in the Schedule is revoked.

(2) In the EEA Agreement, in Annex 20, in Chapter 5—

- (a) omit the adaptation in point 32aa;
- (b) omit points 32da, 32ea, 32ed, 32fb, 32fc and 32fec;
- (c) omit the adaptations in points 32ffa to 32ffc.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE

Regulation 23(1)

Revocations

Regulations

1. Commission Regulation (EU) No 1357/2014 replacing Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives.

2. Council Regulation (EU) 2017/997 amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 'Ecotoxic'.

Decisions

3. Commission Decision 76/431/EEC setting up a Committee on Waste Management.

4. Commission Decision 94/741/EC concerning questionnaires for Member States reports on the implementation of certain Directives in the waste sector.

5. Commission Decision 97/129/EC establishing the identification system for packaging materials pursuant to European Parliament and Council Directive 94/62/EC on packaging and packaging waste.

6. Commission Decision 97/622/EC concerning questionnaires for Member States reports on the implementation of certain Directives in the waste sector.

7. Commission Decision 2000/738/EC concerning a questionnaire for Member States reports on the implementation of Directive 1999/31/EC on the landfill of waste.

8. Commission Decision 2001/753/EC concerning a questionnaire for Member States reports on the implementation of Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles.

9. Commission Decision 2002/151/EC on minimum requirements for the certificate of destruction issued in accordance with Article 5(3) of Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles.

10. Commission Decision 2003/138/EC establishing component and material coding standards for vehicles pursuant to Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles.

11. Commission Decision 2004/249/EC concerning a questionnaire for Member States reports on the implementation of Directive 2002/96/EC of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE).

12. Commission Decision 2005/270/EC establishing the formats relating to the database system pursuant to European Parliament and Council Directive 94/62/EC on packaging and packaging waste.

13. Commission Decision 2005/293/EC laying down detailed rules on the monitoring of the reuse/recovery and reuse/recycling targets set down in Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles.

14. Commission Decision 2005/369/EC laying down rules for monitoring compliance of Member States and establishing data formats for the purposes of Directive 2002/96/EC of the European Parliament and of the Council on waste electrical and electronic equipment.

15. Commission Decision 2007/151/EC amending Decisions 94/741/EC and 97/622/EC as regards the questionnaires for the report on the implementation of Directive 2006/12/EC of the European Parliament and of the Council on waste and on the implementation of Council Directive 91/689/EEC on hazardous waste.

16. Commission Decision 2008/350/EC on the rules of England, Wales, Northern Ireland and Scotland concerning permit exemptions for undertakings and establishments recovering hazardous waste under Article 3 of Council Directive 91/689/EEC.

17. Commission Decision 2008/763/EC establishing, pursuant to Directive 2006/66/EC of the European Parliament and of the Council, a common methodology for the calculation of annual sales of portable batteries and accumulators to end-users.

18. Commission Decision 2009/358/EC on the harmonisation, the regular transmission of the information and the questionnaire referred to in Articles 22(1)(a) and 18 of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries.

19. Commission Decision 2009/851/EC establishing a questionnaire for Member States reports on the implementation of Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators.

20. Council Decision (EU) 2015/1156 on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement (Batteries and Accumulators).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations (except Part 2) are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of waste and, in particular, amend legislation relating to waste batteries and accumulators, end of waste criteria, packaging waste, end-of-life vehicle destruction certification, landfill acceptance criteria, the management of waste from extractive industries, and calculation methods for verifying recycling target compliance. Part 3 amends primary legislation, and Part 4 amends and revokes retained direct EU legislation.

Part 2 of these Regulations is made in exercise of the powers in section 2(2) of the European Communities Act 1972 (c. 68), and updates references to Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3) in Part 2 of the Environmental Protection Act 1990 (c. 43) and in section 37(2) of the Waste and Emissions Trading Act 2003 (c. 33).

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

© Crown copyright 2018

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

UK201812131010 12/2018 19585

<http://www.legislation.gov.uk/id/ukdsi/2019/9780111177228>

EXPLANATORY MEMORANDUM TO
THE WASTE (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS
2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 makes amendments to three waste-related Acts of Parliament and 14 related EU Regulations and Decisions. This will enable their continued operability as retained EU law under the European Union (Withdrawal) Act 2018, following the UK's withdrawal from the European Union. It also revokes some EU directly applicable legislation relating to waste which it is not necessary to retain in a domestic context because the requirements are already otherwise embedded in UK legislation or will be covered by other EU Exit legislation. See paragraph 7.8 for further information.

Explanations

What did any relevant EU law do before exit day?

- 2.2 EU Commission Regulations on waste being amended cover the following:

(EU) Nos. 1103/2010, 333/2011, 493/2012, 1179/2012 and 715/2013 concern labelling of batteries and accumulators, criteria for determining when certain materials (including glass cullet and certain scrap metals) cease to be waste, and calculations of the efficiency of recycling processes.

Commission Decisions on waste being amended cover the following:

2000/532/EC provides an EU-wide common terminology for waste classification to ease waste management, including for hazardous waste;

2001/171/EC and 2009/292/EC establish the conditions for derogations for glass packaging, plastic crates and plastic pallets in relation to heavy metal concentration levels;

2002/151/EC and 2003/138/EC on requirements for certificates of destruction of End of Life Vehicles ('ELVs') and for component and coding standards for vehicles to facilitate the identification of those components and materials which are suitable for reuse and recovery (with respect to the ELV Directive (Directive 2000/53/EC on end of life vehicles) which aims at making dismantling and recycling of ELVs more environmentally friendly);

2003/33/EC establishes criteria and procedures for the acceptance of waste at landfills;

2009/337/EC, 2009/360/E, 2009/359/EC and 2009/335/EC concerning management of waste from extractive industries, on the classification of waste facilities, the technical requirements for waste characterisation, conditions under which waste can

be considered as inert waste, and technical guidelines for the establishment of financial guarantees; and

2011/753/EU establishes rules and calculation methods for verifying compliance with recycling targets.

EU Commission Regulations on waste being revoked are:

Commission Regulation (EU) No. 1357/2014 regarding the classification of hazardous waste.

EC Commission Decisions on waste being revoked are:

94/741/EC, 97/622/EC, 2000/738/EC, 2001/753/EC, 2004/249/EC, 2009/851/EC, 2007/151/EC concerning questionnaires for Member States reports;

76/431/EEC setting up a Committee on Waste Management;

97/129/EC establishing an identification system for packaging materials;

2005/270/EC establishing database system formats;

2005/293/EC regarding rules on the monitoring of the reuse/recovery and reuse/recycling targets on end-of-life vehicles;

2003/138/EC establishing component and material coding standards for vehicles

2005/369/EC laying down rules for monitoring compliance on waste electrical and electronic equipment;

2008/350/EC concerning permit exemptions;

2008/763/EC on methodology for the calculation of annual sales of portable batteries and accumulators to end-users;

2015/1156 concerning an amendment to an agreement on Batteries and Accumulators

2009/358/EC on the harmonisation, the regular transmission of the information and the questionnaire on the management of waste from extractive industries]

Why is it being changed?

- 2.3 The changes made by this instrument will ensure that waste regulation will continue to be effectively managed after EU Exit.

What will it now do?

- 2.4 This instrument will address deficiencies in the converted Regulations and other associated retained direct EU legislation arising from EU Exit, and ensure that exiting protections relating to: waste batteries and accumulators; end of waste criteria; packaging waste; end-of-life vehicle destruction certification; landfill acceptance criteria; the management of waste from extractive industries; and calculation methods for verifying recycling target compliance are maintained and continue to be operative once the United Kingdom has left the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24(1) of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Environment, Dr Thérèse Coffey MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972 (the ‘Withdrawal Act’), but section 2 saves EU derived domestic legislation so that it continues to have effect in domestic law on and after “Exit Day”. Exit Day is defined by section 20 of the European Union (Withdrawal) 2018 Act.
- 6.2 This instrument is made in exercise of powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) 2018 Act Section 8(1) of the European Union (Withdrawal) 2018 Act provides that a Minister of the Crown may by regulations make such provisions as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.

7. Policy background

What is being done and why?

- 7.1 Amendments are made to three waste-related Acts of Parliament, the Environmental Protection Act 1990, the Waste and Emissions Trading Act 2003 and the Control of Pollution (Amendment) Act 1989, and a number of waste related EU Regulations and Decisions (see section 2.2 of this explanatory memorandum for descriptions).
- 7.2 Without these amendments the retained EU law would not be effective in UK law due to the deficiencies within the provisions arising from the withdrawal of the United Kingdom from the European Union. The instrument makes minor and technical amendments to the existing legislation described above to ensure the legislation is operable after EU Exit. The changes include amending references to the EU, EU institutions and EU administrative processes to UK equivalents and updating legal references to refer to relevant UK legislation.

7.3 Representative examples of amendments:

In amendments to two Decisions made under Directive 94/62/EC on packaging and packaging waste relating to derogations for glass packaging and plastic crates and pallets, references to 'Member States' are to be replaced by 'Secretary of State', references to 'Community' are to be replaced with 'United Kingdom' and 'appropriate agency' is defined as the Environment Agency in England, the Scottish Environment Protection Agency in Scotland, the Natural Resources Body for Wales in Wales and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

7.4 Amendments to various Decisions made under Directives 1999/31/EC and 2006/21/EC relating to landfilling of waste and waste from the extractive industry respectively. These amendments include references to 'Member States' to be replaced by 'Secretary of State', references to 'Community' to be replaced with 'United Kingdom' and providing certainty on definitions and defining 'appropriate agency' (the Environment Agency in England, the Scottish Environment Protection Agency in Scotland, the Natural Resources Body for Wales in Wales and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland). These amendments also remove the requirement to report on implementation of the directives to the European Commission.

7.5 In amendments to three Regulations made under Directive 2008/98/EC of the European Parliament and of the Council on end of waste criteria for certain types of scrap metal, glass cullet, and copper scrap, include replacing references to Member States such that a provision imposing an obligation on, or providing discretion to, a Member State is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion. The amendments provide certainty on definitions and in defining 'appropriate agency' (Environment Agency in England, the Scottish Environment Protection Agency in Scotland, the Natural Resources Body for Wales in Wales and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland).

References to the Eco-Management and Audit Scheme (EMAS) Regulation (Regulation (EC) No 1221/2009) (an organisational management instrument developed by the European Commission for organisations to evaluate, report, and improve their environmental performance) will be omitted. Only Member States, European Free Trade Association countries and those with a free trade agreement with European Free Trade Association may register organisations with European EcoManagement and Audit Scheme. When the UK exits the EU, the UK Competent Body for European Eco-Management and Audit Scheme will lose its status and the registrations it awarded will no longer be valid, so this Regulation is considered redundant in UK context. We are, therefore, planning on omitting references to the EMAS Regulation in the retained versions of the end of waste Regulations and we propose to make an alternative provision for references to the certification of environmental management standards by retaining a reference to a conformity assessment body (an independent body that performs conformity assessment activities including calibration, testing, certification and inspection.), as defined in Regulation (EC) No 765/2008. The End of Waste regulations provide options for accrediting such bodies. The UK uses the accreditation system described in Regulation (EC) 765/2008. The accreditation is done by the United Kingdom Accreditation Service (UKAS).

Transitional provisions are also proposed that will ensure that certifications granted to quality management systems will continue to be recognised as valid.

- 7.6 In amendments to Commission Decision 2011/753/EU establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of the Waste Framework Directive 2008/98/EC, references to Member States are amended to the appropriate authority (the Secretary of State in relation to England, the Welsh Ministers in relation to Wales, the Scottish Ministers in relation to Scotland and in relation to Northern Ireland the Department for Agriculture, Environment and Rural Affairs).
- 7.7 In further amendments to Decision 2011/753/EU (establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of the Waste Framework Directive), it makes modifications to how the Waste Framework Directive should be read for the purposes of the Decision. It removes references to exports to other Member States and exports “out of the union” in relation to export of materials from the UK. Finally it requires the Secretary of State to publish a report called “the progress report” on whether the UK target to recycle 50% of household waste by 2020 set in article 11(2) of the Waste Framework Directive have been met in respect of England. This progress report must be published before 1 January 2022 and in a manner which the Secretary of State considers appropriate. This instrument does not create an obligation on the Devolved Administrations to publish such a report.
- 7.8 It also revokes some directly applicable EU legislation relating to waste which it is not necessary to retain in a domestic context, or because the requirements are already otherwise embedded in UK legislation Representative examples here include:

Commission Decision 2003/138/EC, which covers material and component coding standards for end-of-life vehicles, and Commission Decision 2002/151/EC, which relates to minimum standards for the Certificate of Destruction. In both cases, the requirements are already set out fully in The End-of-Life Vehicles Regulations 2003 (Schedules 2 and 3 respectively).

Two directly applicable Commission Decisions (2004/249/EC: which relates to a questionnaire for Member States reports on the implementation) and (2005/369/EC – which relates to laying down rules for monitoring compliance of Member States and establishing data formats) in relation to the Waste Electrical and Electronic Equipment (WEEE) Directive which relate to reporting on compliance with the Directive and formats of data reporting by Member States to the European Commission. The provisions in both of these Decisions are not necessary to be retained in a domestic context, since compliance with the wider retained legislation in relation to the WEEE Directive will be covered by other EU Exit legislation.

The full list of EU legislation being revoked is:

Commission Regulation (EU) No. 1357/2014 regarding the classification of hazardous waste.

94/741/EC, 97/622/EC, 2000/738/EC, 2001/753/EC, 2004/249/EC, 2009/851/EC, 2007/151/EC concerning questionnaires for Member States reports;

76/431/EEC setting up a Committee on Waste Management;

97/129/EC establishing an identification system for packaging materials;

2005/270/EC establishing database system formats;

2005/293/EC regarding rules on the monitoring of the reuse/recovery and reuse/recycling targets on end-of-life vehicles;

2003/138/EC establishing component and material coding standards for vehicles

2005/369/EC laying down rules for monitoring compliance on waste electrical and electronic equipment;

2008/350/EC concerning permit exemptions;

2008/763/EC on methodology for the calculation of annual sales of portable batteries and accumulators to end-users;

2015/1156 concerning an amendment to an agreement on Batteries and Accumulators

2009/358/EC on the harmonisation, the regular transmission of the information and the questionnaire on the management of waste from extractive industries.

7.9 Amendments to Primary Legislation

(i) Amendment to the Waste and Emissions Trading Act 2003:

One amendment updates the Section 37 which defines “waste” for the purposes of the Act, to refer directly to Council Regulation (EU) 2017/997 which amended Annex III to Directive 2008/98/EC in relation to the definition of HP 14 ‘Ecotoxic’, and ensures that the changes made by the Council Regulation remain valid after exit day.

A further amendment ensures that landfill targets set using powers under Section 1 of the Waste and Emissions Trading Act 2003, will continue to apply after exit day. Section 1 requires the Secretary of State to consult the appropriate authority for each country of the UK before these amounts are set. As waste is a devolved matter a further amendment ensures that the Devolved Administrations must consent to any future changes to landfill targets that effects the whole of the UK.

(ii) Amendment to the Control of Pollution (Amendment) Act 1989:

An amendment to the Control of Pollution (Amendment) Act 1989 removes the ability for a carrier of waste to operate in the UK based solely on meeting the legal requirements in EU Member States. In the future all waste carriers operating in the UK will need to meet the requirements set by the competent authorities in the UK.

7.10 This instrument applies to waste which is a transferred matter for Northern Ireland under the Act 1998. In the continued absence of a Northern Ireland Executive, UK Government Ministers have decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments.

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

8.1 This instrument is being made using the power in section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the

requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this explanatory memorandum.

Alongside the EU (Withdrawal) Act 2018 powers, in relation to Part 2, the instrument is also being made under section 2(2) of the European Communities Act 1972(a).

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 A consultation was not required because no policy changes are being made via this instrument

11. Guidance

11.1 There is no associated guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this because this instrument only amends deficiencies arising from the UK's withdrawal from the EU.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The effect of this instrument is to maintain the status quo, therefore no specific action was required to minimise the impact of the requirements on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is no specific monitoring arrangements are needed.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Kathryn Arnold at the Department for Environment, Food and Rural Affairs, Telephone: 02080 255306 or email: Kathryn.arnold@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste Policy, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP can confirm that this explanatory memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because it does no more than prevent, remedy or mitigate deficiencies in retained EU law arising from the withdrawal of the UK from EU examples of which are mentioned in section 7 in the main body of this explanatory memorandum.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These Regulations correct deficiencies in the waste regulatory regime to ensure that it can continue to operate from exit day. This instrument does not impose any new liabilities or obligations on any relevant persons.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP, has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 3.2 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

69 - The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 19 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 39
SICM under SO 30A (because amends primary legislation)	Paper 40

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These (affirmative procedure) Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 of the European Union (Withdrawal) Act 2018. Section 8(1) of the European Union (Withdrawal) 2018 Act provides that a Minister of the Crown may by regulations make such provisions as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.

These Regulations make changes to the following legislation:-

EU Regulations

1. Commission Regulation (EU) No 1103/2010 establishing, pursuant to Directive 2006/66/EC of the European Parliament and of the Council, rules as regards capacity labelling of portable secondary (rechargeable) and automotive batteries and accumulators

2. Council Regulation (EU) No 333/2011 establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC of the European Parliament and of the Council
3. Commission Regulation (EU) No 493/2012 laying down detailed rules regarding the calculation of recycling efficiencies of the recycling processes of waste batteries and accumulators
4. Commission Regulation (EU) No 1179/2012 establishing criteria determining when glass cullet ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council
5. Commission Regulation (EU) No 715/2013 establishing criteria determining when copper scrap ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council

European Commission Decisions

1. Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of waste pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste.
2. Commission Decision 2001/171/EC establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste.
3. Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills.
4. Commission Decision 2009/292/EC establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste.
5. Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries.
6. Commission Decision 2009/337/EC on the definition of the criteria for the classification of waste facilities in accordance with Annex III of Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries.
7. Commission Decision 2009/359/EC completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries.
8. Commission Decision 2009/360/EC completing the technical requirements for waste characterisation laid down by Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries.
9. Commission Decision 2011/753/EU establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC.

Domestic Legislation

1. Environmental Permitting (England and Wales) Regulations 2016
2. Environmental Protection Act 1990
3. Waste and Emissions Trading Act 2003
4. Control of Pollution (Amendment) Act 1989

As these regulations amend primary legislation within the legislative competence of the Assembly, the Welsh Government have laid a statutory instrument consent memorandum under Standing Order 30A.2. The Assembly has legislative competence in relation to waste and the environment, with the exception of regulations that relate to product standards and safety and technical standards in relation to products, which are reserved.

These changes are necessary to ensure that the above legislation continues to operate effectively after the UK leaves the EU. The instrument makes minor and technical amendments to the existing legislation described above. The changes include amending references to the EU, EU institutions and EU administrative processes to UK equivalents and updating legal references to refer to relevant UK legislation. The changes include the replacement of references to “Member States” with references to the UK or to an appropriate UK body, the replacement of references to “Community legislation” or “EU law” with references to “retained EU law”, and the replacement of requirements to notify or report to the Commission with requirements to report publicly. The changes also ensure that cross references to other EU legislation, will continue to work after exit.

Legal Advisers agree with the statement laid by the Welsh Government dated 19 December 2018 regarding the effect of these Regulations. Legal advisers are satisfied that the statement adequately summarises the purpose of the Regulations and accurately describes any impact on the Assembly’s competence and the Welsh Ministers’ executive competence and why consent has been sought. The statement confirms that there will be no divergence in policy within the UK on these technical amendments and it is therefore thought appropriate for the UK Parliament to legislate in these particular circumstances.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Greenhouse Gas Emissions Trading Scheme (Amendment)
(EU Exit) Regulations 2018**

DATE **12 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

**The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations
2018**

The 2018 Regulations make amendments to the following:

EU Directly Applicable Legislation

Commission Decision 2009/450/EC
Commission Regulation (EU) 606/2010
Commission Regulation (EU) 600/2012
Commission Regulation (EU) 601/2012

Revocation

Commission Decision (EC) 2005/381
Commission Regulation (EC) 748/2009
Commission Decision 2010/670/EU
Commission Regulation (EU) 1031/2010
Commission Decision 2011/278/EU
Commission Regulation (EU) 550/2011
Commission Regulation (EU) 1123/2013

EU Other

EEA Agreement

Domestic Legislation

Greenhouse Gas Emissions Trading Scheme Regulations 2012

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The SI is part of a package of measures to address the deficiencies within the EU Emissions Trading Scheme regime. This SI amends a domestic piece of legislation, which largely falls within devolved competence of the National Assembly for Wales and Welsh Ministers' powers in relation to carbon trading.

Within this SI, there are however some elements, which fall outside competence and therefore not all the provisions within this SI could be made on a Wales only basis for example the aviation provisions within the domestic legislation, as well as the revocations and amendment of the directly applicable EU law.

Other elements of the package include the inclusion of a carbon tax within the UK Finance Bill. It is the UK Government's intention that regulations made pursuant to the proposed Finance (No.3) Bill will introduce a new carbon emissions tax. The purpose of this new tax is to replace the elements of the EU Scheme that will be revoked by the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2018.

The purpose of the amendments

The purpose of the SI is address specific deficiencies within retained EU legislation as a result of the UK exiting the EU, it also revokes directly applicable legislation relating to the cap and trade elements of the scheme.

