

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 3 June 2019	Committee Clerk
Meeting time: 13.30	0300 200 6362
	<a href="mailto:SeneddCLA@assembly.wales">SeneddCLA@assembly.wales</a>

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**1 Introduction, apologies, substitutions and declarations of interest**  
13.30

**2 Children (Abolition of Defence of Reasonable Punishment) (Wales)**  
**Bill: Evidence session**  
13.30–14.30 (Pages 1 – 8)

Julie Morgan AM, Deputy Minister for Health and Social Services  
Karen Cornish, Deputy Director Children and Families Division  
Emma Gammon, Lawyer

CLA(5)–17–19 – Briefing

[Children \(Abolition of Defence of Reasonable Punishment\) \(Wales\) Bill 2019](#),  
as introduced

[Explanatory Memorandum](#)

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

14.30–14.35

Negative Resolution Instruments

**3.1 SL(5)413 – The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment)  
Regulations 2019**

(Pages 9 – 16)

CLA(5)–17–19 – Paper 1 – Report



CLA(5)-17-19 – Paper 2 – Regulations

CLA(5)-17-19 – Paper 3 – Explanatory Memorandum

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

14.35-14.40

(Pages 17 – 74)

CLA(5)-17-19 – Paper 4 – Written Statement

CLA(5)-17-19 – Paper 5 – Report

CLA(5)-17-10 – Paper 6 – Revised Frameworks Analysis

#### **5 Paper(s) to note**

14.40-14.45

##### **5.1 Letter from the Deputy Minister for Health and Social Services to the Chair of the Children, Young People and Education Committee: Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill**

(Pages 75 – 76)

CLA(5)-17-19 – Paper 7 – Letter from the Deputy Minister for Health and Social Services, 5 April 2019

##### **5.2 Letter from the Deputy Minister for Health and Social Services to the Chair of the Children, Young People and Education Committee: Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill**

(Pages 77 – 92)

CLA(5)-17-19 – Paper 8 – Letter from the Deputy Minister for Health and Social Services, 25 April 2019

##### **5.3 Letter from the Chair of the European Affairs and Additional Legislation Committee to the First Minister: Attendance of Ministers at Monday committees**

(Pages 93 – 94)

CLA(5)-17-19 – Paper 9 – Letter from the Chair of the European Affairs and Additional Legislation Committee, 20 May 2019

##### **5.4 Letter from the Minister for Finance and Trefnydd: Commencement Orders**

(Pages 95 – 96)

**CLA(5)-17-19 – Paper 10** – Letter from the Minister for Finance and Trefnydd, 21 May 2019

**5.5 Letter from the First Minister: Publication of the updated version of the Legislation Handbook on Assembly Bills**

(Page 97)

**CLA(5)-17-19 – Paper 11** – Letter from the First Minister, 22 May 2019

**5.6 Letter from the Minister for Environment, Energy and Rural Affairs: Inter-Ministerial Group Environment, Food and Rural Affairs**

(Page 98)

**CLA(5)-17-19 – Paper 12** – Letter from the Minister for Environment, Energy and Rural Affairs, 24 May 2019

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

14.45

**7 Supplementary Legislative Consent Memorandum on the Agriculture Bill: Draft report**

14.45–15.15

(Pages 99 – 111)

**CLA(5)-17-19 – Paper 13** – Draft report

**CLA(5)-17-19 – Paper 14** – Bilateral agreement on WTO provisions within the Agriculture Bill

**Date of the next meeting – 10 June 2019**

Document is Restricted

# SL(5)413 – The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2019

## Background and Purpose

These Regulations amend the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2019 (S.I.2019/50 (W. 15)) (“the 2019 Regulations”) to correct a typographical error in the Welsh text of the 2019 Regulations.

The 2019 Regulations specify all fuels which are currently authorised for use in smoke control areas in Wales for the purposes of section 20 of the Clean Air Act 1993 (c. 11).

## Procedure

Negative.

## Technical Scrutiny

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

## Merits Scrutiny

**One point is identified for reporting under Standing Order 21.3 (ii) (that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly) in respect of this instrument.**

The Committee’s report on the 2019 Regulations included a technical reporting point, in respect of a discrepancy between the Welsh and English texts in paragraph 71(c) of the Schedule. The English text specified a size of “between approximately 30 millimetres and 130 millimetres in length”. However, instead of “130”, the Welsh text read “150”. The English text represented the correct specification, and as such the Welsh text required correction. These Regulations provide for that correction to be made.