The SI enables the existing Monitoring, Reporting and Verification (MRV) of emissions from installations to continue to function post exit day. It makes the necessary amendments to ensure:

- continued implementation and enforcement in relation to scheme years up to and including the 2018 scheme year;
- continued operation of the MRV obligations post exit day; and
- Disapplication of the requirements relating to the EU cap and trade scheme post exit day

The SI does not replace the elements, which it revokes. The UK Government has determined to replace these elements with a new Carbon Emissions Tax through the proposed Finance (No.3) Bill.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency but also as elements of the legislation corrected by this SI fall outwith competence. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU, by amending or revoking provisions that would otherwise be inoperable.

UK MINISTERS ACTING IN DEVOLVED AREAS

59 - The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 11 December 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	8 January 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 7 January 2019
Date sifting period ends in UK Parliament	10 January 2019
Written statement under SO 30C:	Paper 44
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018.

This instrument is part of a package of measures to address the deficiencies within the EU Emissions Trading Scheme ("EU ETS") regime. This instrument amends legislation which largely falls within devolved competence of the National Assembly for Wales and Welsh Ministers' powers in relation to carbon trading. However, there are elements which fall outside competence. The instrument also addresses specific deficiencies within retained EU legislation as a result of the UK exiting the European Union.

In the event of a 'No Deal' exit from the European Union, the UK would not have an agreement in place to continue participating in the EU ETS. The UK would therefore leave the EU ETS on exit day, making the existing

legislation inoperable. This instrument revokes certain provisions that will cease to apply on exit day and amends others so that they will continue to be operable after exit day.

The instrument maintains, and makes technical fixes to, the elements which will continue to be operable, namely the Monitoring, Reporting and Verification (MRV) of greenhouse gas emissions. MRV is designed to ensure transparency over greenhouse gas emissions, and provide information to allow the implementation of HM Treasury's 'Carbon Emission Tax' (announced in the 2018 Autumn Budget). The Tax will temporarily replace the lost EU ETS carbon price in a 'No Deal' scenario, maintaining a carbon pricing policy for industry in an interim period (i.e. from exit day until a long-term alternative is established). However, the substance of this interim carbon pricing will be included in a power under the Finance Bill 2018-19, which will be debated by Parliament separately, and does not form part of this instrument.

The Explanatory Memorandum to this instrument notes that the interim policy is without prejudice to any final decision on the UK's future approach to carbon pricing.

Legal Advisers agree with the statement laid by the Welsh Government dated 12 December 2018 regarding the effect of these Regulations. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019**

DATE **18 December 2018**

BY **Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs**

The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019

Amendment of EU legislation

1. Regulation (EC) No 396/2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin.
2. Commission Implementing Regulation (EU) 2018/555 concerning a coordinated multiannual control programme of the Union for 2019, 2020 and 2021 to ensure compliance with maximum residue levels of pesticides and to assess the consumer exposure to pesticide residues in and on food of plant and animal origin
3. Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market

Amendment to Domestic Legislation

1. Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008

Revocations

1. Commission Regulation (EC) No 645/2000 setting out detailed implementing rules necessary for the proper functioning of certain provisions of Article 7 of Council Directive 86/362/EEC and of Article 4 of Council Directive 90/642/EEC concerning the arrangements for monitoring the maximum levels of pesticide residues in and on cereals and products of plant origin, including fruit and vegetables, respectively.
2. Commission Regulation (EC) No 178/2006 amending Regulation (EC) No 396/2005 of the European Parliament and of the Council to establish Annex I listing the food and feed products to which maximum levels for pesticide residues apply.
3. Commission Regulation (EC) No 149/2008 amending Regulation (EC) No 396/2005 of the European Parliament and of the Council by establishing Annexes II, III and IV setting maximum residue levels for products covered by Annex I thereto.
4. Commission Regulation (EC) No 260/2008 amending Regulation (EC) No 396/2005 of

16. flutriafol, imidacloprid, ioxynil, metconazole, prothioconazole, tebufenozide and thiophanate-methyl in or on certain products.
17. Commission Regulation (EU) No 310/2011 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for aldicarb, bromopropylate, chlorfenvinphos, endosulfan, EPTC, ethion, fenthion, fomesafen, methabenzthiazuron, methidathion, simazine, tetradifon and triforine in or on certain products
18. Commission Regulation (EU) 460/2011 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards the maximum residue level for chlorantraniliprole (DPX E-2Y45) in or on carrots.
19. Commission Regulation (EU) No 508/2011 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for abamectin, acetamiprid, cyprodinil, difenoconazole, dimethomorph, fenhexamid, proquinazid, prothioconazole, pyraclostrobin, spirotetramat, thiacloprid, thiamethoxam and trifloxystrobin in or on certain products.
20. Commission Regulation (EU) No 520/2011 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for benalaxyl, boscalid, buprofezin, carbofuran, carbosulfan, cypermethrin, fluopicolide, hexythiazox, indoxacarb, metaflumizone, methoxyfenozide, paraquat, prochloraz, spirodiclofen, prothioconazole and zoxamide in or on certain products.
21. Commission Regulation (EU) No 524/2011 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for biphenyl, deltamethrin, ethofumesate, isopyrazam, propiconazole, pymetrozine, pyrimethanil and tebuconazole in or on certain products.
22. Commission Regulation (EU) No 559/2011 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for captan, carbendazim, cyromazine, ethephon, fenamiphos, thiophanate-methyl, triasulfuron and triticonazole in or on certain products.
23. Commission Regulation (EU) No 812/2011 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for dimethomorph, fluopicolide, mandipropamid, metrafenone, nicotine and spirotetramat in or on certain products.
24. Commission Regulation (EU) No 813/2011 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acequinocyl, emamectin benzoate, ethametsulfuron-methyl, flubendiamide, fludioxonil, kresoxim-methyl, methoxyfenozide, novaluron, thiacloprid and trifloxystrobin in or on certain products.
25. Commission Regulation (EU) No 978/2011 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acetamiprid, biphenyl, captan, chlorantraniliprole, cyflufenamid, cymoxanil, dichlorprop-P, difenoconazole, dimethomorph, dithiocarbamates, epoxiconazole, ethephon, flutriafol, fluxapyroxad, isopyrazam, propamocarb, pyraclostrobin, pyrimethanil and spirotetramat in or on certain products.
26. Commission Regulation (EU) No 270/2012 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for amidofluorfen, trifloxystrobin, bentazone, bixafen,

- cyproconazole, fluopyram, imazapic, malathion, propiconazole and spinosad in or on certain products
27. .Commission Regulation (EU) No 322/2012 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for clopyralid, dimethomorph, fenpyrazamine, folpet and pendimethalin in or on certain products.
 28. Commission Regulation (EU) No 441/2012 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bifenazate, bifenthrin, boscalid, cadusafos, chlorantraniliprole, chlorothalonil, clothianidin, cyproconazole, deltamethrin, dicamba, difenoconazole, dinocap, etoxazole, fenpyroximate, flubendiamide, fludioxonil, glyphosate, metalaxyl-M, meptyldinocap, novaluron, thiamethoxam, and triazophos in or on certain products.
 29. Commission Regulation (EU) No 473/2012 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for spinetoram (XDE-175) in or on certain products.
 30. Commission Regulation (EU) No 556/2012 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for spinosad in or on raspberries.
 31. Commission Regulation (EU) No 592/2012 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bifenazate, captan, cyprodinil, fluopicolide, hexythiazox, isoprothiolane, metaldehyde, oxadixyl and phosmet in or on certain products.
 32. Commission Regulation (EU) No 897/2012 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acibenzolar-S-methyl, amisulbrom, cyazofamid, diflufenican, dimoxystrobin, methoxyfenozide and nicotine in or on certain products.
 33. Commission Regulation (EU) No 899/2012 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acephate, alachlor, anilazine, azocyclotin, benfuracarb, butylate, captafol, carbaryl, carbofuran, carbosulfan, chlorfenapyr, chlorthal-dimethyl, chlorthiamid, cyhexatin, diazinon, dichlobenil, dicofol, dimethipin, diniconazole, disulfoton, fenitrothion, flufenzin, furathiocarb, hexaconazole, lactofen, mepronil, methamidophos, methoprene, monocrotophos, monuron, oxycarboxin, oxydemeton-methyl, parathion-methyl, phorate, phosalone, procymidone, profenofos, propachlor, quinclorac, quintozone, tolylfluanid, trichlorfon, tridemorph and trifluralin in or on certain products and amending that Regulation by establishing Annex V listing default values.
 34. Commission Regulation (EU) No 34/2013 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 2-phenylphenol, ametoctradin, *Aureobasidium pullulans* strains DSM 14940 and DSM 14941, cyproconazole, difenoconazole, dithiocarbamates, folpet, propamocarb, spinosad, spirodiclofen, tebufenpyrad and tetraconazole in or on certain products.
 35. Commission Regulation (EU) No 35/2013 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards

- maximum residue levels for dimethomorph, indoxacarb, pyraclostrobin and trifloxystrobin in or on certain products.
36. Commission Regulation (EU) No 212/2013 replacing Annex I to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards additions and modifications with respect to the products covered by that Annex
 37. Commission Regulation (EU) No 241/2013 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlorantraniliprole, fludioxonil and prohexadione in or on certain products.
 38. Commission Regulation (EU) No 251/2013 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for aminopyralid, bifenazate, captan, fluazinam, fluopicolide, folpet, kresoxim-methyl, penthiopyrad, proquinazid, pyridate and tembotrione in or on certain products.
 39. Commission Regulation (EU) No 293/2013 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for emamectin benzoate, etofenprox, etoxazole, flutriafol, glyphosate, phosmet, pyraclostrobin, spinosad and spirotetramat in or on certain products
 40. Commission Regulation (EU) No 500/2013 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acetamiprid, *Adoxophyes orana granulovirus* strain BV-0001, azoxystrobin, clothianidin, fenpyrazamine, heptamaloxyloglucan, metrafenone, *Paecilomyces lilacinus* strain 251, propiconazole, quizalofop-P, spiromesifen, tebuconazole, thiamethoxam and *zucchini yellow mosaik virus* - weak strain in or on certain products.
 41. Commission Regulation (EU) No 668/2013 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 2,4-DB, dimethomorph, indoxacarb, and pyraclostrobin in or on certain products.
 42. Commission Regulation (EU) No 772/2013 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for diphenylamine in or on certain products.
 43. Commission Regulation (EU) No 777/2013 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for clodinafop, clomazone, diuron, ethalfluralin, ioxynil, iprovalicarb, maleic hydrazide, mepanipyrim, metconazole, prosulfocarb and tepraloxym in or on certain products.
 44. Commission Regulation (EU) No 834/2013 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acequinocyl, bixafen, diazinon, difenoconazole, etoxazole, fenhexamid, fludioxonil, isopyrazam, lambda-cyhalothrin, profenofos and prothioconazole in or on certain products.
 45. Commission Regulation (EU) No 1004/2013 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 8-hydroxyquinoline, cyproconazole, cyprodinil, fluopyram, nicotine, pendimethalin, penthiopyrad, trifloxystrobin in or on certain products

46. Commission Regulation (EU) No 1138/2013 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bitertanol, chlorfenvinphos, dodine and vinclozolin in or on certain products.
47. Commission Regulation (EU) No 1317/2013 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 2,4-D, beflubutamid, cyclanilide, diniconazole, florasulam, metolachlor and S-metolachlor, and milbemectin in or on certain products
48. Commission Regulation (EU) No 36/2014 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for aminopyralid, chlorantraniliprole, cyflufenamid, mepiquat, metalaxyl-M, propamocarb, pyriofenone and quinoxyfen in or on certain products.
49. Commission Regulation (EU) No 51/2014 amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for dimethomorph, indoxacarb and pyraclostrobin in or on certain products.
50. Commission Regulation (EU) No 61/2014 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for cyromazine, fenpropidin, formetanate, oxamyl and tebuconazole in or on certain products.
51. Commission Regulation (EU) No 79/2014 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bifenazate, chlorpropham, esfenvalerate, fludioxonil and thiobencarb in or on certain products
52. Commission Regulation (EU) No 87/2014 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acetamiprid, butralin, chlorotoluron, daminozide, isoproturon, picoxystrobin, pyrimethanil and trinexapac in or on certain products.
53. Commission Regulation (EU) No 289/2014 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for foramsulfuron, azimsulfuron, iodosulfuron, oxasulfuron, mesosulfuron, flazasulfuron, imazosulfuron, propamocarb, bifenazate, chlorpropham and thiobencarb in or on certain products.
54. Commission Regulation (EU) No 318/2014 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for fenarimol, metaflumizone and teflubenzuron in or on certain products.
55. Commission Regulation (EU) No 364/2014 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for fenpyroximate, flubendiamide, isopyrazam, kresoxim-methyl, spirotetramat and thiacloprid in or on certain products.
56. Commission Regulation (EU) No 398/2014 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for benthiavalicarb, cyazofamid, cyhalofop-butyl, forchlorfenuron, pymetrozine and silthiofam in or on certain products.
57. Commission Regulation (EU) No 491/2014 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for azoxystrobin, cycloxydim, cyfluthrin,

- dinotefuran, fenbuconazole, fenvalerate, fludioxonil, fluopyram, flutriafol, fluxapyroxad, glufosinate-ammonium, imidacloprid, indoxacarb, MCPA, methoxyfenozide, penthiopyrad, spinetoram and trifloxystrobin in or on certain products.
58. Commission Regulation (EU) No 588/2014 amending Annexes III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for orange oil, *Phlebiopsis gigantea*, gibberellic acid, *Paecilomyces fumosoroseus* strain FE 9901, *Spodoptera littoralis* nucleopolyhedrovirus, *Spodoptera exigua* nuclear polyhedrosis virus, *Bacillus firmus* I-1582, s-abscisic acid, L-ascorbic acid and *Helicoverpa armigera* nucleopolyhedrovirus in or on certain products
 59. Commission Regulation (EU) No 617/2014 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for ethoxysulfuron, metsulfuron-methyl, nicosulfuron, prosulfuron, rimsulfuron, sulfosulfuron and thifensulfuron-methyl in or on certain products.
 60. Commission Regulation (EU) No 703/2014 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acibenzolar-S-methyl, ethoxyquin, flusilazole, isoxaflutole, molinate, propoxycarbazone, pyraflufen-ethyl, quinclamine and warfarin in or on certain products.
 61. Commission Regulation (EU) No 737/2014 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 2-phenylphenol, chlormequat, cyflufenamid, cyfluthrin, dicamba, fluopicolide, flutriafol, fosetyl, indoxacarb, isoprothiolane, mandipropamid, metaldehyde, metconazole, phosmet, picloram, propyzamide, pyriproxyfen, saflufenacil, spinosad and trifloxystrobin in or on certain products.
 62. Commission Regulation (EU) No 752/2014 replacing Annex I to Regulation (EC) No 396/2005 of the European Parliament and of the Council.
 63. Commission Regulation (EU) No 991/2014 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for fosetyl in or on certain products.
 64. Commission Regulation (EU) No 1096/2014 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for carbaryl, procymidone and profenofos in or on certain products.
 65. Commission Regulation (EU) No 1119/2014 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for benzalkonium chloride and didecyldimethylammonium chloride in or on certain products.
 66. Commission Regulation (EU) No 1126/2014 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for asulam, cyanamide, dicloran, flumioxazin, flupyrsulfuron-methyl, picolinafen and propisochlor in or on certain products.
 67. Commission Regulation (EU) No 1127/2014 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for amitrole, dinocap, fipronil, flufenacet, pendimethalin, propyzamide, and pyridate in or on certain products.

68. Commission Regulation (EU) No 1146/2014 amending Annexes II, III, IV and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for anthraquinone, benfluralin, bentazone, bromoxynil, chlorothalonil, famoxadone, imazamox, methyl bromide, propanil and sulphuric acid in or on certain products.
69. Commission Regulation (EU) 2015/165 amending Annex IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for lactic acid, *Lecanicillium muscarium* strain Ve6, chitosan hydrochloride and *Equisetum arvense* L. in or on certain products.
70. Commission Regulation (EU) 2015/399 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 1,4-dimethylnaphthalene, benfuracarb, carbofuran, carbosulfan, ethephon, fenamidone, fenvalerate, fenhexamid, furathiocarb, imazapyr, malathion, picoxystrobin, spirotetramat, tepraloxymid and trifloxystrobin in or on certain products.
71. Commission Regulation (EU) 2015/400 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bone oil, carbon monoxide, cyprodinil, dodemorph, iprodione, metaldehyde, metazachlor, paraffin oil (CAS 64742-54-7), petroleum oils (CAS 92062-35-6) and propargite in or on certain products.
72. Commission Regulation (EU) 2015/401 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acetamiprid, chromafenozide, cyazofamid, dicamba, difenoconazole, fenpyrazamine, fluazinam, formetanate, nicotine, penconazole, pymetrozine, pyraclostrobin, tau-fluvalinate and tebuconazole in or on certain products.
73. Commission Regulation (EU) 2015/552 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 1,3-dichloropropene, bifenox, dimethenamid-P, prohexadione, tolylfluanid and trifluralin in or on certain products.
74. Commission Regulation (EU) 2015/603 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 2-naphthyloxyacetic acid, acetochlor, chloropicrin, diflufenican, flurprimidol, flutolanil and spinosad in or on certain products.
75. Commission Regulation (EU) 2015/845 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for azoxystrobin, chlorantraniliprole, cyantraniliprole, dicamba, difenoconazole, fenpyroximate, fludioxonil, glufosinate-ammonium, imazapic, imazapyr, indoxacarb, isoxaflutole, mandipropamid, penthiopyrad, propiconazole, pyrimethanil, spirotetramat and trinexapac in or on certain products.
76. Commission Regulation (EU) 2015/846 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acetamiprid, ametoctradin, amisulbrom, bupirimate, clofentezine, ethephon, ethirimol, fluopicolide, imazapic, propamocarb, pyraclostrobin and tau-fluvalinate in or on certain products.
77. Commission Regulation (EU) 2015/868 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards

maximum residue levels for 2,4,5-T, barban, binapacryl, bromophos-ethyl, camphechlor (toxaphene), chlorbufam, chloroxuron, chlozolate, DNOC, di-allate, dinoseb, dinoterb, dioxathion, ethylene oxide, fentin acetate, fentin hydroxide, flucyclohexuron, flucythrinate, formothion, mecarbam, methacryfos, monolinuron, phenothrin, protham, pyrazophos, quinalphos, resmethrin, tecnazene and vinclozolin in or on certain products

78. .Commission Regulation (EU) 2015/896 amending Annex IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for *Trichoderma polysporum* strain IMI 206039, *Trichoderma asperellum* (formerly *T. harzianum*) strains ICC012, T25 and TV1, *Trichoderma atroviride* (formerly *T. harzianum*) strains IMI 206040 and T11, *Trichoderma harzianum* strains T-22 and ITEM 908, *Trichoderma gamsii* (formerly *T. viride*) strain ICC080, *Trichoderma asperellum* (strain T34), *Trichoderma atroviride* strain I-1237, geraniol, thymol, sucrose, ferric sulphate (iron (III) sulphate), ferrous sulphate (iron (II) sulphate) and folic acid in or on certain products.
79. Commission Regulation (EU) 2015/1040 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for azoxystrobin, dimoxystrobin, fluoxypyr, methoxyfenozide, metrafenone, oxadiargyl and tribenuron in or on certain products.
80. Commission Regulation (EU) 2015/1101 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for difenoconazole, fluopicolide, fluopyram, isopyrazam and pendimethalin in or on certain products
81. .Commission Regulation (EU) 2015/1200 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for amidosulfuron, fenhexamid, kresoxim-methyl, thiachlopyrid and trifloxystrobin in or on certain products.
82. Commission Regulation (EU) 2015/1608 amending Annex IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for capric acid, paraffin oil (CAS 64742-46-7), paraffin oil (CAS 72623-86-0), paraffin oil (CAS 8042-47-5), paraffin oil (CAS 97862-82-3), lime sulphur and urea in or on certain products.
83. Commission Regulation (EU) 2015/1910 amending Annexes III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for guazatine in or on certain products.
84. Commission Regulation (EU) 2015/2075 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for abamectin, desmedipham, dichlorprop-P, haloxyfop-P, oryzalin and phenmedipham in or on certain products.
85. Commission Regulation (EU) 2016/1 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bifenazate, boscalid, cyazofamid, cyromazine, dazomet, dithiocarbamates, fluazifop-P, mepanipyrim, metrafenone, picloram, propamocarb, pyridaben, pyriofenone, sulfoxaflor, tebuconazole, tebufenpyrad and thiram in or on certain products

86. Commission Regulation (EU) 2016/46 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for oxadixyl and spinetoram in or on certain products
87. Commission Regulation (EU) 2016/53 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for diethofencarb, mesotrione, metosulam and pirimiphos-methyl in or on certain products.
88. Commission Regulation (EU) 2016/60 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlorpyrifos in or on certain products.
89. Commission Regulation (EU) 2016/67 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for ametoctradin, chlorothalonil, diphenylamine, flonicamid, fluazinam, fluoxastrobin, halauxifen-methyl, propamocarb, prothioconazole, thiacloprid and trifloxystrobin in or on certain products.
90. Commission Regulation (EU) 2016/71 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 1-methylcyclopropene, flonicamid, flutriafol, indolylacetic acid, indolylbutyric acid, pethoxamid, pirimicarb, prothioconazole and teflubenzuron in or on certain products
91. Commission Regulation (EU) 2016/75 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for fosetyl in or on certain products.
92. Commission Regulation (EU) 2016/143 amending Annex IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards COS-OGA, cerevisane, calcium hydroxide, lecithins, *Salix* spp cortex, vinegar, fructose, *Pepino mosaic virus* strain CH2 isolate 1906, *Verticillium albo-atrum* isolate WCS850 and *Bacillus amyloliquefaciens* subsp. *plantarum* strain D747.
93. Commission Regulation (EU) 2016/156 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for boscalid, clothianidin, thiamethoxam, folpet and tolclofos-methyl in or on certain products.
94. Commission Regulation (EU) 2016/439 amending Annex IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards *Cydia pomonella* Granulovirus (CpGV), calcium carbide, potassium iodide, sodium hydrogen carbonate, rescalure and *Beauveria bassiana* strain ATCC 74040 and *Beauveria bassiana* strain GHA.
95. Commission Regulation (EU) 2016/440 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for atrazine in or on certain products.
96. Commission Regulation (EU) 2016/452 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for captan, propiconazole and spiroxamine in or on certain products
97. Commission Regulation (EU) 2016/486 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for cyazofamid, cycloxydim, difluoroacetic acid, fenoxycarb,

- flumetralin, fluopicolide, flupyradifurone, fluxapyroxad, kresoxim-methyl, mandestrobin, mepanipyrim, metalaxyl-M, pendimethalin and tefluthrin in or on certain products
98. .Commission Regulation (EU) 2016/567 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlorantraniliprole, cyflumetofen, cyprodinil, dimethomorph, dithiocarbamates, fenamidone, fluopyram, flutolanil, imazamox, metrafenone, myclobutanil, propiconazole, sedaxane and spirodiclofen in or on certain products.
 99. Commission Regulation (EU) 2016/805 amending Annex IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards *Streptomyces* K61 (formerly *S. griseoviridis*), *Candida oleophila* strain O, FEN 560 (also called fenugreek or fenugreek seed powder), methyl decanoate (CAS 110-42-9), methyl octanoate (CAS 111-11-5) and terpenoid blend QRD 460.
 100. Commission Regulation (EU) 2016/1002 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for AMTT, diquat, dodine, glufosinate and tritosulfuron in or on certain products.
 101. Commission Regulation (EU) 2016/1003 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for abamectin, acequinocyl, acetamiprid, benzovindiflupyr, bromoxynil, fludioxonil, fluopicolide, fosetyl, mepiquat, proquinazid, propamocarb, prohexadione and tebuconazole in or on certain products.
 102. Commission Regulation (EU) 2016/1015 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 1-naphthylacetamide, 1-naphthylacetic acid, chloridazon, fluazifop-P, fuberidazole, mepiquat and tralkoxydim in or on certain products.
 103. Commission Regulation (EU) 2016/1016 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for ethofumesate, etoxazole, fenamidone, fluoxastrobin and flurtamone in or on certain products.
 104. Commission Regulation (EU) 2016/1355 amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards thiacloprid.
 105. Commission Regulation (EU) 2016/1726 amending Annex IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards carvone, diammoniumphosphate, *Saccharomyces cerevisiae* strain LAS02 and whey.
 106. Commission Regulation (EU) 2016/1785 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for cymoxanil, phosphane and phosphide salts and sodium 5-nitroguaiacolate, sodium o-nitrophenolate and sodium p-nitrophenolate in or on certain products
 107. Commission Regulation (EU) 2016/1822 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for aclonifen, deltamethrin, fluazinam, methomyl, sulcotrione and thiodicarb in or on certain products.
 108. Commission Regulation (EU) 2016/1866 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards

- maximum residue levels for 3-decen-2-one, acibenzolar-S-methyl and hexachlorobenzene in or on certain products.
109. Commission Regulation (EU) 2016/1902 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acetamiprid, ametoctradin, azoxystrobin, cyfluthrin, difluoroacetic acid, dimethomorph, fenpyrazamine, flonicamid, fluazinam, fludioxonil, flupyradifurone, flutriafol, fluxapyroxad, metconazole, proquinazid, prothioconazole, pyriproxyfen, spiroticlofen and trifloxystrobin in or on certain products.
 110. Commission Regulation (EU) 2017/170 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bifenthrin, carbetamide, cinidon-ethyl, fenpropimorph and triflusaluron in or on certain products.
 111. Commission Regulation (EU) 2017/171 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for aminopyralid, azoxystrobin, cyantraniliprole, cyflufenamid, cyproconazole, diethofencarb, ithiocarbamates, fluazifop-P, fluopyram, haloxyfop, isofetamid, metalaxyl, prohexadione, propaquizafop, pyrimethanil, *Trichoderma atroviride* strain SC1 and zoxamide in or on certain products.
 112. Commission Regulation (EU) 2017/405 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for sulfoxaflor in or on certain products.
 113. Commission Regulation (EU) 2017/623 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acequinocyl, amitraz, coumaphos, diflufenican, flumequine, metribuzin, permethrin, pyraclostrobin and streptomycin in or on certain products.
 114. Commission Regulation (EU) 2017/624 amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bifenazate, daminozide and tolylfluanid in or on certain products.
 115. Commission Regulation (EU) 2017/626 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acetamiprid, cyantraniliprole, cypermethrin, cyprodinil, difenoconazole, ethephon, fluopyram, flutriafol, fluxapyroxad, imazapic, imazapyr, lambda-cyhalothrin, mesotrione, profenofos, propiconazole, pyrimethanil, spirotetramat, tebuconazole, triazophos and trifloxystrobin in or on certain products.
 116. Commission Regulation (EU) 2017/627 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for fenpyroximate, triadimenol and triadimefon in or on certain products.
 117. Commission Implementing Regulation (EU) 2017/660 concerning a coordinated multiannual control programme of the Union for 2018, 2019 and 2020 to ensure compliance with maximum residue levels of pesticides and to assess the consumer exposure to pesticide residues in and on food of plant and animal origin.
 118. Commission Regulation (EU) 2017/671 amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for clothianidin and thiamethoxam in or on certain products.

119. Commission Regulation (EU) 2017/693 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for bitertanol, chlormequat and tebufenpyrad in or on certain products.
120. Commission Regulation (EU) 2017/978 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for fluopyram; hexachlorocyclohexane (HCH), alpha-isomer; hexachlorocyclohexane (HCH), beta-isomer; hexachlorocyclohexane (HCH), sum of isomers, except the gamma isomer; lindane (hexachlorocyclohexane (HCH), gamma-isomer); nicotine and profenofos in or on certain products.
121. Commission Regulation (EU) 2017/983 amending Annexes III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for tricyclazole in or on certain products.
122. Commission Regulation (EU) 2017/1016 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for benzovindiflupyr, chlorantraniliprole, deltamethrin, ethofumesate, haloxyfop, Mild Pepino Mosaic Virus isolate VC1, Mild Pepino Mosaic Virus isolate VX1, oxathiapiprolin, penthiopyrad, pyraclostrobin, spirotetramat, sunflower oil, tolclofos-methyl and trinexapac in or on certain products.
123. Commission Regulation (EU) 2017/1135 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for dimethoate and omethoate in or on certain products
124. Commission Regulation (EU) 2017/1164 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acrinathrin, metalaxyl and thiabendazole in or on certain products
125. Commission Regulation (EU) 2017/1777 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for *Bacillus amyloliquefaciens* strain FZB24, *Bacillus amyloliquefaciens* strain MBI 600, clayed charcoal, dichlorprop-P, ethephon, etridiazole, flonicamid, fluazifop-P, hydrogen peroxide, metaldehyde, penconazole, spinetoram, tau-fluvalinate and *Urtica* spp. in or on certain products.
126. Commission Regulation (EU) 2018/62 replacing Annex I to Regulation (EC) No 396/2005 of the European Parliament and of the Council.
127. Commission Regulation (EU) 2018/70 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for ametoctradin, chlorpyrifos-methyl, cyproconazole, difenoconazole, fluazinam, flutriafol, prohexadione and sodium chloride in or on certain products
128. Commission Regulation (EU) 2018/73 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for mercury compounds in or on certain products.
129. Commission Regulation (EU) 2018/78 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 2-phenylphenol, bensulfuron-methyl, dimethachlor and lufenuron in or on certain products.

130. Commission Regulation (EU) 2018/685 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for abamectin, beer, fluopyram, fluxapyroxad, maleic hydrazide, mustard seeds powder and tefluthrin in or on certain products.
131. Commission Regulation (EU) 2018/686 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for chlorpyrifos, chlorpyrifos-methyl and triclopyr in or on certain products.
132. Commission Regulation (EU) 2018/687 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for acibenzolar-S-methyl, benzovindiflupyr, bifenthrin, bixafen, chlorantraniliprole, deltamethrin, flonicamid, fluazifop-P, isofetamid, metrafenone, pendimethalin and teflubenzuron in or on certain products.
133. Commission Regulation (EU) 2018/832 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for cyantraniliprole, cymoxanil, deltamethrin, difenoconazole, fenamidone, flubendiamide, fluopicolide, folpet, fosetyl, mandestrobin, mepiquat, metazachlor, propamocarb, propargite, pyrimethanil, sulfoxaflor and trifloxystrobin in or on certain products.
134. Commission Regulation (EU) 2018/960 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for lambda-cyhalothrin in or on certain products.
135. Commission Regulation (EU) 2018/1049 amending Annex I to Regulation (EC) No 396/2005 of the European Parliament and of the Council.
136. Commission Regulation (EU) 2018/1514 amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for abamectin, acibenzolar-S-methyl, clopyralid, emamectin, fenhexamid, fenpyrazamine, fluazifop-P, isofetamid, *Pasteuria nishizawae* Pn1, talc

Any impact the SI may have on the Assembly's legislative competence and/or the executive competence

Pesticides are a matter in which the National Assembly has legislative competence but in which the Welsh Ministers do not have functions. These Regulations contain provisions which enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales. They also contain provisions which enable the Secretary of State to exercise functions alone but only with the consent of the Devolved Authorities in relation to devolved territories

Functions transferred to the Secretary of State with consent would constitute functions of a Minister of the Crown for the purposes Schedule 7B to GoWA 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas. Functions transferred to the Secretary of State alone but which can only be exercised with the consent of the Devolved Authorities in relation to devolved territories constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the

The purpose of the amendments

Plant protection products are 'pesticides' that protect crops or desirable or useful plants, regulate plant growth or prevent growth of unwanted plants. They are primarily used in the agricultural sector but also in forestry, horticulture, amenity areas and in home gardens. For example, they play a fundamental role in UK farming and the provision of food, keeping the transport infrastructure clear of weeds, maintaining public spaces and controlling invasive species. However, as plant protection products contain chemicals that are designed to disrupt life processes, risks can be associated with their use.

The changes made by this statutory instrument will ensure plant protection products will continue to be effectively managed after EU Exit. This will enable the UK to have an operable regulatory framework after EU exit to ensure that plant protection products continue to pose no unacceptable risks to humans or the environment, whilst facilitating production of affordable food and trade in food produce. The Regulations will also ensure enforcement regulations continue to operate alongside the main regulations governing marketing and use of plant protection products and the setting of maximum residue levels, once they have been retained in national law and corrected so as to work sensibly in a national context..

This Statutory Instrument and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://beta.parliament.uk/statutory-instruments/PyC5117b>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and no policy divergence with the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

62 - The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 18 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 46
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

This instrument is one of three that will make corrections to the converted EU plant protection product regulatory regime, so that it continues to operate effectively after the United Kingdom leaves the European Union.

The instrument makes corrections to Regulation (EC) No 396/2005 to ensure that after EU exit, effective arrangements and robust controls governing the level of residues permitted in food will continue to operate in the UK.

The instrument makes amendments to legislation in the field of pesticides, and in particular, amends legislation relating to the maximum residue levels of pesticides. Part 2 amends Regulation (EC) No 396/2005 of the European Parliament and of the Council on maximum levels of pesticides in or on food and feed of plant and animal origin, and other supporting retained direct EU

legislation. Part 3 revokes retained direct EU legislation that will no longer be relevant after exit day.

Legal Advisers agree with the statement laid by the Welsh Government dated 18 December 2018 regarding the effect of these Regulations but would draw the Committee's attention to the following statement:

"Pesticides are a matter in which the National Assembly has legislative competence but in which the Welsh Ministers do not have functions. These Regulations contain provisions which enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales. They also contain provisions which enable the Secretary of State to exercise functions alone but only with the consent of the Devolved Authorities in relation to devolved territories. Functions transferred to the Secretary of State with consent would constitute functions of a Ministers of the Crown for the purposes Schedule 7B *[sic]* to GoWA 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas. Functions transferred to the Secretary of State alone but which can only be exercised with the consent of the Devolved Authorities in relation to devolved territories constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UKG."

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019
DATE	18 December 2018
BY	Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs

The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019

Amendment of domestic legislation

- The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003
- The Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008
- The Plant Protection Products Regulations 2011
- Plant Protection Products (Fees and Charges) Regulations 2011
- The Plant Protection Products (Sustainable Use) Regulations 2012

Any impact the SI may have on the Assembly's legislative competence and/or the executive competence

Pesticides are a matter in which the National Assembly has legislative competence but in which the Welsh Ministers do not have functions.

These Regulations contain provisions which enable the Welsh ministers to exercise functions jointly with parties including the Secretary of State.

Functions transferred to the Secretary of State jointly would constitute functions of a Minister of the Crown for the purposes Schedule 7B to Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

The purpose of the amendments:

Plant protection products are 'pesticides' that protect crops or desirable or useful plants, regulate plant growth or prevent growth of unwanted plants. They are primarily used in the agricultural sector but also in forestry, horticulture, amenity areas and in home gardens. For example, they play a fundamental role in UK farming and the provision of food, keeping the

transport infrastructure clear of weeds, maintaining public spaces and controlling invasive species. However, as plant protection products contain chemicals that are designed to disrupt life processes, risks can be associated with their use.

The changes made by this statutory instrument will ensure plant protection products will continue to be effectively managed after EU Exit. This will enable the UK to have an operable regulatory framework after EU exit to ensure that plant protection products continue to pose no unacceptable risks to humans or the environment, whilst facilitating production of affordable food and trade in food produce.

This Statutory Instrument and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-pesticides-and-fertilisers-miscellaneous-amendments-eu-exit-regulation-2019>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and no policy divergence with the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

63 - The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 13 December 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	8 January 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 7 January 2019
Date sifting period ends in UK Parliament	15 January 2019
Written statement under SO 30C:	Paper 46
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) and paragraph 21 of Schedule 7 of the European Union (Withdrawal) Act 2018.

To ensure plant protection products will continue to be effectively managed after EU Exit and also to enable the UK to have an operable regulatory framework after EU exit, these Regulations amend by making minor corrections, the following:

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

The Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008

The Plant Protection Products Regulations 2011

Plant Protection Products (Fees and Charges) Regulations 2011

The Plant Protection Products (Sustainable Use) Regulations 2012

This instrument also transfers functions under EU pesticides legislation to the Welsh Ministers.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 18 December 2018 regarding the effect of these Regulations:

The Welsh Government statement at paragraph 4 says, *"These Regulations contain provisions which enable the Welsh ministers to exercise functions jointly with parties including the Secretary of State."* However, as a result of the amendments made by this instrument, Welsh Ministers themselves will be able to exercise functions in relation to pesticides. Para 7:10 of the UKG Explanatory Memorandum says, *"Currently, the Secretary of State is the competent authority in respect of both England and Wales for Regulation (EC) No 1107/2009 and Directive 2009/128/EC, and the designated national authority for Regulation (EC) No 396/2005. Pesticides is a devolved matter under the Government of Wales Act 2006. Therefore in preparation for exit day, the instrument makes amendments to domestic legislation to designate Welsh Ministers as the competent authority in relation to Wales for the purposes of Regulation (EC) No 1107/2009 and Directive 2009/128/EC, and as designated national authority for the purposes of Regulation (EC) No 396/2005. It also amends the Plant Protection Products (Fees and Charges) Regulations 2011 to allow the Welsh Ministers to charge fees in respect of their functions as competent authority and designated national authority. This is in line with the government's approach to EU exit and devolution, and in order to facilitate both UK-wide decision making with consent and independent exercise of powers as necessary."*

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE The Common Agricultural Policy (Rules for Direct Payments)
 (Amendment) (EU Exit) Regulations 2018

DATE 19 December 2018

BY Lesley Griffiths AM, Minister for Environment, Energy and Rural
 Affairs

The Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2018

The law which is being amended

Amends retained EU legislation relating to Direct Payments:

- Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application 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; and
- Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing 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 and amending Annex X to that Regulation.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Agriculture is a devolved matter.

Functions in relation to the administration of the common agricultural policy (CAP) have been transferred by these instruments so that they are exercisable by the Welsh Ministers alone.

Any necessary transfer of legislative functions will be dealt with by a separate instrument.

The purpose of the amendments

The instruments amend retained EU legislation in relation to Direct Payments to farmers under pillar 1 of the Common Agricultural Policy (CAP).

The instrument address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. It deals with corrections that are technical in nature and do not make any significant policy changes, instead corrections incorporate new (agreed) terms to ensure the existing EU programmes will continue to be funded for the remainder of the 2014 to 2020 programme, if there is no deal.

This SI is the fourth UK correcting Statutory Instrument included as part of the wider package to correcting the CAP.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-common-agricultural-policy-rules-for-direct-payments-amendment-eu-exit-regulations-2018>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

64 - The Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 17 December 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	15 January 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 7 January 2019
Date sifting period ends in UK Parliament	16 January 2019
Written statement under SO 30C:	Paper 50
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations make amendments to Commission Delegated Regulation (EU) No 639/2014 supplementing Regulation (EU) No 1307/2013 and Commission Implementing Regulation (EU) No 641/2014 laying down rules for the application of Regulation (EU) No 1307/2013. Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishes rules for direct payments to farmers under support schemes within the framework of the common agricultural policy. These amendments will address operability issues created by the UK leaving the EU, to ensure that the direct payments legislation can continue to operate effectively.

Legal Advisers agree with the statement laid by the Welsh Government dated 19 December 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019**

DATE **19 December 2018**

BY **Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs**

The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

The law which is being amended

The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 amends 12 domestic waste Regulations, which implement different European Directives related to waste management to ensure that the waste regime can continue to operate effectively after the UK leaves the EU.

This SI makes amendments to the following domestic legislation. The amendments to these Regulations will ensure the continued operability of the Regulations, largely by providing for how the relevant directives to which the legislation relate are to be read (by modification). No substantive changes are introduced and they do not remove or amend any environmental standards.

The End-of-Life Vehicles Regulations 2003

These Regulations partially implement Directive 2000/53/EC of the European Parliament and the Council on end-of-life vehicles. The Regulations outline the design requirements for materials and components of vehicles put on the market after the Regulations come into effect. They also introduce minimum treatment standards and the Certificate of Destruction, which deregisters the vehicle from the national vehicle database on notification by the Authorised Treatment Facility.

The End-of-Life Vehicles (Producer Responsibility) Regulations 2005

These Regulations transpose aspects of Directive 2000/53/EC (the EC End-of-Life Vehicles Directive) relating to producer responsibility for establishing collection systems to take back end-of-life vehicles free of charge and the arrangements for meeting re-use, recycling and recovery targets.

The Hazardous Waste (England and Wales) Regulations 2005

The Hazardous Waste Regulations set out the regime for the control and tracking of hazardous waste in England and Wales. These regulations introduced a process for registration of hazardous waste producers and new system for recording the movement of hazardous waste from the point of production to the final point of disposal or recovery.

The Producer Responsibility Obligations (Packaging Waste) Regulations 2007

These Regulations implement Council Directive 94/62/EC on packaging and packaging waste as amended by Council Regulation (EC) No 1882/2003, Council Directive 2004/12/EC and Council Directive 2005/20/EC. The aim is to harmonise the management of packaging waste and prevent or reduce the impact of packaging and packaging waste on the environment by encouraging minimisation and reuse by setting recovery and recycling targets. At the same time, the aim is to avoid obstacles to trade and the distortion and restriction of competition within the Community.

The Batteries and Accumulators (Placing on the Market) Regulations 2008

These Regulations partially implement Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances. The main purpose of these Regulations is to protect the environment and human health. They provide that new batteries (single use cells) and accumulators (commonly known as rechargeable batteries) or appliances containing batteries or accumulators that are placed on the market must not contain prohibited levels of heavy metals and that they must be labelled to show the presence of lead-acid, cadmium or mercury and to promote recycling. They also provide that certain types of new electrical and electronic equipment must be designed in a way that facilitates the easy removal of waste batteries and accumulators for recycling purposes.

The Waste Batteries and Accumulators Regulations 2009

These Regulations partially implement Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances. These Regulations establish the scope of 'producer responsibility', requiring producers of batteries and accumulators to take responsibility for separately collecting and recycling batteries and accumulators once they become waste.

The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009

The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 transpose specific elements of Article 6 of Directive 2006/21/EC on the management of waste from extractive industries (Mining Waste Directive) in England and Wales. Article 6 of the Mining Waste Directive requires that measures are taken in respect of 'Category A' facilities where the risks of harm to human health and the environment are greatest.

The Waste (England and Wales) Regulations 2011

These Regulations partially transpose Directive 2008/98/EC on waste in England and Wales they require the establishment of waste prevention programmes and waste management

plans for England and Wales including provision for public participation in their preparation and revision. They impose duties in relation to the improved use of waste as a resource and require the waste hierarchy in Article 4 of the Directive to be applied as a priority order. They also require the separate collection of waste paper, metal, plastic and glass and prohibit mixing of those wastes once separately collected. The instrument imposes duties on planning authorities when exercising certain functions under the planning Acts and imposes duties on authorities responsible for licensing deposits of waste at sea. It makes provision in relation to carriers of waste and brokers and dealers in waste and provides for the transfer note to be completed on the transfer of waste. It also provides for enforcement of the requirements and makes provision in relation to the reduction of administrative burden, radioactive waste and the amendment and revocation of other legislation.