## Implications arising from exiting the European Union

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

## Government Response

A government response is not required.

## Legal Advisers

**Constitutional and Legislative Affairs Committee**

**24 May 2019**



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

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**2019 No. 932 (W. 163)**

**CLEAN AIR, WALES**

**The Smoke Control Areas  
(Authorised Fuels) (Wales)  
(Amendment) Regulations 2019**

**EXPLANATORY NOTE**

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

These Regulations amend the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2019 (S.I. 2019/50 (W. 15)) (“the 2019 Regulations”).

These Regulations correct a typographical error in the Welsh text of the 2019 Regulations.

The 2019 Regulations specify all fuels which are currently authorised for use in smoke control areas in Wales for the purposes of section 20 of the Clean Air Act 1993 (c. 11).

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

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

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**2019 No. 932 (W. 163)**

**CLEAN AIR, WALES**

**The Smoke Control Areas  
(Authorised Fuels) (Wales)  
(Amendment) Regulations 2019**

*Made* 9 May 2019

*Laid before the National Assembly for Wales*  
14 May 2019

*Coming into force* 5 June 2019

The Welsh Ministers in exercise of the power conferred by section 20(6) of the Clean Air Act 1993(1), make the following Regulations.

**Title and commencement**

**1.**—(1) The title of these Regulations is the Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2019.

(2) These Regulations come into force on 5 June 2019.

**Amendment of the Smoke Control Areas  
(Authorised Fuels) (Wales) Regulations 2019**

**2.** In the Welsh text of the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2019(2), in the Schedule, in paragraph 71(c), for “150” substitute “130”.

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(1) 1993 c. 11. The relevant function of the Secretary of State was, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). That function is now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(2) S.I. 2019/50 (W. 15).

*Lesley Griffiths*  
Minister for Environment, Energy and Rural Affairs,  
one of the Welsh Ministers  
9 May 2019

## **EXPLANATORY MEMORANDUM TO THE SMOKE CONTROL AREAS (AUTHORISED FUELS) (WALES) (AMENDMENT) REGULATIONS 2019**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2019.

Lesley Griffiths AM

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

14 May 2019

## **1. Description**

The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2019 correct the typographical error made in The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2019 (“the 2019 Regulations”).

The 2019 Regulations revoke and replace The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2017 (SI 2017 No.421 (W.89)). The 2019 Regulations update the current legislation with newly authorised fuels for the purposes of Part III of The Clean Air Act 1993 (“the 1993 Act”).

An amending Statutory Instrument is required to rectify an error within the 2019 Regulations.

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

At its meeting on 28 January 2019, the Constitutional and Legislative Affairs Committee identified a Technical Point within the 2019 Regulations under Standing Order 21.2.

On 31 January 2019, the Welsh Government undertook to make an amending Statutory Instrument to rectify the error.

The English version was identified as including the correct text which specifically refers to the authorised fuel and its length in millimetres: “*charcoal pieces between approximately 30 millimetres and 130 millimetres in length*” (Schedule, Regulation 2, section 9).

The corresponding Welsh text refers to charcoal pieces between approximately 30 millimetres and 150 millimetres in length. The discrepancy amounts to a difference of 20 millimetres.

The amending Statutory Instrument will correct this typographical error.

## **3. Legislative Background**

The enabling power is contained in section 20(6) of the 1993 Act.

This power was originally conferred on the Secretary of State but was, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of Article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999/672. This power is now exercisable by the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Section 63 of the 1993 Act provides for the procedure to be followed for statutory instruments. Accordingly, this Statutory Instrument is subject to the negative resolution procedure.

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

The 1993 Act (a consolidation of The Clean Air Act 1956 and The Clean Air Act 1968) aims to safeguard public health from emissions of smoke. It empowers local authorities to declare Smoke Control Areas in which it is an offence to emit smoke from chimneys. Households in those areas must use an “authorised” smokeless fuel or use an “exempt” appliance capable of operating without emitting smoke, regardless of the fuel used.

The 1993 Act provides the Welsh Ministers with the power to authorise fuels and appliances for use in Wales’ designated Smoke Control Areas. Authorised fuels are prescribed in regulations.

The fuels listed in the Schedule to the 2019 Regulations have been recently approved as suitable for inclusion on the list of fuels authorised for use in designated Smoke Control Areas. They are included in the Schedule to the 2019 Regulations, alongside fuels previously authorised. The 2019 Regulations revoke and replace The Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2017 and provide a consolidated, up-to-date list of authorised fuels.