The Controlled Waste (England and Wales) Regulations 2012

These Regulations revoke and replace the Controlled Waste Regulations 1992 (SI 1992/588). They classify waste as household, industrial or commercial waste, and list the types of waste for which local authorities may make a charge for collection and disposal. The instrument enables local authorities (as waste collection authorities under the Environmental Protection Act 1990) to charge under section 45 of that Act for the disposal of waste arising from a wider range of non-domestic premises than the 1992 Regulations permitted; it also consolidates previous amendments, and includes some amended and updated definitions and classifications to improve the clarity of the Regulations and bring them into line with other legislation. It also provides that certain litter and refuse is to be treated under Part 2 of the Environmental Protection Act 1990 in the same way as waste collected under section 45 of the Act.

The Restrictions of the Use and Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012

These Regulations implement Directive 2011/65/EU of the European Parliament and Council on the Restriction of the use of certain hazardous substances in electrical and electronic equipment (recast) ("RoHS Directive"), and revoke and replace the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (SI 2008/37). They restrict the use of hazardous substances including some heavy metals and certain flame retardants in a defined number of categories of electrical and electronic equipment (EEE), requiring compliant products to be CE marked. They place obligations on economic operators to meet certain requirements and provide the Secretary of State with powers for the enforcement of those obligations.

The Waste Electrical and Electronic Equipment Regulations 2013

These Regulations transpose the main provisions of Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) which recasts Directive 2002/96/EC. The main purpose of the Directive is the protection of the environment and human health. They provide that producers of electrical and electronic equipment (EEE) will be financially responsible for managing the waste that arises from products they place on the Union market. Producers must also be registered with the national authorities in any Member State where they place EEE onto the market either directly or by appointing an authorised representative to act on their behalf. The Directive provides that Member States must establish systems for the collection, treatment, reuse and environmentally sound

disposal of most types of waste electrical and electronic equipment (WEEE); and that the costs of these systems must be largely borne by the producers of such equipment. Distributors of EEE also have obligations under the Directive to establish systems for the return of WEEE from private households (i.e. from consumers) free of charge.

The Packaging (Essential Requirements) Regulations 2015

These Regulations specifically implement Articles 9 and 11 of Directive 94/62/EC of the European Parliament and Council on Packaging and Packaging Waste. They set the essential requirements packaging must meet before it can be placed on the market. They provide enforcement authorities with powers for the enforcement of those obligations.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The National Assembly for Wales and Welsh Ministers have legislative and executive competence respectively in relation to waste, its prevention, reduction and management and the environment.

The purpose of the amendments

The purpose of this SI is to address the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU on the basis of a no-deal scenario.

The function of the EU law in this area is to minimise the negative effects of the generation and management of waste on human health and the environment and to help us become a recycling society that seeks to avoid waste and use waste as a resource.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-waste-miscellaneous-amendments-eu-exit-no-2-regulations-2019>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

70 - The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

Laid in the UK Parliament: 18 December 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	15 January 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c
Date sifting period ends in UK Parliament	17 January 2019
Written statement under SO 30C:	Paper 52
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018.

This instrument amends 12 domestic waste regulations, which implement different European directives related to waste management to ensure that the waste regime can continue to operate effectively after the UK leaves the EU. No environmental standards are removed or amended. The modifications are necessary to the text of the domestic legislation, removing or amending references to EU directives and associated EU terms, to ensure that waste legislation continues to operate as intended after EU exit by ensuring that existing protections and regulatory frameworks are maintained and continue to work in the same way once the UK has left the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 19 December 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE The Marketing of Seeds and Plant Propagating Material
(Amendment etc.) (EU Exit) Regulations 2018

DATE 20 December 2018

BY Lesley Griffiths AM, Minister for Environment, Energy and Rural
Affairs

The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018

The law which is being amended

Domestic

- The Seeds (National Lists of Varieties) Regulations 2001.

EU

- **Commission Decision 80/512/EEC:** authorising the United Kingdom and others not to apply the conditions laid down in Council Directive 66/401/EEC on the marketing of fodder plant seed, as regards the weight of the sample for the determination of seed of *Cuscuta*.
- **Council Decision 2003/17/EC:** on equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries.
- **Council Decision 2005/834/EC:** on the equivalence of checks on practices for the maintenance of varieties carried out in certain third countries and amending Decision 2003/17/EC.
- **Commission Regulation 217/2006:** laying down rules for the application of Council Directives 66/401/EEC, 66/402/EEC, 2002/54/EC 2002/55/EC and 2002/57/EC as regards the authorisation of Member States to permit temporarily the marketing of seed not satisfying the requirements in respect of the minimum germination.
- **Commission Implementing Decision 2012/340/EU:** on the organisation of a temporary experiment under Council Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC as regards field inspection under official supervision for basic seed and bred seed of generations prior to basic seed.
- **Commission Implementing Decision 2014/150/EU:** on the organisation of a temporary experiment providing for certain derogations for the marketing of populations

of the plant species wheat, barley, oats and maize pursuant to Council Directive 66/402/EEC.

- **Commission Implementing Decision 2017/547/EU:** on the organisation of a temporary experiment under Council Directive 2002/56/EC as regards seed potato tubers derived from true potato seed.

Revocations

Regulations

1. Commission Regulation (EC) No 1597/2002 laying down detailed rules for the application of Council Directive 1999/105/EC as regards the format for national lists of the basic material of forest reproductive material
2. Commission Regulation (EC) No 1598/2002 laying down detailed rules for the application of Council Directive 1999/105/EC as regards the provision of mutual administrative assistance by official bodies
3. Commission Regulation (EC) No 1602/2002 laying down detailed rules for the application of Council Directive 1999/105/EC as regards the authorisation of a Member State to prohibit the marketing of specified forest reproductive material to the end-user

Decisions

1. Commission Decision 2007/321 releasing the United Kingdom from certain obligations for the marketing of vegetable seed under Council Directive 2002/55/EC
2. Commission Implementing Decision (EU) 2017/478 releasing certain Member States from the obligation to apply certain species Council Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 1999/105/EC, 2002/54/EC, 2002/55/EC and 2002/57/EC on the marketing of fodder plant seed, cereal seed, material for the vegetative propagation of the vine, forest productive material, beet seed, vegetable seed and seed of oil and fibre plants respectively
3. Commission Implementing Decision (EU) 2017/925 temporarily authorising certain Member States to certify pre-basic material of certain species of fruit plants, produced in the field under non-insect proof conditions

EEA Agreement

In Annex 1 to the EEA Agreement, in Chapter 3 (Phytosanitary matters), in Section 2 (Application texts), paragraphs 16, 22, 36 and 39 are revoked.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The territorial extent of this instrument is the United Kingdom

Plant varieties and seeds is a devolved policy area, which is currently governed by EU law. This has resulted in the adoption of common plant varieties and seeds marketing and certification rules across the UK in line with EU (CPVO) and International (UPOV) criteria whilst enabling divergence (where technically justified). The approach to the plant varieties and seeds EU Exit amendments seek to create a framework to maintain this approach as far as possible post-exit.

This SI contains provision conferring functions on the Welsh Ministers that are exercised jointly. Those provisions are conferred in the context of an existing UK wide statutory instrument in which the Welsh Ministers currently exercise functions jointly.

This SI also contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales.

Functions transferred to the Secretary of State with consent and functions exercisable jointly would constitute functions of a Minister of the Crown for the purposes Schedule 7B to GoWA 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

The purpose of the amendments

The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018, hereafter referred to as “these regulations”, make amendments to legislation concerning the marketing of seed and plant propagating material.

These Regulations amend the Seeds (National Lists of Varieties) Regulations 2001 (‘the 2001 Regulations’) and retained EU law on the marketing of seeds. The amendments address operability issues so that the 2001 Regulations and retained EU law continue to function after withdrawal and revoke any retained EU law which will become redundant. The amendments are for provisions which are inappropriate or redundant on withdrawal and are to ensure continuity of seed supply.

These Regulations also make necessary amendments to the Seeds (National Lists of Varieties) Regulations 2001 to reinstate a historical reference to the Novel Foods Regulation and to update the list of derogated species which is out of date.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-marketing-of-seeds-and-plant-propagating-material-amendment-etc-eu-exit-regulations-2018>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

71 - The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018

Laid in the UK Parliament: 20 December 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	15 January 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c
Date sifting period ends in UK Parliament	8 January 2019
Written statement under SO 30C:	Paper 54
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) and paragraph 21 of Schedule 7 of the European Union (Withdrawal) Act 2018.

These Regulations amend the Seeds (National Lists of Varieties) Regulations 2001 ('the 2001 Regulations') and retained EU law on the marketing of seeds. The amendments made by these Regulations address operability issues so that the 2001 Regulations and retained EU law can continue to function after withdrawal. These Regulations are to ensure continuity of seed supply in the UK.

Legal Advisers agree with the statement laid by the Welsh Government dated 20 December 2018 regarding the effect of these Regulations. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Plant Health (EU Exit) Regulations 2019**

DATE **20 December 2018**

BY **Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs**

The Plant Health (EU Exit) Regulations 2019

The law which is being amended

These Regulations are part of a suite of UK Government plant health Regulations – save for the revocations set out below, they do not amend existing legislation.

Revocation of retained direct EU legislation

EU Regulations

- Commission Regulation (EC) No 1040/2002 establishing detailed rules for the implementation of the provisions relating to the allocation of a financial contribution from the Community for plant-health control and repealing Regulation (EC) No 2051/97.
- Commission Regulation (EC) No 1756/2004 specifying the detailed conditions for the evidence required and the criteria for the type and level of the reduction of the plant health checks of certain plants, plant products or other objects listed in Part B of Annex V to Council Directive 2000/29/EC.
- Commission Regulation (EC) No 690/2008 recognising protected zones exposed to particular plant health risks in the Community.

EU Decisions

- Commission Decision 91/261/EEC recognising Australia as being free from *Erwinia amylovora* (Burr.) Winsl. et al.
- Commission Decision 93/360/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of wood of *Thuja L.*, originating in Canada.
- Commission Decision 93/365/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of heat-treated coniferous wood, originating in Canada and establishing the details of the indicator system to be applied to the kiln dried wood.
- Commission Decision 93/422/EEC authorising the Member States to provide for

derogations from certain provisions of Council Directive 77/93/EEC in respect of kiln-dried coniferous wood, originating in Canada and establishing the details of the indicator system to be applied to the kiln dried wood.

- Commission Decision 93/423/EEC authorising Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of kiln dried coniferous wood, originating in the United States of America, and establishing the details of the indicator system to be applied to the kiln dried wood.
- Commission Decision 98/109/EC authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand.
- Commission Decision 2002/499/EC authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea.
- Commission Decision 2002/757/EC on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Phytophthora ramorum* Werres, De Cock & Man in 't Veld sp. Nov.
- Commission Decision 2002/887/EC authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in Japan.
- Commission Decision 2003/248/EC authorising Member States to provide for temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina.
- Commission Decision 2003/249/EC authorising Member States to provide for temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Chile.
- Commission Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus.
- Commission Decision 2005/51/EC authorising Member States temporarily to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of the importation of soil contaminated by pesticides or persistent organic pollutants for decontamination purposes.
- Commission Decision 2005/359/EC providing for a derogation from certain provisions of Council Directive 2000/29/EC as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America.
- Commission Implementing Decision 2011/787/EU authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards Egypt.
- Commission Implementing Decision 2013/413/EU authorising Member States to provide derogations from certain provisions of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in the regions of Akkar and Bekaa of Lebanon.
- Commission Implementing Decision 2013/780/EU providing for a derogation from Article 13(1)(ii) of Council Directive 2000/29/EC in respect of bark-free sawn wood of *Quercus* L., *Platanus* L. and *Acer saccharum* Marsh. originating in the United States of America.

- Commission Implementing Decision 2014/917/EU setting out detailed rules for the implementation of Council Directive 2000/29/EC as regards the notification of the presence of harmful organisms and of measures taken or intended to be taken by the Member States.
- Commission Implementing Decision (EU) 2015/179 authorising Member States to provide for a derogation from certain provisions of Council Directive 2000/29/EC in respect of wood packaging material of conifers (Coniferales) in the form of ammunition boxes originating in the United States of America under the control of the United States Department of Defence.
- Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckermann and Kotthoff) Davis et al.
- Commission Implementing Decision 2017/198/EU as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyuma & Goto.
- Commission Implementing Decision 2018/638 establishing emergency measures to prevent the introduction into and spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith).

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Plant health is an area of devolved responsibility. These Regulations do not impact on the Assembly's legislative competence or the Welsh Ministers' executive competence.

The purpose of the amendments

The changes made by the Plant Health (EU Exit) Regulations 2019 are necessary to ensure that current UK plant health legislation continues to operate effectively in the event of the UK leaving the EU in a 'no deal' scenario. They provide a basis to operate an internal market for regulated plant material by providing a single list of regulated pests and hosts to protect biosecurity and to help maintain the UK's internal market.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://beta.parliament.uk/work-packages/77D2MmcT>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

72 - The Plant Health (EU Exit) Regulations 2019

Laid in the UK Parliament: 20 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 56
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Council Directive 2000/29/EC (“the Plant Health Directive”) establishes a EU plant health regime which sets out controls for the import of plant material into the EU and provides for the trade and movement of plant material within and between EU Member States.

These Regulations set out the basis for the UK to operate an internal market for regulated plant material in the event of the UK leaving the EU in a ‘no deal’ scenario. This is done by providing a common list of regulated pests and plant material for England, Wales and Northern Ireland which mirrors the pests and plant material that are currently regulated under the Plant Health Directive.

The Regulations also set out amendments to deal with deficiencies in retained direct EU legislation relating to plant health, comprising EU plant health derogations (to enable them to continue to be used in line with existing practice) and EU plant health emergency decisions (to ensure that UK biosecurity continues to be protected).

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 20 December 2018 regarding the effect of these Regulations:

- In the list of retained direct EU legislation being revoked, the Welsh Government's statement includes '*Commission Implementing Decision 2013/413/EU authorising Member States to provide derogations from certain provisions of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in the regions of Akkar and Bekaa of Lebanon*'. However, that decision is not listed in the Regulations as one that is being revoked. As such, it is unclear why the Welsh Government have included it in the statement.

-

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2018**

DATE **20 December 2018**

BY **Kirsty Williams AM, Minister for Education**

The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2018

The Law which is being amended

The European Union (Recognition of Professional Qualifications) Regulations 2015.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The proposed amendments will have no impact on the Assembly's legislative competence and/or the Welsh Ministers' executive competence. The regulation of a number of professions within scope of the SI is devolved through the devolution settlement for Wales. The UK Government is using powers set out in section 8 of the European Union (Withdrawal) Act 2018 to make provisions that could be made by Welsh Ministers.

The purpose of the amendments

The purpose of this SI is to correct deficiencies arising as a consequence of the United Kingdom's (UK) withdrawal from the European Union (EU). The deficiencies are primarily those arising from the reciprocal arrangements between the UK and European Economic Area (EEA) States, which will no longer be operable or appropriate after the UK exits the EU.

The SI and accompanying Explanatory Memorandum setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/zdDtZ5ZV>

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK-wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the

Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance. The proposed laying date for the SI is 19 December 2018, and the fixes will be made using the affirmative procedure for SIs.

UK MINISTERS ACTING IN DEVOLVED AREAS

73 - The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2018

Laid in the UK Parliament: XX December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 58
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary:

These Regulations are proposed to be made by the UK Government pursuant to section 2(2) of the 1972 Act, section 132(1) and (2) of the Education Act 2002(c) and section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations amend the European Union (Recognition of Professional Qualification) Regulations 2015 (the “2015 Regulations”), revokes the effect of the European Communities (Recognition of Professional Qualifications) Regulations 2007 (the “2007 Regulations”) in relation to Switzerland, and makes transitional and savings provisions, in reliance on the powers conferred by section 8(1) and paragraph 21 of schedule 7 to, the European Union (Withdrawal) Act 2018. This instrument will revoke a number of pieces of retained direct EU legislation. These changes are being made to address deficiencies arising as a consequence of the United Kingdom’s withdrawal from the European Union.

These Regulations will update schedules in the 2015 Regulations in reliance on powers in section 2(2) of the European Communities Act 1972. Also, these Regulations will make minor amendments to legislation concerning school teachers in England, in reliance on the powers in section 132 of the Education Act 2002.

These Regulations ensure that a system of recognition of professional qualifications continues and that individuals arriving in the UK with EEA or Swiss qualifications after exit day will have a means to seek recognition of their qualifications. Under the current provisions of the 2007 Regulations and the 2015 Regulations, it is the responsibility of the Member State where the professional is currently registered to decide the level of the qualification of the applicant, and the UK cannot dispute this level. The Explanatory notes state at paragraph 7.15 that, when the UK leaves the EU, it will no longer be “appropriate to allow the EU competent authorities to decide the level of the qualification for the purpose of recognition in the UK. Instead, the UK competent authority will no longer be required to accept the level of qualification certified by another Member State”.

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 20 December regarding the effect of these Regulations. The statement only notes that the European Union (Recognition and of Professional Qualifications) Regulations 2015 are being amended. This instrument also revokes the effects of the 2007 Regulations in respect of Switzerland. Further, it revokes a number of pieces of retained direct EU legislation, and makes amendments concerning school teachers in England.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendments etc) (EU Exit) Regulations 2018
DATE	21 December 2018
BY	Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs

The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendments etc) (EU Exit) Regulations 2018

The 2018 Regulations contain provisions which fall within devolved competence. They amends the following legislation:-

Domestic Legislation

- The Ozone-Depleting Substances Regulations 2015
- The Fluorinated Greenhouse Gases Regulations 2015

EU Regulations

- Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer.
- Regulation EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases.
- Commission Regulation (EU) No 291/2011 on essential uses of controlled substances other than hydrochlorofluorocarbons for laboratory and analytical purposes in the Union under Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer.
- Commission Regulation (EU) No 537/2011 on the mechanism for the allocation of quantities of controlled substances allowed for laboratory and analytical uses in the Union under Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer.
- Commission Regulation (EC) No 1497/2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, standard leakage checking requirements for stationary fire protection systems containing certain fluorinated greenhouse gases.
- Commission Regulation (EC) No 1516/2007 establishing, pursuant to Regulation (EC)

No 842/2006 of the European Parliament and of the Council, standard leakage checking requirements for stationary fire protection systems containing certain fluorinated greenhouse gases.

- Commission Regulation (EC) No 304/2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of companies and personnel as regards stationary fire protection systems and fire extinguishers containing certain fluorinated greenhouse gases.
- Commission Regulation (EC) No 306/2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of personnel recovering certain fluorinated greenhouse gas-based solvents from equipment.
- Commission Regulation (EC) No 307/2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements for training programmes and the conditions for mutual recognition of training attestations for personnel as regards air-conditioning systems in certain motor vehicles containing certain fluorinated greenhouse gases.
- Commission Implementing Regulation (EU) No 1191/2014 determining the format and means for submitting the report referred to in Article 19 of Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases.
- Commission Implementing Regulation (EU) 2015/2065 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, the format for notification of the training and certification programmes of the Member States.
- Commission Implementing Regulation (EU) 2015/2066 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of natural persons carrying out installation, servicing, maintenance, repair or decommissioning of electrical switchgear containing fluorinated greenhouse gases or recovery of fluorinated greenhouse gases from stationary electrical switchgear
- Commission Implementing Regulation (EU) 2015/2067 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of natural persons as regards stationary refrigeration, air conditioning and heat pump equipment, and refrigeration units of refrigerated trucks and trailers, containing fluorinated greenhouse gases and for the certification of companies as regards stationary refrigeration, air conditioning and heat pump equipment, containing fluorinated greenhouse gases.
- Commission Implementing Regulation (EU) 2015/2068 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, the format of labels for products and equipment containing fluorinated greenhouse gases
- Commission Implementing Regulation (EU) 2016/879 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, detailed arrangements relating to the declaration of conformity when placing refrigeration, air conditioning and heat pump equipment charged with hydrofluorocarbons on the market and its verification by an independent auditor.

EU Decisions

- Commission Implementing Decision (EU) 2017/1984 determining, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases, reference values for the period 1 January 2018 to 31 December 2020 for each producer or importer which has lawfully placed on the market hydrofluorocarbons from 1 January 2015 as reported under that Regulation.

European legislation to be revoked

The 2018 Regulations also revoke the following:-

- Commission Decision 2010/372/EU on the use of controlled substances as process agents under Article 8(4) of Regulation (EC) No 1005/2009 of the European Parliament and of the Council is revoked.
- Commission Implementing Regulation (EU) 2015/2065 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, the format for notification of the training and certification programmes of the Member States is revoked.
- Commission Implementing Decision (EU) 2017/1984 determining, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases, reference values for the period 1 January 2018 to 31 December 2020 for each producer or importer which has lawfully placed on the market hydrofluorocarbons from 1 January 2015 as reported under that Regulation is revoked.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The Regulations transfer functions falling within devolved competence to the Welsh Ministers and Natural Resources Wales.

The Regulations also provides the Welsh Ministers with a power to consent to the SoS exercising those Welsh Ministerial functions, in relation to Wales.

Functions transferred to the Secretary of State constitute functions of the Minister of the Crown for the purposes of paragraph 11 of Schedule 7B to GoWA 2006. Paragraph 11 of Schedule 7B restricts the Assembly's competence to remove or modify Minister of the Crown functions without consent from the relevant UKG Minister, where the function is a qualified devolved function which includes a function which is to any extent exercisable jointly/concurrently. This means that any future Assembly Bill seeking to modify (remove or change) these functions could trigger a requirement for UKG consent to the modification.

The purpose of the amendments

This instrument amends the relevant legislation to ensure that existing protections and regulatory frameworks are maintained and continue to work once the UK has left the EU.

This instrument makes minor and technical amendments to the existing legislation described above to ensure the legislation is operable after EU Exit. The changes in this instrument include necessary fixes such as: amending cross references to EU legislation; amending references to the EU, EU institutions and EU administrative processes to

domestic equivalents; updating legal references to refer to relevant domestic legislation; and adjusting the requirements for government reporting as is appropriate

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/w1y5C4tN>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

74 - The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendments etc) (EU Exit) Regulations 2018

Laid in the UK Parliament: XX December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 60
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government under section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations address deficiencies in retained EU law relating to restrictions on the use of ozone depleting substances (ODS) and fluorinated greenhouse gases (F-gases) to ensure the legislation continues to operate effectively at the point at which the UK leaves the EU, if there is no withdrawal agreement.

This instrument transfers powers and functions from the European Institutions (including the European Commission and European Environment Agency) to the Secretary of State, devolved Ministers and appropriate UK regulatory bodies, so that the requirements set out in

certain EU Regulations relating to ODS and F-gases can continue to operate in the UK after EU exit, if there is no withdrawal agreement.

This has the intended objective of maintaining the same environmental outcomes and minimising disruption to businesses, by retaining the requirements of certain EU Regulations relating to ODS and F-gases in UK law while correcting operability deficiencies. It will also maintain the contribution that the EU Regulations are making to meeting UK domestic carbon budgets under the UK Climate Change Act 2008.

By consenting to the UK Government making these Regulations in Welsh devolved areas, it appears that the Welsh Government is allowing the Assembly's legislative competence to be restricted in future. As the statement laid by the Welsh Government on 21 December 2018 states:

"Functions transferred to the Secretary of State constitute functions of the Minister of the Crown for the purposes of paragraph 11 of Schedule 7B to GoWA 2006. Paragraph 11 of Schedule 7B restricts the Assembly's competence to remove or modify Minister of the Crown functions without consent from the relevant UKG Minister, where the function is a qualified devolved function which includes a function which is to any extent exercisable jointly/concurrently. This means that any future Assembly Bill seeking to modify (remove or change) these functions could trigger a requirement for UKG consent to the modification."

Given that, Members may wish to consider writing to the Secondary Legislation Scrutiny Committee of the House of Lords to make observations.

Legal Advisers agree with the statement laid by the Welsh Government on 21 December 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L-FM/0868/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

3 January 2019

Dear Mick,

I am writing in response to your letter of 11 December, to my predecessor as First Minister, regarding the written statements for The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018 and The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018.

I can confirm that the inaccuracies in the written statements were a result of a clerical error. The written statements have been corrected and re-issued. My officials have reviewed other written statements which have been laid in relation to UK EU Exit SIs in light of your letter and have identified a similar error in the written statement for The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018. This written statement has also been re-issued in corrected form. The revised written statements are attached to this letter for ease of reference. My officials have since introduced a revised approach for checking written statements before they are issued, to avoid repeating such errors.

I appreciate that errors in written statements make it more challenging to assess the impact UK EU Exit SIs will have in Wales and we are endeavouring to avoid further occurrences of this kind.

I thank you for your diligence and for your detailed consideration of the UK EU Exit SIs.

I am copying this letter to the Minister for Finance and Trefnydd.

Yours sincerely

Mark Drakeford

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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

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

Rt Hon Carwyn Jones AM
First Minister of Wales
Welsh Government

11 December 2018

Dear Carwyn

The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statements issued under Standing Order 30C for the above named regulations at its meeting on 10 December 2018.

I would like to draw your attention to concerns we have with these written statements. Both statements dated 27 November 2018 incorrectly summarise the legislation that is being amended by the respective regulations (see the annexe).

It is also not clear from the statements the impact the Regulations have on the National Assembly's legislative competence or the Welsh Minister's executive competence.

Please could you therefore provide clarification on these matters.

I am copying this letter to Julie James AM, Leader of the House and Chief Whip.

I would be grateful for a response, from your successor, by 3 January 2019. I would also like to take this opportunity to thank you for your constructive engagement as First Minister with this Committee and its predecessor.



Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is fluid and cursive, with a horizontal line underneath the name.

Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Annexe

The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

The statement incorrectly summarises the legislation which is being amended by the Regulations. The statement notes that the following legislation is being amended by the Regulations:

- The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018
 - Regulation (EC) No. 116/2006
 - Commission Implementing Decision 2011/850/EC –
 - Commission Decision 2015/6674/EU
 - Directive (Directive 2004/42/EC).
 - Commission Implementing Decision 2012/115/EU
 - Directive (2010/75/EU).
 - Directive (2010/75/EU).

However, assessment undertaken for the Committee by the Assembly Commission's Legal Services indicates that the Regulations amend:

- The Air Quality Standards Regulations 2010;
- The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012;
- The National Emission Ceilings Regulations 2018.

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

The statement incorrectly summarises the legislation which is being amended by the Regulations. The statement notes that the following legislation is being amended by the Regulations:

- The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018
 - Directive 2008/50/EC
 - Directive 2004/107/EC
 - Directive 2004/42/EC
- Domestic Legislation



- The Air Quality Standards Regulations 2010
- The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012
- The National Emission Ceilings Regulations 2018

However, assessment undertaken for the Committee by the Assembly Commission's Legal Services indicates that the Regulations amend and revoke the following retained direct EU legislation:

- Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register
- Decision 2004/279/EC concerning guidance for implementation of Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air
- Decision 2011/850/EU laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality
- Decision 2012/115/EU laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2012/134/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the manufacture of glass
- Decision 2012/135/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for iron and steel production 2
- Decision 2012/249/EU concerning the determination of start-up and shut-down periods for the purposes of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2013/84/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the tanning of hides and skins
- Decision 2013/163/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the production of cement, lime and magnesium oxide



- Decision 2013/732/EU establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the production of chlor-alkali
- Decision 2014/687/EU establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of pulp, paper and board
- Decision 2014/738/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the refining of mineral oil and gas
- Decision 2014/768/EU establishing the type, format and frequency of information to be made available by the Member States on integrated emissions management techniques applied in mineral oil and gas refineries, pursuant to Directive 2010/75/EU of the European Parliament and of the Council
- Decision 2015/6674/EU establishing a common format for the submission of Member State reports on the implementation of Directive 2004/42/EC of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products
- Decision 2015/2119/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of wood-based panels
- Decision 2016/902/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for common waste water and waste gas treatment/management systems in the chemical sector
- Decision 2016/1032/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the non-ferrous metals industries
- Decision 2017/302/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the intensive rearing of poultry or pigs
- Decision 2017/1442/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants
- Decision 2017/2117/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of large volume organic chemicals



- Decision 2018/1135/EU establishing the type, format and frequency of information to be made available by the Member States for the purposes of reporting on the implementation of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2018/1147/EU establishing best available techniques (BAT) conclusions for waste treatment, under Directive 2010/75/EU of the European Parliament and of the Council 3
- Decision 2018/1522 laying down a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants
- Annex 20 to EEA agreement





Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

DATE 20 December 2018

BY Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs

The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

- The Air Quality Standards Regulations 2010
- The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012
- The National Emission Ceilings Regulations 2018

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

This SI has no impact on either legislative competence of the Assembly or executive competence of Welsh Ministers.

The purpose of the amendments

This instrument makes minor and technical amendments to the existing legislation described above to ensure the legislation is operable after EU Exit. The changes in this instrument include necessary fixes such as: amending cross references to EU legislation; amending references to the EU, EU institutions and EU administrative processes to domestic equivalents; updating legal references to refer to relevant domestic legislation; and adjusting the requirements for government reporting as is appropriate

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-air-quality-amendment-of-domestic-regulations-eu-exit-regulations-2018>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments pack Page 543

functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS	
Revised - The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018 <i>Laid in the UK Parliament: 22 November 2018</i>	
Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 3 December 2018
Date sifting period ends in UK Parliament	10 December 2018
Written statement under SO 30C:	Paper 64
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Commentary	
These Regulations are proposed to be made by the UK Government pursuant to section 8 (1) of and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Regulations amend domestic legislation that implements EU air quality legislation to ensure it continues to be operable after the withdrawal of the UK from the EU. Legal Advisers agree with the statement laid by the Welsh Government dated 20 December 2018 regarding the effect of these Regulations. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect. Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal)	

Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Ein cyf/Our ref: MA-L-FM/0868/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

3 January 2019

Dear Mick,

I am writing in response to your letter of 11 December, to my predecessor as First Minister, regarding the written statements for The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018 and The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018.

I can confirm that the inaccuracies in the written statements were a result of a clerical error. The written statements have been corrected and re-issued. My officials have reviewed other written statements which have been laid in relation to UK EU Exit SIs in light of your letter and have identified a similar error in the written statement for The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018. This written statement has also been re-issued in corrected form. The revised written statements are attached to this letter for ease of reference. My officials have since introduced a revised approach for checking written statements before they are issued, to avoid repeating such errors.

I appreciate that errors in written statements make it more challenging to assess the impact UK EU Exit SIs will have in Wales and we are endeavouring to avoid further occurrences of this kind.

I thank you for your diligence and for your detailed consideration of the UK EU Exit SIs.

I am copying this letter to the Minister for Finance and Trefnydd.

Yours sincerely



Mark Drakeford

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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

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

Rt Hon Carwyn Jones AM
First Minister of Wales
Welsh Government

11 December 2018

Dear Carwyn

The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statements issued under Standing Order 30C for the above named regulations at its meeting on 10 December 2018.

I would like to draw your attention to concerns we have with these written statements. Both statements dated 27 November 2018 incorrectly summarise the legislation that is being amended by the respective regulations (see the annexe).

It is also not clear from the statements the impact the Regulations have on the National Assembly's legislative competence or the Welsh Minister's executive competence.

Please could you therefore provide clarification on these matters.

I am copying this letter to Julie James AM, Leader of the House and Chief Whip.

I would be grateful for a response, from your successor, by 3 January 2019. I would also like to take this opportunity to thank you for your constructive engagement as First Minister with this Committee and its predecessor.



Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw'. The signature is fluid and cursive, with a horizontal line underneath the name.

Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Annexe

The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

The statement incorrectly summarises the legislation which is being amended by the Regulations. The statement notes that the following legislation is being amended by the Regulations:

- The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018
 - Regulation (EC) No. 116/2006
 - Commission Implementing Decision 2011/850/EC –
 - Commission Decision 2015/6674/EU
 - Directive (Directive 2004/42/EC).
 - Commission Implementing Decision 2012/115/EU
 - Directive (2010/75/EU).
 - Directive (2010/75/EU).

However, assessment undertaken for the Committee by the Assembly Commission's Legal Services indicates that the Regulations amend:

- The Air Quality Standards Regulations 2010;
- The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012;
- The National Emission Ceilings Regulations 2018.

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

The statement incorrectly summarises the legislation which is being amended by the Regulations. The statement notes that the following legislation is being amended by the Regulations:

- The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018
 - Directive 2008/50/EC
 - Directive 2004/107/EC
 - Directive 2004/42/EC
- Domestic Legislation



- The Air Quality Standards Regulations 2010
- The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012
- The National Emission Ceilings Regulations 2018

However, assessment undertaken for the Committee by the Assembly Commission's Legal Services indicates that the Regulations amend and revoke the following retained direct EU legislation:

- Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register
- Decision 2004/279/EC concerning guidance for implementation of Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air
- Decision 2011/850/EU laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality
- Decision 2012/115/EU laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2012/134/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the manufacture of glass
- Decision 2012/135/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for iron and steel production 2
- Decision 2012/249/EU concerning the determination of start-up and shut-down periods for the purposes of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2013/84/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the tanning of hides and skins
- Decision 2013/163/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the production of cement, lime and magnesium oxide



- Decision 2013/732/EU establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the production of chlor-alkali
- Decision 2014/687/EU establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of pulp, paper and board
- Decision 2014/738/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the refining of mineral oil and gas
- Decision 2014/768/EU establishing the type, format and frequency of information to be made available by the Member States on integrated emissions management techniques applied in mineral oil and gas refineries, pursuant to Directive 2010/75/EU of the European Parliament and of the Council
- Decision 2015/6674/EU establishing a common format for the submission of Member State reports on the implementation of Directive 2004/42/EC of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products
- Decision 2015/2119/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of wood-based panels
- Decision 2016/902/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for common waste water and waste gas treatment/management systems in the chemical sector
- Decision 2016/1032/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the non-ferrous metals industries
- Decision 2017/302/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the intensive rearing of poultry or pigs
- Decision 2017/1442/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants
- Decision 2017/2117/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of large volume organic chemicals



- Decision 2018/1135/EU establishing the type, format and frequency of information to be made available by the Member States for the purposes of reporting on the implementation of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2018/1147/EU establishing best available techniques (BAT) conclusions for waste treatment, under Directive 2010/75/EU of the European Parliament and of the Council 3
- Decision 2018/1522 laying down a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants
- Annex 20 to EEA agreement





Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018**

DATE **20 December 2018**

BY **Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs**

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

EU Directly applicable law being amended

- Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register
- Decision 2004/279/EC concerning guidance for implementation of Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air
- Decision 2011/850/EU laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality
- Decision 2012/115/EU laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2012/134/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the manufacture of glass
- Decision 2012/135/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for iron and steel production.
- Decision 2012/249/EU concerning the determination of start-up and shut-down periods for the purposes of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2013/84/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the tanning of hides and skins
- Decision 2013/163/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the production of cement, lime and magnesium oxide
- Decision 2013/732/EU establishing the best available techniques (BAT) conclusions,

under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the production of chlor-alkali

- Decision 2014/687/EU establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of pulp, paper and board
- Decision 2014/738/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the refining of mineral oil and gas
- Decision 2014/768/EU establishing the type, format and frequency of information to be made available by the Member States on integrated emissions management techniques applied in mineral oil and gas refineries, pursuant to Directive 2010/75/EU of the European Parliament and of the Council
- Decision 2015/6674/EU establishing a common format for the submission of Member State reports on the implementation of Directive 2004/42/EC of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products
- Decision 2015/2119/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of wood-based panels
- Decision 2016/902/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for common waste water and waste gas treatment/management systems in the chemical sector
- Decision 2016/1032/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the non-ferrous metals industries
- Decision 2017/302/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the intensive rearing of poultry or pigs
- Decision 2017/1442/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants
- Decision 2017/2117/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of large volume organic chemicals
- Decision 2018/1135/EU establishing the type, format and frequency of information to be made available by the Member States for the purposes of reporting on the implementation of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2018/1147/EU establishing best available techniques (BAT) conclusions for waste treatment, under Directive 2010/75/EU of the European Parliament and of the Council
- Decision 2018/1522 laying down a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants
- Revocations and amendment of Annex 20 to EEA agreement.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

This SI has no impact on either legislative competence of the Assembly or executive competence of Welsh Ministers.

The purpose of the amendments

This instrument makes minor and technical changes to legislation referred to ensure that it functions correctly after the UK has left the EU. The changes in this instrument include necessary fixes such as: amending cross references to EU legislation; amending references to the EU, EU institutions and EU administrative processes to domestic equivalents; updating legal references to refer to relevant domestic legislation; and adjusting the requirements for government reporting as is appropriate.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-air-quality-miscellaneous-amendment-and-revocation-of-retained-direct-eu-legislation-eu-exit-regulations-2018>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

Laid in the UK Parliament: 22 November 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	4 December 2018
Date sifting period ends in UK Parliament	10 December 2018
Written statement under SO 30C:	Paper 68
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary:

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

The Regulations amend retained direct EU legislation relating to air quality, to ensure that it continues to operate effectively following withdrawal of the United Kingdom from the European Union. This includes addressing deficiencies, such as references to EU authorities (e.g. the Commission) being replaced with domestic equivalents.

Legal Advisers agree with the statement laid by the Welsh Government dated 20 December 2018 regarding the effect of these Regulations. The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Jane Hutt
Aelod Cynulliad dros
Fro Morgannwg
Assembly Member for
Vale of Glamorgan

Agenda Item 10.1

Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Gareth Williams
Clerk to Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Ref.: JH 2856

3rd January 2019

Dear Gareth,

Re: [REDACTED].

I am writing to the Constitutional and Legislative Affairs Committee regarding my constituent [REDACTED], who has contacted me about her dealings with the Valuation Tribunal for Wales.

[REDACTED] has been through several tribunals over a Council Tax issue since 2005, in the process of which she states that she found the logo of a now-defunct tribunal service is being used by the current organisation.

She has expressed concerns that the organisation issuing tribunal notices is being supported or working in support of an equivalent statutory body in England and has continued to use the logos of the older defunct organisation unlawfully.

I attach a copy of [REDACTED] complaint regarding the Valuation Tribunal for Wales. I also attach a letter to [REDACTED] from Mr Andrew Shippesides, the Chief Executive of Valuation Tribunal Wales, concerning the matter.

Cynulliad Cenedlaethol Cymru
115 High Street, Y Barri,
CF62 7DT
Jane.hutt@cymru.gov.uk
www.janehutt.co.uk
T +44 (0)1446 740981

National Assembly for Wales
115 High Street, Barry,
CF62 7DT
Jane.hutt@wales.gov.uk
www.janehutt.co.uk
T +44 (0)1446 740981

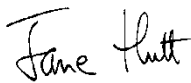
Jane Hutt

Aelod Cynulliad dros
Fro Morgannwg
Assembly Member for
Vale of Glamorgan

I would be most grateful if the Constitutional and Legislative Affairs Committee could look into the issues raised by [REDACTED], and pass any information gleaned to my office.

I look forward to hearing from you.

Yours sincerely



Jane Hutt AM
Vale of Glamorgan

Cynulliad Cenedlaethol Cymru

115 High Street, Y Barri,
CF62 7DT

Jane.hutt@cymru.gov.uk

www.janehutt.co.uk

T +44 (0)1446 740981 Pack Page 560

National Assembly for Wales

115 High Street, Barry,
CF62 7DT

Jane.hutt@wales.gov.uk

www.janehutt.co.uk

T +44 (0)1446 740981

7th December 2018

To: Jane Hutt AM

From: [REDACTED]

Complaint regarding the Valuation Tribunal for Wales ('VTW')

1. Part 6 of the VTW '*Complaints Policy and Procedures*' provides for appellants and respondents to approach their local AM if they believe the VTW has failed administratively in any way:

'6. ASSEMBLY MEMBERS AND MEMBERS OF PARLIAMENT

6.1 If you believe we have failed administratively in any way, you can ask your local AM or MP to look into the matter. You can do this before or after we have begun, or concluded, the above internal complaints procedure.'

2. I instigated a complaint with the VTW in July 2018. During this process I discovered that the VTW is issuing statutory notices under the auspices of the Valuation Tribunal Service for Wales ('VTSW'). The VTSW was created under the Valuation Tribunal (Wales) Regulations 2005 – SI 2005 No. 3364 (W.261). However following the 'Rolph Report' published in 2007 a single Valuation Tribunal, the VTW, was established. The 2005 Regulations were revoked and the business of the former VTSW was to be wound up with effect from the 1st July 2010 under the Valuation Tribunal (Wales) Regulations 2010 - SI 2010 No.713.
3. Under the 2010 Regulations (as amended) the functions of the VTW are performed on its behalf by the Governing Council so my concern is that the Governing Council has not been undertaking its administrative functions in accordance with its duties under the 2010 Regulations. As well as permitting legal notices to be issued under the auspices of the VTSW – defunct since 1st July 2010 - I have evidence that the VTSW bank account was never closed down as part of the winding up process under the 2010 Regulations but is instead being utilised by the VTW.
4. The VTW is a devolved INDEPENDENT tribunal sponsored by the WG to the tune of £1.1 million per annum. The sponsoring department is the Local Taxation Policy Division with whom the VTW has a 'Framework Agreement'.
5. During correspondences with the CEO for the VTW – Mr Andrew Shippides – over the use of the VTSW logo the CEO recently admitted that the Valuation Tribunal Service ('VTS') manages appeal management software on behalf of the VTW. As to the bank account the CEO's stance is that it is simply the name of account and is of no consequence.

6. The CEO's response instead of resolving my concerns actually amplifies them. The 'VTS' is itself a statutory body and is sponsored by the Ministry of Housing, Communities and Local Government (MHCLG). It was established under section 105 of the Local Government Act 2003 and created on 1 April 2004 to provide a range of specialist services to assist the discharge of the valuation tribunals' functions. These tribunals later became the Valuation Tribunal for England (VTE). The Act, as amended, specifically requires the VTS to do anything which it considers is "calculated to facilitate the carrying out of its functions" and that it shall carry out its functions "in the manner it considers is best calculated to secure the VTE's efficient and independent operation". The explanatory memorandum to the 2003 Act makes clear that the VTS is a non-departmental public body that has the power to carry out administrative functions **for Valuation Tribunals in England only** including accommodation, staffing, **information technology**, equipment and training needs. I have checked for amendments to section 205 of the 2003 Act but can find nothing enabling the VTS to act on behalf of the VTW – not least that the VTS can generate statutory notices in relation to Wales appeals that carry the logo of the VTSW – defunct now for over 8 years.
7. The CEO acknowledged that to continue to issue statutory notices using the VTSW logo from a 'shared system' with the VTS was the result of the corporate decision made in 2010 – see email dated 22nd November 2018 from the CEO attached – to save £10,000. He further added that the situation will come to an end in March 2019. The VTW's Annual Report for 2017 - 18 makes reference to the current IT situation in Appendix 1:

'Leave shared IT system arrangements with VOA and VTS/ establish full VTW independence for all IT arrangements'

The above quote is a clear acceptance by the VTW that insofar as the issuing of statutory appeal notices are concerned it has not been acting 'independently' but is reliant on a body sponsored by the MHCLG i.e. the VTS that was only created to serve the VTE.