The amending Statutory Instrument corrects the typographical error identified in the 2019 Regulations.

#### **5. Implementation**

Updating the lists of authorised fuels in the 2019 Regulations ensured the legislation keeps pace with the development of new smokeless fuels, making them available to households in designated Smoke Control Areas.

Air quality can have fundamental impacts on human health, affecting both the quality and duration of people’s lives. A more effective air quality regime will have an important contributory impact in terms of the goals of “A healthier Wales” under the Well-being of Future Generations (Wales) Act 2015.

Updating the lists of authorised fuels also contributes to the achievement of the Healthy and Active strategy within Prosperity for All, the Welsh Government’s national strategy as improving air quality improves the health and wellbeing of individuals, families and communities.

The amendment to correct the identified error in the 2019 Regulations will correct the error made and ensure consistency in both Welsh and English texts.

#### **6. Consultation**

It was considered neither necessary nor appropriate to publicly consult on the amendment of the 2019 Regulations as they leave the nature of the smoke control regime in Wales unchanged. The 2019 Regulations simply update the list of fuels authorised for use within Wales' designated Smoke Control Areas. Similarly, the amending Statutory Instrument was not subject to public consultation as it simply corrects a typographical error identified in the 2019 Regulations.

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

The amendment to correct the identified error in the 2019 Regulations does not impose costs on the public, private, or voluntary sectors. An RIA is not therefore deemed necessary.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**        **The European Union (Withdrawal) Act and Common Frameworks**

**DATE**        **20 May 2019**

**BY**            **Jeremy Miles, AM, Counsel General and Brexit Minister**

The European Union (Withdrawal) Act requires the UK Government to report to Parliament periodically on matters relating to common frameworks and the use if any made by the UK Government of powers under section 12 of the Act (the so-called 'freezing powers') temporarily to maintain existing EU law limits on devolved competence

I am notifying Members that the third such report was laid in Parliament on 16 May.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/801833/Third-EU-Withdrawal-Act-and-Common-Frameworks-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/801833/Third-EU-Withdrawal-Act-and-Common-Frameworks-report.pdf)



Cabinet Office

# The European Union (Withdrawal) Act and Common Frameworks

26 December 2018 to 25 March 2019



Cabinet Office

# The European Union (Withdrawal) Act and Common Frameworks

**26 December 2018 to 25 March 2019**

**Presented to Parliament pursuant to paragraph 4 of Schedule 3 to the European Union  
(Withdrawal) Act 2018**

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**The Rt Hon David Lidington CBE MP**  
**Chancellor of the Duchy of**  
**Lancaster and Minister for the**  
**Cabinet Office**



**The Rt Hon Karen Bradley MP**  
**Secretary of State for Northern Ireland**



**The Rt Hon David Mundell MP**  
**Secretary of State for Scotland**



**The Rt Hon Alun Cairns MP**  
**Secretary of State for Wales**

## Foreword

In the context of the UK's departure from the European Union, the Government remains committed to ensuring a smooth and orderly exit. Officials from the UK, Scottish, and Welsh Governments and Northern Ireland Civil Service have continued to work closely over the period covered by this report (26 December 2018 to 25 March 2019) to prepare the UK for EU Exit.

This Government recognises the importance of accountability and transparency and has therefore committed in legislation to report to Parliament every three months and to share this report with the devolved administrations (DAs). The report includes the steps we are taking, with those administrations, to establish common frameworks and any use of the powers in section 12 of the European Union (Withdrawal) Act 2018 to temporarily freeze devolved competence. The first report was laid before Parliament on 13 November 2018 covering the period from 26 June to 25 September 2018. Subsequent to this the second report was published on 7 February 2019 covering the period from 26 September to 25 December 2018.

It is important that the process of developing common frameworks is not just carried out between governments. We welcome the input and scrutiny from businesses and stakeholders as well as Parliament and the devolved legislatures as we move closer to implementation. With the DAs, we are developing a wider programme of stakeholder engagement, to ensure that proposals for future frameworks meet the needs of those who will be impacted by them. The Northern Ireland Civil Service will continue to participate in this area of work.

In addition, 199 Statutory Instruments (SIs) relating to devolved matters were laid in the UK Parliament before 29 March with the agreement of the devolved administrations. This contributes to meeting the UK Government's commitment to have a functioning statute book on exit day. The DAs and UK government departments have noted the positive working relations that joint work to deliver EU Exit secondary legislation has fostered.