8. I have gathered further information regarding the VTS's IT system and apparently the VTW is part of VTS contract that sub-contracts support and development services in respect of a Central Database from Capgemini via the Valuation Office Agency ('VOA') who in turn sub-contracts services from the main contractor HMRC.
9. What I have not been able to find out is if the VTW pays the VTS or pays Capgemini – but there is every indication that the VTW pays the VTS - such as the reference to a 'shared service'. Whatever the details of the arrangement the VTW has with the VTS I am of the opinion that it is unlawful. The enabling 2003 Act that created the VTS takes precedence over any corporate decision by the VTW's Governing Council – in simple terms the VTS

as a matter of law can only serve the VTE. That on its own renders the issuing of Wales statutory notices by VTS software as a clear breach of the VTS's functions. This combined by the fact that the notices also carry the logo of a defunct Wales body must render all notices invalid so must call into question the validity of proceedings heard by the VTW since 2010 because the issuing of the notices under the auspices of the VTSW is an abuse of due legal process.

10. As to cost savings of allegedly £10,000 again this does not justify unlawful practises. Indeed the late Carl Sargeant who laid the 2010 Regulations before the NAW stated in his explanatory memorandum dated 9th March 2010 in respect of the 2010 Regulations that the costs of revised stationery, letterheads etc can be met from within the existing Valuation Tribunal running costs budget. By implication the costs of generating statutory appeal notices showing the logo of the VTW should also have been covered.
11. I am aware that the soon to be First Minister Mark Drakeford has announced that the Law Commission will review the laws which govern tribunals in Wales next year - it being widely accepted that rules and procedures for the devolved Welsh Tribunals are complicated and inconsistent and in some instances unfit for practise. From my vast and often distressing ongoing experiences with the VTW since late 2015 I can categorically state I have found the VTW not fit for purpose.
12. I would ask that as my AM you investigate the above because as well as my concerns on the administration of statutory appeal notices there is a overarching concern that the VTW for literally years has not been acting in accordance with the legislation by which it is bound and perhaps should be raised with the Committee on Constitutional and Legislative Affairs. I might add this committee considered the 2017 amendments to the 2010 Regulations that came into force just over a year ago on the 1st December 2017 and from my reading on the matter the committee members were totally oblivious to the connection the VTW has with the VTS in its administration of council tax appeals. Indeed I would go as far as to say the connection is a national scandal that the Governing Council for the VTW has managed to suppress for years. What the WG sponsoring department knows about the matter I have no idea – but at the end of the day a significant proportion of WG funding for the VTW is going into England's coffers and by default is being used to support the VTE!

Andrew Shipsides <Andrew.Shipsides@vtw.gsi.gov.uk>

Thu 22/11/2018, 15:24

You;
correspondence.mark.drakeford@gov.wales;
LocalTaxationPolicy@gov.wales

Dear [REDACTED]

The logo on the tribunal's notices is hard-coded into the appeal management software which we currently share with the Valuation Tribunal Service (VTS) in England and which is managed by VTS on our behalf. It is not the logo that we use for other materials that we have direct control of. However it is the logo that we continue to use on notices produced by the shared platform. The notices do clearly show in words, in the address information next to the logo, that the notice emanates from the Valuation Tribunal for Wales. The choice of logo does not invalidate the notices in any way. However I do appreciate that the situation is not ideal.

A corporate decision was made in 2010, when the Valuation Tribunal Service for Wales became the Valuation Tribunal for Wales, not to change the logo on the shared system notices. This was done principally on cost grounds. The change would have cost in excess of £10,000 at the time. It was also anticipated at that point that the shared computing arrangement would come to an end in a few years' time, and the situation would resolve itself for zero cost. Unfortunately the period on the shared platform has been longer than anticipated (one factor, but not the only factor, was that the life of the 2010 Rating List was extended by Government by two years).

The situation will come to an end for council tax purposes in March next year, when the sharing arrangement comes to a permanent end. It has already come to an end for rating purposes with regard to the 2017 Rating List.

To answer the specific questions in your email below: I doubt that neither the president of the tribunal nor the clerk who were both present at your initial hearings would have regarded the logo on the notice you photographed as anything but the norm. It would be what they expected to see, and unremarkable for that reason. Both were aware of the corporate decision described above from the time it had been made.

Yours sincerely

Andrew Shipsides

Andrew Shipsides
Prif Weithredwr | Chief Executive | Tribiwnlys Prisio Cymru | Valuation Tribunal Wales
Swyddfa'r Prif Weithredwr | Chief Executive's Office | Swyddfeydd y Llywodraeth | Government
Buildings
Sarn Mynach, Cyffordd Llandudno, LL31 9RZ | Sarn Mynach, Llandudno Junction, LL31 9RZ
03000 625350

Rwy'n dysgu Cymraeg | I'm a Welsh learner

Agenda Item 10.2

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



Llywodraeth Cymru
Welsh Government

Mick Antoniw
Chair
Constitutional and Legislative Affairs Committee
Ty Hywel
Cardiff Bay
CF99 1NA

8

January 2019

Dear Mick

Thank you for your letter of 18 December 2018, regarding The Carcase Classification and Price Reporting (Wales) Regulations 2018.

The Welsh Government is satisfied that Regulation 29 is framed clearly.

Undertaking classification of a bovine carcase by means of automatic grading equipment in the absence, or in breach of the terms, of a licence granted under regulation 9 will be a criminal offence as set out in regulation 29(2). Undertaking classification of a bovine carcase other than by means of automatic grading equipment in the absence, or in breach of the terms, of a licence granted under regulation 8 will be a criminal offence as set out in regulation 29(1).

The structure of regulation 29 reflects the structure of the predecessor regulations which applied in relation to Wales (see regulation 28 of the Beef and Pig Carcase Classification (Wales) Regulations 2011 (S.I. 2011/1826)) and the structure of the provisions which apply currently in England (see regulation 30 of S.I. 2018/1164), which will apply in Northern Ireland from 10 January 2019 (see regulation 26 of S.I. 2018/216) and which extend to Scotland (see regulation 22 of S.I. 2010/330) save that the regulations in Scotland refer to 'automatic grading methods' and not equipment.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

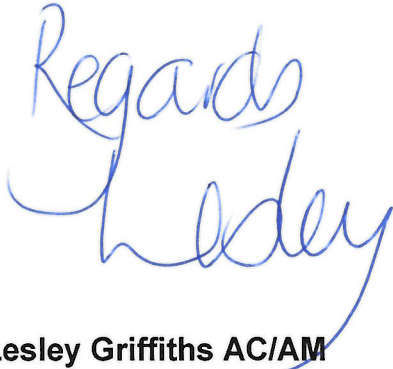
Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

Pack Page 566

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

In respect of the formatting errors in the Welsh language version of the Regulations published on legislation.gov.uk, the Welsh Government is able to confirm that officials have contacted the National Archives to request that the formatting errors which appeared in the Regulations upon publication are corrected to reflect the formatting of the Regulations, as made.



Lesley Griffiths AC/AM

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

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

18 December 2018

Dear Lesley

The Carcase Classification and Price Reporting (Wales) Regulations 2018

The Constitutional and Legislative Affairs Committee considered the Carcase Classification and Price Reporting (Wales) Regulations 2018 (the Regulations) at its meeting on 10 December 2018.

We raised a technical reporting point under Standing Order 21.2(vi) in respect of the Regulations. The reporting point raised the question of whether regulation 29(1) of the Regulations should refer to “visual classification” as opposed to just “classification”. You responded by saying it is “clear that the offence in 29(1) relates to visual classification only and not all classifications”.

As we noted in our reporting point, regulation 29 creates criminal offences and absolute clarity is required. Therefore, it would help this Committee if you could explain why it was necessary to make express reference to “by means of automated grading equipment” in regulation 29(2) but it was not necessary to make express reference to “visual classification” in regulation 29(1).

Since we **reported**, we have also become aware of a significant formatting error in the Welsh version of the Regulations published on www.legislation.gov.uk. In the published versions, regulation 13 of the English text is split into two paragraphs, but the Welsh is not. We accept that both the English and the Welsh versions of the Regulations as signed by you are correct, but you may wish to draw the error to the attention of the National Archives.



I would be grateful for a response by 8 January 2019.

Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw'. The signature is fluid and cursive, with a horizontal line underneath the name.

Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.





Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA - L/VG/0709/18

Stephen Hammond MP
Minister of State for Health
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

9 January 2019

Dear Stephen,

HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

I am writing in response to Lord O'Shaughnessy's correspondence of 19 December in relation to the Healthcare (International Arrangements) Bill.

This letter seemed to misconstrue my current position with regard to recommending consent to the Bill. We are not at that stage yet and none of my previous letters or telephone conversations indicated this, nor has any such indication been given at official level.

In my letter of 4 December I stated that I would be content to recommend consent on the basis that the Bill is amended to include a duty to consult the Welsh Ministers where regulations under Clause 2 relate to devolved matters and that the memorandum provides satisfactory assurance on the process and nature of consultation.

I am pleased to note in the letter the UK Government's willingness to amend the Bill. With regard to the memorandum, this has not progressed at the pace I expected. At present my officials are awaiting a response on this from your officials.

The letter refers to the MoU between the UK and the Devolved Administrations concerning international agreements. I see no reason why the on-going discussion in that context should prevent the preparation of the MoU in relation to this Bill. That certainly has not been the case with other parts of UK Government, the MoU in relation to the Agriculture Bill is a specific example.

Once I have seen the terms of the MOU as proposed in my letter and the commitment to amending the Bill, I hope that will enable me to be able to recommend consent.

Lord O'Shaughnessy's letter also raised ongoing issues concerning funding. Whilst I note and welcome the commitment to no additional financial burdens being placed on Devolved Administrations in relation to UK schemes, I have concerns about the expectation that Devolved Administrations will be expected to bear the costs of healthcare provision

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

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

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

provided to foreign nationals. This relates directly to my previous point about Welsh Government being consulted on and involved in the negotiation of the healthcare agreements and not just at the point of the regulations that implement them. It is unrealistic to expect that the Welsh NHS will bear the cost of healthcare provision resulting from a healthcare agreement that the Welsh Ministers have not been involved in and do not agree with. The MOU needs to set out a clear process for avoiding this situation.

I am copying this letter to the First Minister of Wales, the Secretary of State for Wales and the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. I am also copying it to the Scottish Government's Cabinet Secretary for Health and Sport and Cabinet Secretary for Government Business and Constitutional Relations, and to the Permanent Secretary at the Department of Health in Northern Ireland and Head of the Northern Ireland Civil Service.

Yours sincerely,

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

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/CG/0009/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

09 January 2019

Dear Mick,

LEGISLATION (WALES) BILL

Thank you for your letter of 11 December asking for information on the matters which we did not reach during the Committee's scrutiny session on the Bill. I have responded to these in Annex A attached.

During my evidence session I outlined the opportunity the Bill may present to make provision about the interpretation of bilingual legislation. Further information on my initial thinking on these points is set out in Annex B.

Finally, having now had the opportunity to review the transcript from my evidence session I wanted to ensure the record was clear on a couple of matters:

- a. I was asked if the Government intended to consult on programmes prepared under section 2 of the Bill, and I was happy to confirm the intention is that the Government will consult. I want to make clear that the consultation will take place within the period of six months from the appointment of the First Minister after a new Assembly is elected. The length of the consultation will depend on the time available, but will need to be sufficient to enable users of legislation to comment on the proposals.
- b. In asking a question on costings for the Bill, I note you indicated that the estimated budget was £0.5m. For the avoidance of doubt, the estimated cost of Part 1 is £0.58m per year or £2.9m per Assembly term, as set out in the Regulatory Impact Assessment to the Bill.
- c. Further, I explained that I anticipated having resources in place at the "beginning of next year" to start to deal with consolidation before the statutory duty is in place. I should have said the beginning of the next financial year.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YPCCGB@llyw.cymru / PSCGBM@gov.wales

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

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy'.

Jeremy Miles AM

Y Darpar Gwnsler Cyffredinol a'r Gweinidog Brexit
Counsel General Designate and Brexit Minister

Annex A – response to questions raised by the Committee

1. Are you content with the balance of powers, in terms of the detail on the face of the Bill and what is left to regulations and the programme under Part 1?

I am content that the Bill strikes the right balance between what is set out on its face and what is left to regulations and the programme.

The Bill contains only four powers for the Welsh Ministers to make subordinate legislation. In Parts 1 and 2, the duties of the Counsel General and the Welsh Ministers, and the interpretation provisions for future Welsh legislation, are set out in full on the face of the provisions.

Three of the powers to make subordinate legislation in the Bill provide the mechanics for ensuring that the Bill works properly in the future. These are the powers to amend Schedule 1 to keep it up-to-date (section 4), to make consequential etc. provision in connection with the Bill (section 40), and to bring Part 2 fully into force by order (section 42).

In Part 3, section 36 confers the power to amend legislation to spell out dates and times. This power could be used to amend not only existing legislation but also future legislation. It would therefore be impossible to set out all of the relevant amendments on the face of the Bill.

The programmes prepared under section 2 will set out the detailed steps that the Welsh Government intends to take in each Assembly term to improve accessibility. That is entirely appropriate because the duty will be ongoing. It would be impossible for the Bill to specify all of the detailed steps that should be taken to improve accessibility in all future Assembly terms.

2. Many pieces of legislation seem to be in force, but when you dig a little deeper, they are often only in force for some purposes. This is a potential serious trap for the unwary. How would Part 1 of the Bill address this lack of transparency of legislation?

The Government agrees that it is important that users of legislation should be able to find out easily which legislation is in force and for which purposes.

Clear information about commencement should be made available with the published legislation, and in fact legislation.gov.uk does provide detailed information identifying provisions which are not yet in force or which come into force in stages. The status of a provision which is not yet in force for any purpose is identified as “prospective”. Where the coming into force of any other provision is not straightforward, information is provided in notes to the provision. The notes will usually state whether the provision is wholly or partly in force, give the date or dates on which it came into force, and identify the relevant commencement provisions or orders.

The information which is provided on legislation.gov.uk deals with commencement issues as fully as possible, and there would be little point in the Government duplicating those efforts. However, there are other steps that the Government might take to reduce the amount of legislation that is not fully in force.

Where the Welsh Ministers have powers to bring provisions of Assembly Acts into force, they have a responsibility for bringing the provisions into force in a timely and orderly way, so that the volume of legislation which is not in force or is only partly in force is kept to a minimum. The activities that are included in a programme under Part 1 of the Bill might also include other steps to reduce the number of provisions that are redundant or not in force, for

example by taking the opportunity to bring those provisions into force or remove them from the statute book at the same time as consolidating the law.

3. Section 4(1) of the Bill says that the Part 2 rules will apply unless “*express provision is made to the contrary*”. Section 4(1) does not say where that expression provision may be made, therefore where do you expect such expression provision to the contrary to be set out? (Compare this to section 26 which clearly says that any express provision to the contrary must be in the relevant Assembly Act or Welsh subordinate instrument.)

Section 3(3) of the Draft Legislation (Wales) Bill, which corresponded to section 4(1) of the Bill that has been introduced, referred to cases where the Assembly Act or Welsh subordinate instrument itself provided that any of the presumptions in Part 2 should not apply to it. On further consideration, we decided that the approach in the Draft Bill was too narrow in two respects.

First, there may be a provision in the Act or instrument which is clearly inconsistent with one of the presumptions in Part 2 of the Bill (for example a definition that is different from one in Schedule 1 to the Bill), but which does not state that the relevant presumption does not apply. The intention is that the inconsistent provision in the Act or instrument should prevail, whether or not it states that the relevant presumption is excluded. The reference in section 4(1)(a) of the Bill to “express provision ... to the contrary” is intended to cover both of these situations.

Secondly, the provision to the contrary might be contained either in the Assembly Act or Welsh subordinate instrument in question, or in another piece of legislation. For example, the Act under which a Welsh subordinate instrument is made might provide that subordinate legislation made under that Act is to operate in a different way from that set out in Part 2 of the Bill. Or another piece of legislation may make a change to the law which modifies a presumption in Part 2 generally or for certain purposes. Section 4(1) of the Bill therefore refers in general terms to whether “*provision is made*” to the contrary.

As noted in paragraph 85 of the consultation document accompanying the Draft Bill, this provision is not strictly necessary where the provision to the contrary is contained in another Act. However, section 4(1) mentions all of the ways in which a presumption in Part 2 could be displaced in order to make the position clear.

4. Schedule 1 to the Bill includes a long list of defined terms, such as “county court”, “land” and “person”. Whenever an Assembly Act that is passed after 1 January 2020 uses any of those defined terms, the meaning in Schedule 1 will, by default, apply to those terms (unless the Assembly Act says otherwise). Would it not be more transparent and accessible if all definitions were included on the face of each Assembly Act?

We considered carefully which general definitions to include in Schedule 1 to the Bill, and retained only those that were likely to be relevant and helpful in Welsh legislation. As a result, Schedule 1 to the Bill defines significantly fewer terms than Schedule 1 to the Interpretation Act 1978 (60 terms in the Bill, compared with over 90 in the 1978 Act following amendments made by the European Union (Withdrawal) Act 2018). In our view these definitions will promote several of the aims of Part 2 (see paragraphs 44 and 45 of the Explanatory Memorandum).

First, they will remove doubt about whether certain terms need to be defined, which will help to shorten Welsh legislation and improve consistency in its drafting. Where there is doubt about whether legislation can refer to a public body or concept without defining it, drafters of

different Acts and instruments may take different approaches. (For this reason, it is not necessarily the case that individual Acts and instruments would always include definitions of a term if it were not defined in Schedule 1 to the Bill.) For terms of this kind, having the definition in Schedule 1 avoids the question by dealing with the issue once and for all.

Secondly, the definitions in Schedule 1 will also remove doubt for certain readers of legislation while generally operating 'in the background'. Many of the definitions in Schedule 1 are intended to resolve minor or detailed questions of interpretation that would be unlikely to occur to the average reader. For example, most readers would not be troubled about the precise meaning of "*county court*" or "*Lord Chancellor*" but including definitions of those terms forestalls any arguments that might conceivably arise.

Thirdly, there are definitions in Schedule 1 that may be more significant, at least in some cases, such as "*land*" and "*person*". However, these terms are already defined in Schedule 1 to the 1978 Act. We have included them in Schedule 1 to the Bill, and kept changes to the minimum, in order to ensure continuity and consistency between the two Acts while also providing bilingual definitions of the terms for Welsh legislation. As with the other definitions, their inclusion in Schedule 1 will also help to shorten legislation and enable its drafting to be more consistent.

5. The Welsh Ministers have some powers to make subordinate legislation in reserved areas. For example, the Welsh Government recently made directions that required Local Health Boards in Wales to provide abortion services to women from Northern Ireland free of charge. Abortion is a reserved matter for the Assembly. If the Welsh Ministers make a Welsh subordinate instrument in a reserved area, how will Part 2 of the Bill affect the interpretation of that Welsh subordinate instrument?

Part 2 of the Bill will apply to a Welsh subordinate instrument made by the Welsh Ministers in a reserved area in the same way that it applies to an instrument they make in a devolved area.

The definition of "*Welsh subordinate instrument*" in section 3(2) of the Bill reflects the Welsh Government's view of the Assembly's competence to legislate about statutory interpretation. However, the way in which Part 2 of the Bill applies to an individual Welsh subordinate instrument will not be affected by whether the subject-matter of the particular instrument is reserved or devolved. The aims of clarity and simplicity would be undermined if readers of Welsh subordinate instruments were required to apply the tests of legislative competence in the Government of Wales Act 2006 in order to work out how Part 2 of the Bill applied to them.

Part 2 of the Bill will not apply to Acts of the UK Parliament, whether their subject matter is devolved or reserved. Nor will it apply retrospectively to existing Acts or Measures of the Assembly, for the reasons set out in paragraph 69 of the Explanatory Memorandum. Part 2 will therefore apply to Welsh subordinate instruments even in cases where it does not apply to the primary legislation under which they are made, as explained in paragraphs 26 to 40 of the Explanatory Notes. That approach is intended to ensure that Part 2 applies to as much of the subordinate legislation that is made bilingually in Wales as possible.

We do not expect any difficulties to be caused by the fact that Part 2 of the Bill will apply to a Welsh subordinate instrument even though the Interpretation Act 1978 may continue to apply to the primary legislation under which it was made. It is already the case that the application of the 1978 Act to subordinate legislation is independent of its application to the Act under which the subordinate legislation is made (see section 23 of the 1978 Act). So there is nothing novel in the fact that Part 2 of the Bill will apply to a Welsh subordinate

instrument in its own right rather than by virtue of the instrument being made under an Act to which Part 2 applies.

The fact that Part 2 of the Bill applies to a Welsh subordinate instrument will not change the meaning of the primary legislation under which it is made, nor will it affect the scope of any powers conferred by the primary legislation. Part 2 simply creates presumptions about how the Welsh Ministers (or other devolved Welsh authority) intend the instrument to operate. Section 4 makes clear that those presumptions are subject to the provisions of the Welsh subordinate instrument itself and any other provisions to the contrary. This means there will not be any conflict between Part 2 of the Bill and the parent Act or Measure, because the presumptions in Part 2 will always give way wherever it is clear that something different is intended.

6. Section 19 says that a power to give directions also includes a power to vary and withdraw the directions. Why is there not a similar provision for varying and withdrawing guidance?

Section 19 deals specifically with powers to give directions because it is common for Acts which confer powers to give directions to state that the directions may be varied (or amended) and withdrawn (or revoked). Making general provision to this effect in section 19 removes doubt and avoids the need to make separate provision about the issue in every Assembly Act.

A direction will usually impose a requirement on a person to take or avoid certain steps, or will produce some other legal effect such as an exemption from a statutory requirement or entitlement. The variation or withdrawal of a direction may therefore have considerable legal significance for the persons affected by the direction, and questions may arise about whether a power to vary or withdraw it is intended. Although such a power might be implied in many cases, it will often be desirable to ensure that there is no doubt about that.

Section 19 does not deal with guidance because guidance is usually different in nature from directions. The variation or withdrawal of guidance will not generally give rise to the same questions because guidance does not usually have such significant legal effects for the persons to whom it is addressed. It is therefore much less common for statutory provisions about guidance to say anything about whether the guidance can be revised or withdrawn.

7. What practical arrangements will Crown bodies have to make as a result of section 26 of the Bill?

Crown bodies will not be required to take any practical steps as a result of section 26. The section does not have any immediate effect on Crown bodies, but simply creates a presumption that future Assembly Acts and Welsh subordinate instruments will bind the Crown. It will be those Acts and instruments that change the substantive law. If they impose new duties that affect the Crown, Crown bodies may need to make arrangements at that time.

It is also important to remember that, although the presumption will be that Welsh legislation should bind the Crown, there may be cases where it is not appropriate for it to do so. In those cases it will still be possible for an Act or instrument to provide that it does not bind the Crown.

8. Is it correct to say that the Counsel General could not be convicted of a criminal offence by virtue of legislation binding the Crown but Welsh Government officials could?

This is not correct. Where a piece of Welsh legislation creates a criminal offence and does not modify or disapply section 26 of the Bill, everyone “*in the service of the Crown*” will be open to criminal liability, including both civil servants and members of the Government.

There have been clear judicial statements that Ministers of the Crown are “*persons in the service of the Crown*” (see *Bank voor Handel en Scheepvaart NV v. Administrator of Hungarian Property* [1954] AC 584). Members of the Welsh Government would be in the same position, because section 57(2) of the Government of Wales Act 2006 provides that the functions of the Welsh Ministers, First Minister and Counsel General are exercised on behalf of Her Majesty.

Section 26(3) of the Bill reflects the constitutional principle that the Sovereign has personal immunity from prosecution for criminal offences, even where legislation binds the Crown. Setting out the position in section 26(3) removes the need to say this in every Act or instrument.

9. Section 38 of the Bill sets out the rules that would apply when combining two pieces of subordinate legislation that are subject to different Assembly procedures. For example, if Regulations A are subject to affirmative procedure, and Regulations B are subject to negative procedure, section 38 allows Regulations A and B to be made in a single instrument, subject to the stricter of the two procedures (i.e. subject to affirmative procedure). What if Regulations A were subject to the negative procedure and required consultation, and Regulations B were subject to affirmative procedure and did not require consultation. What procedure would apply?

Section 38 deals only with differences in the Assembly procedures that would otherwise apply to different types of subordinate legislation; it does not affect any requirements for the Welsh Ministers to undertake consultation before making subordinate legislation. The reason for this is that the application of multiple Assembly procedures can give rise to greater difficulties and uncertainties where Ministers wish to combine provisions in a single statutory instrument.

In the example given by the Committee, Regulations A will be subject to negative Assembly procedure and Regulations B will be subject to affirmative Assembly procedure. If they are combined in a single statutory instrument, section 38(1) of the Bill will mean that the combined instrument is subject only to affirmative procedure.

Before making the combined instrument, the Welsh Ministers will be required to consult on the proposal to make Regulations A. Section 38(1) will neither remove that requirement in relation to Regulations A, nor extend it so that it applies in relation to Regulations B. There is no need for it to do so. The fact that the Welsh Ministers are not required to consult anyone before making Regulations B does not conflict with their duty to consult before making Regulations A, and does not prevent them making Regulations B in the same instrument as Regulations A.

In practice, there might be cases where a statutory instrument was drafted in a way that made it difficult to distinguish the provisions made under power A from those made under power B. So if the Welsh Ministers were to consult by publishing a draft of the instrument, it might not be practicable to consult on a draft containing Regulations A alone. A single consultation on all of the provisions might make most sense, for both the Welsh Government and consultees. But that would not be because section 38(1) had changed the legal effect of the consultation duty.

The Welsh Ministers might well wish to consult before making the regulations in any event. In many cases there is no statutory duty to consult on proposals to make subordinate

legislation, but consultation is nevertheless carried out in order to obtain input from stakeholders with a view to improving policy development.

10. Given that Part 2 of the Bill will not apply to subordinate legislation made by the Welsh Ministers and UK Ministers on a composite basis, will we see fewer composite statutory instruments being laid before the Assembly in future?

The fact that Part 2 of the Bill will not apply to composite instruments will not necessarily mean that fewer composite instruments are made in future, because other considerations may affect that decision.

The Government considers carefully whether it would be appropriate to join with UK Ministers in making a joint or composite instrument in each case where the question arises. In making that decision, a number of factors will be taken into account, including:

- whether the Welsh Ministers are required by law to make a joint or composite instrument;
- whether the Welsh Ministers acting alone will be able to make all of provision that is required to implement the policy, considering the way powers have been devolved;
- which approach would be most convenient for the reader, for example where the requirements for the relevant industry are the same in each part of the UK;
- how best to ensure consistency in approach and timing where there are significant cross-border operational overlaps.

One of the disadvantages of making a joint or composite instrument is that it involves making legislation in English only, and in future this disadvantage will be compounded by the fact that the legislation will be subject to a slightly different set of interpretation rules which also exist in English only.

However, as at present, these disadvantages will have to be weighed against the comparative ease of having all the relevant provisions across territorial boundaries in a single instrument; and there will continue to be cases where the extent of devolved powers means that a stand-alone instrument for Wales is not a realistic option.

Annex B – interpreting bilingual legislation

1. The overall purpose of the Legislation (Wales) Bill is to make Welsh law more accessible, clear and straightforward to use. But a supplementary and complementary purpose is to facilitate more bilingual legislation and give greater effect to the equal status of our two languages in law.
2. Section 156(1) of the Government of Wales Act 2006 (GoWA 2006) makes clear that the English language and Welsh language versions of legislation passed by the National Assembly for Wales or made by the Welsh Ministers are equal. In other words one doesn't take precedence over the other, and any difference in meaning between the two texts cannot be reconciled by reference to one of the languages being more likely to be a proper reflection of the intended purpose of the legislator.
3. This is a widely known provision and there has been much focus, both within and outside the Welsh Government, on the need to ensure that the languages always have equivalent meaning. Much thought has been given within the Welsh Government in particular to the skills and processes we need, when promoting legislation, to ensure that the languages don't differ in legal meaning. It is also, of course, an issue scrutinised by the Constitutional and Legislative Affairs Committee.
4. The impression I am forming, however, is that less thought has been given to the implications of this after legislation has taken effect. Although the meaning of section 156(1) is relatively well understood in the abstract, the practical effect, in particular on the courts and on practitioners, may not be. If there is any doubt about the meaning of Welsh legislation you need to consider both languages – not just one – and some may be under the misapprehension that you can work with one language only.
5. The implications of the equal status of the English and Welsh languages have been considered in some detail by the Law Commission. Chapter 12 of its consultation paper, written personally by Lord Lloyd Jones, analyses the meaning and practical implications of section 156(1) of GoWA 2006 and considers how discrepancies between languages are dealt with in other jurisdictions. It is probably the first thorough analysis of the issue from a Welsh perspective.
6. The paper considers what is done elsewhere and whether anything similar should be adopted in Wales. Of most relevance is the Commission's assessment of custom and practice in Canada, and of a legislative provision on interpreting bilingual legislation in Hong Kong.
7. The Commission, rightly in my view, concludes that use of a "shared meaning rule" – under which any discrepancy between two languages is resolved by adopting an interpretation that is common to each language – is not helpful. Although intended to be a guide rather than a rule, this has the potential to lead the courts towards a narrow interpretation whenever there is inconsistency. A broader interpretation which could be construed from one but not the other of the languages may, however, have been the legislature's intention.
8. Statutory provisions contained in Hong Kong's Interpretation and General Clauses Ordinance go further than the corresponding provision in section 156(1) of GOWA. Section 10B begins by making a statement similar to that contained in section 156(1) by providing that the English language and Chinese language text of legislation is equally authentic. However, it goes on to also say, firstly, that both texts are presumed to have the same meaning (and guidance on this provides that this means the two texts are "but two expressions of the same intent and together constitute one law embodying a single

meaning”), and secondly, where there is a difference in meaning, the meaning which “best reconciles the texts, having regard to the object and purposes of the [legislation], shall be adopted”.

9. This last provision is of particular interest to us. This is because it makes clear that only a parallel reading of the two versions can reveal whether they are susceptible to different interpretations, and neither one of the versions should be preferred without considering the other. Although this may, to some at least, be self-evident, section 156(1) of GoWA 2006 does not contain an express obligation to consult and compare both texts, and as indicated above we are concerned that this is not fully understood.
10. The Law Commission for their part eventually concluded that this was an issue best left to the courts, determining that judges should not be fettered in their application of the ordinary rules of construction. This is something with which we agree in principle but wonder whether there is scope for retaining this discretion while at the same time clarifying certain fundamentals such as the need to understand both texts not merely one.
11. Guidance issued on the Hong Kong legislation suggests that this is what they consider their position to be. It is contended that the process of reconciliation of any differences in meaning must, ultimately, correspond with the legal meaning intended by the legislature. They conclude, on that basis, that a meaning shared “by both versions if one text is ambiguous and the other is plain and unequivocal, or if one text has a broader meaning than the other...may not be decisive.” The guidance goes on to say that the “process of reconciliation does not stop at extracting the highest common meaning in both texts, which may possibly be repugnant to the spirit of the legislation as a whole. It must still be related back to and tested against the backdrop of the overall objective of the legislation in question.” Perhaps for this reason, therefore, the view expressed is that section 10B “provides only broad guidelines for bilingual interpretation... Statutory interpretation is after all the province of the judiciary under the common law.”
12. Based on this, my thinking at present is that we should restate section 156(1) so that it can be found in our legislation on the interpretation of legislation, rather than in what is essentially our constitutional document. This would in turn facilitate the production of guidance, possibly in the explanatory note to the restated section 156(1), which would clarify the issues highlighted above. The aim would be to guide the courts and other users of legislation rather than attempting to be prescriptive. Going further than this, therefore, by legislating in a manner similar to Hong Kong, is in my view probably unnecessary.
13. I would be very grateful for any views you have on the best means of tackling this issue or indeed about whether you agree this is an issue that we should seek to address.

Agenda Item 10.5

Paul Davies AM/AC

Aelod Y Ceidwadwyr Cymreig dros Preseli Penfro
Conservative Member for Preseli Pembrokeshire

Dai Lloyd AM

Chair, Health, Social Care and Sport Committee

Mick Antoniw AM

Chair, Constitutional and Legislative Affairs Committee

Llyr Gruffydd AM

Chair, Finance Committee

10 January 2019

Dear Chairs,

Autism (Wales) Bill

I would like to thank you and members of your committees for your detailed consideration of the Autism (Wales) Bill and your reports published on 7 December 2018. After careful consideration, I would like to take this opportunity to respond to the recommendations made in each report ahead of the Plenary debate on the general principles of the Bill on 16 January.

Health, Social Care and Sport Committee

Recommendation 8. We recommend that, if the Bill proceeds to Stage 2, an amendment should be brought forward to ensure that Judicial Review is not the only route available for individuals to assert their rights.

I accept the principle behind this recommendation, but having given careful consideration to the relevant issues, it is with much regret that I am unable to implement it at this time.

The overall purpose of this Bill is to ensure the needs of children and adults with Autism Spectrum Disorder (ASD) in Wales are met, and to protect and promote their rights. It would be of great concern to me therefore should those whom this Bill seeks to help are unable to seek appropriate remedies if their needs are not

Cardiff Bay, Cardiff, CF99 1NA - Bae Caerdydd, Caerdydd, CF99 1NA

Paul Davies AM
Tel: 0300 00 7216

paul.davies@assembly.wales / www.pauldaviesam.co.uk

met. The Bill currently sets out clear duties on the Welsh Ministers and relevant bodies that enables those wishing to seek redress to do so through judicial review; however I acknowledge concerns that this is not always an easy process to navigate.

In evidence, my officials and I commented on the distinction between enforcement on the part of the Executive, and direct remedies available to the citizen. Whilst the former can be addressed in a number of ways (for example powers of direction and intervention), the options to address the latter in this type of legislation are far more limited. Financial remedies would not be appropriate in this case, and I would not want to legislate for remedies that the citizen already has the right to access (such as complaints via the existing NHS and local authority procedures, and reference to the Public Services Ombudsman). However, like the Committee, I am supportive of the aim of further enhancing the rights of the citizen to access suitable remedies where practical and, as such, have given much consideration during the development of the Bill as to how it might be amended in order to achieve this aim.

Unfortunately however, for the reasons I have outlined, I have been unable to identify a workable solution and am therefore unable to accept this recommendation at this time. That said, I remain fully supportive of the Committee's rationale in making this recommendation, and can assure Members that, should the general principles be agreed, I would be happy to work with Members, or to consider any amendments tabled during the amending periods, with the aim of strengthening the Bill in this respect.

The remaining recommendations made by the Health, Social Care and Sport Committee relate to the Welsh Government. I share the concerns raised by the Committee in its report and fully agree with the Committee that urgent improvements to ASD support services are needed.

Finance Committee

Recommendation 2. The Committee notes the miscalculation in the Regulatory Impact Assessment and recommends this is addressed, should the Bill proceed to stage 2.

Accept.

I wrote to the Finance Committee on 31 October 2018 outlining a miscalculation in the Regulatory Impact Assessment regarding the potential savings that could be made should the Bill result in a 1% reduction in ASD spend. Should the general principles of the Bill be agreed, I can confirm that the revised RIA, which will be produced following the completion of Stage 2 proceedings, will reflect the updated figure.

I share the frustration expressed by the Finance Committee around the Welsh Government's lack of co-operation with me as I sought to obtain accurate data on the current spend on ASD services across Wales. One would expect Welsh Government to collect such data so as to ensure the proper planning and delivery of its own ASD services, and I can say unequivocally that it would have enabled me to provide even greater detail around the costings for the Bill. I wholeheartedly endorse the Committee's recommendation 1 that the Welsh Government should commit to providing information to assist Members in producing accurate costs for explanatory memoranda tabled to accompany Bills introduced in accordance with Standing Order 26.91.

Constitutional and Legislative Affairs Committee

Recommendation 1. The Member in charge should table an amendment to the Bill to require that the autism strategy under section 1 of the Bill is subject to the negative procedure.

Accept.

I accept this recommendation and, should the Bill proceed to Stage 2, commit to tabling an amendment to this effect to ensure that this level of Assembly scrutiny is afforded to the strategy.

Recommendation 2. The Member in charge should discuss with the Cabinet Secretary a suitable timeframe for completion of the autism strategy and table an amendment to section 1(4) of the Bill to increase the 6 month deadline in line with those discussions.

Accept.

I am aware that the Cabinet Secretary for Health and Social Services has expressed concern around the timescale specified in the Bill for completion of the autism strategy. I am content to reconsider the timeframe and commit to working with the

Welsh Government to agree a suitable timescale and to table an amendment to the Bill to that effect.

Recommendation 3. The Member in charge should re-consider whether the remedies available to citizens under the Bill are appropriate, and if necessary, table amendments at Stage 2 to provide a more effective way of enforcing the Bill's provisions.

Accept.

This is similar to recommendation 8 made by the Health, Social Care and Sport Committee. As stated in my above response to that recommendation, I am supportive of enhancing citizen's rights under the Bill where possible, and have carefully considered all practical options to achieve the aim of strengthening the remedies available to them. Unfortunately, as I have explained, I have been unable to identify a meaningful way of amending the Bill in this respect.

However, I re-iterate my commitment to ensuring that the Bill does provide for remedial rights where practical and, as I have stated above, am happy to work with Members and other experts, or to consider any amendments tabled during the amending periods, with the aim of strengthening available remedies under the Bill.

Recommendation 4. The Member in charge should table an amendment to the Bill setting out the data that must be collected by local authorities, with the addition of a power for the Welsh Ministers to prescribe in regulations, subject to the affirmative procedure, other categories of data (in effect replicating the provision in section 6(6)(j)).

Accept.

Section 6 of the Bill sets out the specific data to be collected by NHS bodies to assist in the diagnosis and service provision for people with ASD. The specified categories of data are judged to meet the minimum requirements for satisfying the functions of diagnosis, service planning and development. This provision was informed in large part by consultation with Dr Dawn Wimpory, who manages a trial on ASD data collection for Betsi Cadwaladr UHB, and who is herself a clinical practitioner. It was further underpinned by the public consultation on this aspect of the Bill.

I acknowledge that, whilst local authorities are specified as one of the relevant bodies to whom parts of section 6 would apply, this is solely in relation to their general obligations to assist the Welsh Ministers to discharge their own data collection duties under section 6(1). The Welsh Ministers' duties are to obtain, produce and keep updated reliable data to support their functions under the Bill – and it is open to them to decide what data they must collect to achieve this. Whilst the specific data obligations placed on NHS bodies in section 6(6) of the Bill were included to address a clearly defined and pressing need, no evidence was received identifying a lacuna in relation to data collection within local authorities generally. Further, the Minister, in his evidence, pointed out that the Welsh Government already has extensive powers to collect data, and did not require further powers or obligations in this regard.

The Committee may be interested to note that the forthcoming Welsh Community Care Information System (WCCIS), which I referred to in the Explanatory Memorandum, will better enable health and social care professionals to record and share important information covering a range of activities such as community nursing, health and social care visits, mental health, learning disabilities, substance misuse, complex care needs or social care therapy.

Taking all this into consideration, I am happy to seek expert advice on the types of data that local authorities might usefully collect to assist in diagnosis and service provision, and, if appropriate, table amendments accordingly.

Recommendation 5. The Member in charge should table an amendment to section 9(1) of the Bill to remove paragraph (b) of the definition of autism spectrum disorder.

Accept.

The primary focus of the Bill is on the improvement of ASD services in Wales. However, as currently drafted, section 9(1) permits the Welsh Ministers to prescribe other neurodevelopmental disorders by regulations. This means that if future Welsh Ministers believe the provisions of this Bill should be applied to people with other neurodevelopmental disorders, they would have the power to do so.

This provision was included in the Bill as feedback from the consultation exercises I ran strongly supported the use of the WHO definition of ASD and the inclusion of

a power to specify other neurodevelopmental disorders. The rationale for including this provision was to enable the benefits of legislating for ASD to be extended to those with other conditions, however the Bill is first and foremost about the improvement of ASD services in Wales, and this is its primary focus.

I have carefully considered the rationale behind the Committee's recommendation and conclude that I am content to table the amendment necessary to implement this recommendation.

Regardless of a provision to extend the scope of this Bill to include other conditions, I believe that passing and implementing my Bill will benefit those with a wider range of conditions.

The Bill will result in the upskilling of staff who work not just with people with ASD, but people with other conditions too. The diagnostic process for autism includes consideration of related or co-occurring conditions (e.g. ADHD), necessitating skills in identifying and differentiating these other conditions. Provision in the Bill for earlier diagnosis will ensure that people receive the right help sooner, whether they have autism or another condition. In addition, improving service standards and data collection, and encouraging research and innovation, can help promote best practice across services and ensure appropriate diagnosis levels measured against relevant prevalence data.

Recommendation 6. The Member in charge should table an amendment to the Bill to enable the data collection requirements for new relevant bodies prescribed under section 9(1) to be set out in regulations subject to the affirmative procedure.

Accept.

This ties in with my response to the Committee's recommendation 4. I accept that, should it be necessary to extend the data collection requirements to include an additional body or organisation, the regulations should set out the data collection requirements on that body where expert evidence indicates this is necessary. If the general principles of the Bill be agreed, I will commit to tabling an amendment to the Bill to that effect.

I am grateful to each committee for the time you have taken to consider the Autism (Wales) Bill and your detailed reports. The aim of this Bill has always been to improve services to meet the needs of people with ASD and their families across

Wales, and I firmly believe that the measures in this Bill provide the most effective means of achieving the improvements needed.

Yours sincerely,

A handwritten signature in blue ink that reads "Paul Davies". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

Paul Davies AM
Preseli Pembrokeshire
Leader of the Welsh Conservative Assembly Group

Ein cyf/Our ref MA - L/LG/0758/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

26 November 2018

Dear Mick

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of The Marine Environment (Amendment) (EU Exit) Regulations 2018, as required by Standing Order 30A.

I am writing to inform you that I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis that our interest in this SI is restricted to operability amendments that will arise as a result of the UK leaving the EU.

The SI provision covers operability amendments in relation to the Marine and Coastal Access Act 2009, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.

Regards



Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Marine Environment (Amendment) (EU Exit) Regulations 2018**

DATE **26 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Marine Environment (Amendment) (EU Exit) Regulations 2018

The law which is being amended

- Commission Decision 2017/848
- The Marine Strategy Framework Directive 2008/56

Domestic legislation

- The Marine and Coastal Access Act 2009
- The Marine Strategy Regulations 2010

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The National Assembly for Wales and Welsh Ministers have some legislative and executive competence in relation to the marine environment.

Functions within Commission Decision (EU) 2017/848 have been transferred so that they are exercisable by the Secretary of State alone, but with the consent of the Welsh Ministers, First Minister or Counsel General in specified circumstances.

Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The purpose of the amendments

The Marine Environment (Amendment) (EU Exit) Regulations 2018 ensure that the current legislation continues to operate effectively after we leave the EU. The changes include the replacement of references to "Member States" with references to the UK or to an

appropriate UK body, the replacement of references to “Community legislation” or “EU law” with references to “retained EU law”, and the replacement of requirements to notify or report to the Commission with requirements to report publicly. The changes also ensure that cross references to the Marine Strategy Framework Directive and other EU legislation will continue to work after exit.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-marine-environment-amendment-eu-exit-regulations-2018>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK’s exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Marine and Coastal Access Act 2009.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Marine Environment (Amendment) (EU Exit) Regulations 2018

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Marine Environment (Amendment) (EU Exit) Regulations 2018 ("2018 Regulations") were laid before the sifting committees in the Houses of Parliament on 20 November 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-marine-environment-amendment-eu-exit-regulations-2018>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also covers operability amendments.
4. In addition, the SI makes amendments to:
 - The Marine and Coastal Access Act 2009 ("2009 Act")

Relevant provision to be made by the SI

5. The amendments made to the 2009 Act by the 2018 Regulations, are to the following provisions:
 - a) Section 60(8) to reflect amendments to Scottish devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018.
 - b) Section 76(2) to ensure operability of the provisions post exit from the European Union.
 - c) Section 123(5) to ensure operability of the provisions post exit from the European Union.
 - d) Section 141 removing the definition of a 'third country vessel.'
 - e) Section 244 providing that EU Member States vessels and vessels from Gibraltar will be treated as 'third country vessels.'
6. The changes identified in paragraph 4.3 (c) to (e) relate to functions that are within the legislative competence of the National Assembly for Wales, which could be the subject of a National Assembly Bill.

7. The National Assembly for Wales possess some legislative competence within the marine environment in relation to Wales, subject to reservations such as shipping, oil and gas. Further, the Welsh Ministers possess executive functions in relation to Wales in accordance with section 58B of the Government of Wales Act 2006 (designation for the purposes of s.2(2) European Communities Act 1972 in those areas where the National Assembly for Wales has legislative competence within the marine environment). The Welsh Ministers further possess various executive functions under a number of enactments in relation to Wales and the Welsh Zone.

Why it is appropriate for the SI to make this provision

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

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

26 November 2018

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Marine Environment (Amendment) (EU Exit) Regulations 2018

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Marine Environment (Amendment) (EU Exit) Regulations 2018 ("2018 Regulations") were laid before the sifting committees in the Houses of Parliament on 20 November 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-marine-environment-amendment-eu-exit-regulations-2018>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also covers operability amendments.
4. In addition, the SI makes amendments to:
 - The Marine and Coastal Access Act 2009 ("2009 Act")

Relevant provision to be made by the SI

5. The amendments made to the 2009 Act by the 2018 Regulations, are to the following provisions:
 - a) Section 60(8) to reflect amendments to Scottish devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018.
 - b) Section 76(2) to ensure operability of the provisions post exit from the European Union.
 - c) Section 123(5) to ensure operability of the provisions post exit from the European Union.
 - d) Section 141 removing the definition of a 'third country vessel.'
 - e) Section 244 providing that EU Member States vessels and vessels from Gibraltar will be treated as 'third country vessels.'
6. The changes identified in paragraph 4.3 (c) to (e) relate to functions that are within the legislative competence of the National Assembly for Wales, which could be the subject of a National Assembly Bill.

7. The National Assembly for Wales possess some legislative competence within the marine environment in relation to Wales, subject to reservations such as shipping, oil and gas. Further, the Welsh Ministers possess executive functions in relation to Wales in accordance with section 58B of the Government of Wales Act 2006 (designation for the purposes of s.2(2) European Communities Act 1972 in those areas where the National Assembly for Wales has legislative competence within the marine environment). The Welsh Ministers further possess various executive functions under a number of enactments in relation to Wales and the Welsh Zone.

Why it is appropriate for the SI to make this provision

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

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

26 November 2018

EXPLANATORY MEMORANDUM TO
THE MARINE ENVIRONMENT (AMENDMENT) (EU EXIT) REGULATIONS 2018
2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Environment, Food & Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument is made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to ensure that UK and EU legislation relating to the marine environment, in particular marine strategy, will continue to be operable after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Marine Strategy Framework Directive (the MSFD) requires the UK to put in place the necessary measures to achieve or maintain good environmental status in the marine environment by 2020.

The Marine Strategy Regulations 2010 were made under section 2(2) of the European Communities Act 1972 and transpose the requirements of the MSFD into UK law.

Commission Decision (EU) 2017/848 sets out the criteria and methodological standards to be used for the purposes of determining good environmental status, and specifications and standardised methods for monitoring and assessment.

The Marine and Coastal Access Act 2009 (the MCAA) established provisions for the management and protection of the marine and environment. The relevant provisions are in Part 3 (Marine Planning) which sets out requirements for a UK Marine Policy Statement and marine plans, Part 4 (Marine Licensing) which sets out the marine licensing regime, Part 5 (Nature Conservation) which sets out a power to create Marine Conservation Zones and a duty to contribute to a UK network of marine sites, and Part 8 (Enforcement) which sets out enforcement powers for enforcing requirements across licensing, nature conservation and fishing.

The Marine Licensing (Exempted Activities) Order 2011 was made in exercise of powers under section 74 of the MCAA and sets out exemptions to otherwise licensable activities.

Why is it being changed?

- 2.3 The changes made by the instrument are necessary to ensure that the current legislation continues to operate effectively after we leave the EU. The changes include the replacement of references to “Member States” with references to the UK or to an appropriate UK body, the replacement of references to “Community legislation” or “EU law” with references to “retained EU law”, and the replacement of requirements to notify or report to the Commission with requirements to report

publicly. The changes also ensure that cross references to the MSFD, and other EU legislation, will continue to work after exit.

What will it now do?

- 2.4 The instrument will ensure that the legislation described above (2.2) will operate effectively in the UK after we leave the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees.

- 3.1 None.

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

As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument varies and is dependent on the application of the legislation that is being amended, as follows:
- The application of regulation 2 varies and is dependent on the application of the provision that is being amended¹.
 - Regulations 3, 5, 6, 7, 8, 9, 10, 11 and 12 apply to the marine strategy area. This area includes territorial seas, including coastal waters as defined by the Water Framework Directive (Directive 2000/60/EC), and offshore waters out to the limits of the UK's renewable energy zone. The marine strategy area also includes areas of the UK's Continental Shelf beyond the renewable energy zone, but for these areas the instrument only applies to the seabed and not the water column above it.
 - Regulation 4 applies wherever the Secretary of State is the licensing authority under Part 4 of the MCAA. The UK marine licensing area covers all UK marine waters apart from Scottish inshore waters, where a separate regime applies. In addition certain activities are licensable wherever carried out if they are carried out by British vessels, vehicles, aircraft, marine structures or floating containers or if the vessels etc have been loaded in the UK. The appropriate licensing authority is defined in section 113 of the MCAA. Licensing in Welsh inshore and offshore² waters, Northern Ireland inshore waters and Scottish offshore waters has been devolved except for the reserved matters specified in section 113. Other than where responsibility has been devolved, the Secretary of State is the licensing authority. The Secretary of State has then delegated licensing (and enforcement) functions to the Marine Management Organisation by means of the Marine Licensing (Delegated Functions) Order 2011.

¹ The Explanatory Notes to the MCAA, Section 323: Extent (paragraphs 830 to 842), comment on the application of the relevant Parts of the MCAA.

² Following the commencement of section 46 of the Wales Act 2017 on 1 April 2018, the Welsh Ministers are the appropriate licensing authority for the Welsh offshore region.

5. European Convention on Human Rights

5.1 Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding Human Rights:

‘In my view the provisions of the Marine Environment (Amendment) (EU Exit) Regulations [2018] are compatible with the Convention rights’.

6. Legislative Context

6.1 The legislative context for this instrument is summarised in paragraph 2.2. A summary of the types of amendment made to the current legislation is set out in paragraph 2.3, with other types of amendments summarised below.

6.2 The amendments made to the MCAA include:

- the amendment of section 60(8) to reflect amendments to devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018
- the removal of section 141(6), which is spent, and the related removal of the definition of “third country vessel” (which would require amendment, as set out below, if retained)
- the amendment of section 244(1) to provide that EU Member State (and Gibraltar) vessels will be treated as “third country vessels” for the purposes of the enforcement of nature conservation legislation under sections 237 and 243 after the UK leaves the EU; there will be no longer be any basis for treating such vessels differently.

6.3 The amendments made to the Marine Strategy Regulations 2010 include:

- the inclusion of a new interpretive provision in new regulation 2(6), so that for the purposes of the Regulations the requirements of the MSFD mean the requirements of the MSFD in so far as they are not reflected in the Regulations or Commission Decision (EU) 2017/848, and as read with the necessary modifications.
- the inclusion of a reference to Commission Decision (EU) 2017/848 in regulation 5(1), to clarify the connection between the Regulations and the Decision (and further the inclusion of new Article 1(2) of the Decision, to clarify that regulation 7(3) of the Regulations applies to the Decision).
- the removal of regulation 17 on Commission notifications and reports; the notification deadlines for regulations 17(1)(a) to (e) have passed and the notifications under regulation 17(1)(g) and (h) are no longer relevant; the notifications under regulation 17(1)(f) will be made as public reports pursuant to the public participation provisions in regulation 18; the notifications to OSPAR under regulation 17(3) will be made pursuant to the public participation provisions in regulation 18, by virtue of regulation 18(8); and the reporting requirements under regulation 17(2) are moved to new regulation 14(13).
- the amendment of regulation 18 consequential to the amendment of Regulation provisions relating to Commission notifications and reports, including regulation 17
- the amendment of regulation 19 (Directions to, and assistance from, public authorities); the Department does not consider that this constitutes the amendment of “a power to legislate” for the purposes of paragraph 1(2)(d) of Part 1 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Marine Strategy Regulations 2010 are made under section 2(2) of the European Communities Act 1972 and section 2(2)

regulations are unable to “confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal”. The Department therefore considers that only directions of a non-legislative character can be made under regulation 19.

- the amendment of paragraph 5 of Part 1 of Schedule 1 to reflect amendments to devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018.
- the inclusion of a schedule of MSFD modifications, to ensure all cross references to the MSFD in the Regulations are read with the appropriate modifications; the modifications are similar to the amendments summarised in paragraph 2.2, and also provide for the removal of references to provision made pursuant to the procedure in Article 25(3) MSFD (provision will be made in accordance with the instrument described in paragraph 6.6).

6.4 The amendments made to the Marine Licensing (Exempted Activities) Order 2011 comprise the amendment of article 37(2) to provide that EU Member State (and Gibraltar) vessels will be treated as “third country vessels” for the purposes of the exemption after the UK leaves the EU; there will be no longer be any basis for treating such vessels differently.

6.5 The amendments made to Commission Decision (EU) 2017/848 include:

- the replacement of references to “Member States” with references to the appropriate UK authority(ies) specified in the relevant provision of the Marine Strategy Regulations 2010.
- the removal of references to “Union cooperation”; after the UK leaves the EU such cooperation will take place at regional or subregional level (through OSPAR mechanics), as currently provided in the Decision.
- the replacement of requirements to agree at Union level with requirements for the appropriate UK authority(ies) to agree, or with requirements to agree through regional or subregional cooperation.
- the amendment or modification of references to non-marine EU legislation, to reflect the amendments made by other instruments introduced by the Department (and other Government Departments) under section 8 of the European Union (Withdrawal) Act 2018.
- the inclusion of a schedule of MSFD modifications, to ensure all cross references to the MSFD in the Decision are read with the appropriate modifications; the modifications are similar to the amendments summarised in paragraph 2.2, and also provide for the removal of references to provision made pursuant to the procedure in Article 25(3) MSFD (provision will be made in accordance with the instrument described in paragraph 6.6).

6.6 In addition to this instrument the Department will also introduce an instrument which transfers functions of the European Commission under the MSFD to the appropriate UK authority where appropriate, and an instrument which amends Parts 1 (The Marine Management Organisation) and 8 (Enforcement (fishing)) of the MCAA.

7. Policy background

What is being done and why?

- 7.1 The amendments to the MCAA, the Marine Strategy Regulations 2010, the Marine Licensing (Exempted Activities) Order 2011 and Commission Decision (EU) 2017/848 (set out in paragraphs 2.3 and 6) are being made to correct operability deficiencies which, if not corrected, would mean that the UK would be unable to maintain the current levels of marine environmental protection. The changes made by the instrument are necessary to ensure that the current legislation continues to operate effectively after we leave the EU.
- 7.2 In addition, the amendments to the Marine Strategy Regulations 2010 and Commission Decision (EU) 2017/848 are being made on a UK-wide basis in order to maintain the existing UK wide framework for marine strategy. This will ensure continuity and consistency of marine environmental monitoring and standards throughout UK waters. This will ensure continuity and consistency of marine environmental monitoring and standards throughout UK waters. The amendments will mean the UK will continue to work cooperatively with other countries within the same marine region or sub-region, to develop our marine strategy. This coordination is being achieved through the Regional Seas Conventions, which for the UK is the OSPAR Convention.
- 7.3 Failure to update and operationalise the legislation underpinning the monitoring, standards, and reporting framework on the environmental status of our seas, creates a risk of reputational harm in the UK from stakeholders, as well as on the international environmental stage, and could potentially leave us open to judicial review.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the power in paragraph 21 of Schedule 7 to that Act to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision re-stating any retained EU law in a clearer or more accessible way). In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 This instrument has not been subject to formal consultation.
- 10.2 The Devolved Administrations (Scottish Government, DAERA and Welsh Government) have been consulted on the amendments contained in the instrument, and they are content with the approach being taken.

- 10.3 The Department has conducted informal consultation with Natural England, the Marine Management Organisation, the Joint Nature Conservation Committee and the Centre for Environment, Fisheries and Aquaculture Science.
- 10.4 The Department has also engaged informally with stakeholders including the Wildlife Trusts, Crown Estate, Client Earth, Marine Conservation Society, Royal Society for the Protection of Birds, Association of British Ports, Energy UK, Sea-bed Users and Development Group, and Wildlife and Countryside Link.

11. Guidance

- 11.1 No guidance is required since the instrument makes the minimum changes necessary to ensure the continuity of existing marine environmental protection post EU Exit.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the SI maintains existing regulatory standards.
- 12.4 The legislation included in this instrument will still apply when we leave the EU. This will provide the maximum possible certainty and continuity to businesses, workers and consumers across the UK so that they can have confidence that they will not be subject to unexpected changes on the day we leave the EU.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that Defra will continue to review legislation to ensure that all relevant EU marine environment legislation is captured. If further EU legislation is identified it will be submitted as separate legislation.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Martin Adams at the Department for Environment, Food and Rural Affairs Telephone: 02080 261474 or email: Martin.Adams@DEFRA.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gemma Harper, Deputy Director for Marine at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment and Rural Affairs, at Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Marine Environment (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because this instrument addresses only technical deficiencies in retained EU legislation and EU derived UK legislation that will arise from withdrawal; it does not change the substantive policy.

2. Appropriateness statement

- 2.1 Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Marine Environment (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because: the instrument makes only the necessary technical drafting changes to retained EU legislation and EU derived domestic legislation required to maintain continuity and operability of marine environmental protection following the UK’s withdrawal from the EU.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: to ensure that the current legislation continues to operate effectively after we leave the EU, so that the UK can maintain current levels of marine environmental protection. The instrument makes the minimum changes necessary to ensure that cross references to the MSFD, and other EU and EU derived UK legislation, will continue to work after exit.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 4.2 Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Marine Environment (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 20 November 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 3 December 2018
Date sifting period ends in UK Parliament	5 December 2018
Written statement under SO 30C:	Paper 14
SICM under SO 30A (because amends primary legislation)	Paper 15

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 of the European Union (Withdrawal) Act 2018.

These Regulations make changes to the following legislation:-

- The Marine Strategy Framework Directive ("the MSFD");
- The Marine Strategy Regulations 2010;
- Commission Decision (EU) 2017/848;
- The Marine and Coastal Access Act 2009 ("the MCCA"); and
- The Marine Licensing (Exempted Activities) Order 2011.

As these regulations amend primary legislation i.e. the MCCA, the Welsh Government have laid a statutory instrument consent memorandum under Standing Order 30A.2.

These changes are necessary to ensure that the above legislation continues to operate effectively after the UK leaves the EU. The changes include the replacement of references to “Member States” with references to the UK or to an appropriate UK body, the replacement of references to “Community legislation” or “EU law” with references to “retained EU law”, and the replacement of requirements to notify or report to the Commission with requirements to report publicly. The changes also ensure that cross references to the MSFD, and other EU legislation, will continue to work after exit.

Legal Advisers agree with the statement laid by the Welsh Government dated 22 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Marine Environment (Amendment) (EU Exit) Regulations 2018

1. Standing Order (SO) 30A prescribes that a Statutory Instrument Consent Memorandum (SICM) must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“National Assembly”) if a UK Statutory Instrument (SI) makes provision (“relevant provision”) in relation to Wales amending primary legislation within the legislative competence of the National Assembly.
2. The Welsh Government laid a SICM in respect of The Marine Environment (Amendment) (EU Exit) Regulations 2018 (“2018 Regulations”) on 26 November 2018.¹
3. This SICM is laid in accordance with SO 30A.3.
4. The 2018 Regulations were laid before the Houses of Parliament for sifting on 20 November 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-marine-environment-amendment-eu-exit-regulations-2018>
5. At its meeting on 4 December 2018, the House of Commons European Statutory Instrument Committee considered the regulations and recommended that the negative procedure should apply.² The House of Lords Secondary Legislation Scrutiny Committee (Sub-Committee B) also reported that the negative procedure should apply.³

Summary of the Statutory Instrument and its objective

6. The objective of the SI is to address:

(a) failures of retained EU law to operate effectively; and

(b) other deficiencies;

arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018.

¹ Welsh Government, [Statutory Instrument Consent Memorandum, The Marine Environment \(Amendment\) \(EU Exit\) Regulations 2018](#), 26 November 2018

² House of Commons European Statutory Instruments Committee, [Tenth Report of Session 2017–19](#), 6 December 2018, HL 1794

³ House of Lords Secondary Legislation Scrutiny Committee (Sub-Committee B), [8th Report of Session 2017–19](#), 6 December 2018, HL Paper 244

7. In particular, the SI makes amendments to:

- (a) the Marine and Coastal Access Act 2009 (“2009 Act”) (Part 2 of the SI);
- (b) the Marine Strategy Regulations 2010 (Part 3 of the SI);
- (c) Commission Directive Decision (EU) 2017/48 (Part 4 of the SI).

Relevant provision to be made by the SI

8. The amendments made to the 2009 Act by the 2018 Regulations are to the following provisions:

- (a) section 60(8) - to reflect amendments to Scottish devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018;
- (b) section 76(2) - to ensure operability of the provisions post exit from the European Union;
- (c) section 123(5) - to ensure operability of the provisions post exit from the European Union;
- (d) section 141 – to remove the definition of a ‘third country vessel’;
- (e) section 244(1) – to provide that EU Member States vessels and vessels from Gibraltar will be treated as third country vessels.

9. The changes identified in paragraphs 8(c) to (e) relate to functions that are within the legislative competence of the National Assembly, which could be the subject of a National Assembly Bill. It is these provisions within the 2018 Regulations that are the subject of this SICM.

Why it is appropriate for the SI to make this provision

10. The changes made by the 2018 Regulations as they relate to the 2009 Act concern:

- (a) the replacement of references to “EU law” with references to “retained EU law” (in section 123(5)); and
- (b) the definition of third country vessel (in sections 141 and 244(1)).

11. It is considered appropriate that the UK Government legislates on behalf of the Welsh Ministers in this instance.

How this SICM differs from the Welsh Government's SICM

12. This SICM re-iterates some of the content of the Welsh Government's SICM but focuses on the relevant provisions in the SI (namely in Part 2) that is to be the subject of a consent motion.

Reason for this additional SICM

13. On 26 November 2018, Lesley Griffiths AM, the Cabinet Secretary for Energy, Planning and Rural Affairs⁴ wrote to the Constitutional and Legislative Affairs Committee saying:

“Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.”

14. This SICM is therefore provided in accordance with Standing Order 30A.3 to enable a motion to be tabled so that the National Assembly's agreement can be sought on whether a relevant provision should be included in this statutory instrument.

Suzy Davies AM
31 December 2018

⁴ Following a Welsh Government Ministerial re-shuffle on 13 December 2018, Lesley Griffiths AM became the Minister for Environment, Energy and Rural Affairs.

Document is Restricted