Following the reporting period covered by this report, the revised frameworks analysis was published. We intend to update the analysis using future publications of this report.

This report details the progress made in the third reporting period (26 December 2018 to 25 March 2019) as required under schedule 3 to the European Union (Withdrawal) Act 2018. On the basis of this continuing joint progress and collaboration on future frameworks which ensures the statute book is ready for exit day, the UK Government has again concluded that it does not need to bring forward any section 12 regulations at this juncture. In addition, the Scottish and Welsh

Governments have reaffirmed their commitment not to create divergent policy in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussion continues.

## Implementation of Future Common Frameworks

1.1 Part 2 of Schedule 3 to the European Union (Withdrawal) Act 2018 requires that a Minister of the Crown report to Parliament at three month intervals on various matters pertaining to common frameworks, and the use of the powers in section 12 of, and Schedule 3 to, the 2018 Act to temporarily maintain the existing EU law limits on devolved competence. Reports are shared with the devolved administrations to enable them to maintain a concurrent level of scrutiny. The first and second reports were published on 13 November 2018 and 7 February 2019 respectively. These reports covered consecutive three month periods after the Act was granted Royal Assent (26 June to 25 September and 26 September to 25 December).

1.2 The purpose of these reports is to ensure that the process of developing common frameworks, in collaboration with the devolved administrations, is transparent and subject to robust parliamentary scrutiny.

### Principles for Common Frameworks

1.3 Under the current devolution settlements, the devolved legislatures and administrations cannot act incompatibly with EU law. The EU laws that are in place work to create common UK-wide approaches - or 'frameworks' - even where those policy areas otherwise fall within devolved competence. The Scottish and Welsh Governments agree that common frameworks will continue to be required in some areas after we leave the EU.

1.4 In October 2017, the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) agreed principles to guide the work to create common frameworks. These principles are set out below:

1. *Common frameworks will be established where they are necessary in order to:*
  - *enable the functioning of the UK internal market, while acknowledging policy divergence;*
  - *ensure compliance with international obligations;*
  - *ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;*
  - *enable the management of common resources;*
  - *administer and provide access to justice in cases with a cross-border element; and*
  - *safeguard the security of the UK.*

2. *Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:*
  - *be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;*
  - *maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory, as is afforded by current EU rules; and*
  - *lead to a significant increase in decision-making powers for the devolved administrations.*
  
3. *Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK which shares a land frontier with the EU. They will also adhere to the Belfast Agreement.*

1.5 These principles continue to guide all discussions between the UK Government and the devolved administrations on common frameworks.

## **Progress Towards Establishing Future Frameworks**

1.6 The following section sets out the steps taken by the UK Government, during the reporting period, toward implementing our future, long-term common frameworks, and explains how the frameworks principles have been taken into account.

1.7 This work to establish common frameworks has five phases. The first phase took place between October 2017 and March 2018 and focused on establishing the principles and proof of concept for this programme of joint work between the UK Government and the devolved administrations. During this phase, the UK Government published an initial common frameworks analysis.

1.8 The second phase of this work, running from April 2018 onwards, has focused on more detailed policy development, including iterative multilateral engagement on the 24 priority framework areas. Alongside this, work continues on cross-cutting issues, notably future free trade agreements, the UK internal market and the review of intergovernmental relations that was commissioned by the Joint Ministerial Committee in March 2018.

1.9 The third phase of work will provide a review of progress to date, wider engagement and consultation with interested stakeholders, and more detailed policy development up to and beyond March 2019. This will lead, in due course, to preparation for the implementation of final frameworks.

1.10 Progress has continued in the latest reporting period (26 December 2018 to 25 March 2019) to deepen the policy development of future common frameworks. This work is underpinned by joint guidance produced collaboratively by the UK Government and the devolved administrations, and supported by the joint structures that have been developed under JMC(EN) and the political commitment made by the Scottish and Welsh Governments in the first and second reports not to pursue policy divergence in areas where frameworks discussions are ongoing and no section 12 'freezing' regulations have been made.

1.11 Common frameworks continue to be developed through constructive discussions between the UK Government and the devolved administrations. Policy teams have also been working on preparing for a no deal scenario. During the latest reporting period (26 December 2018 to 25 March 2019), detailed multilateral engagement has continued to take place at official level, including standalone sessions on:

- Chemicals and Pesticides (22 January 2019)
- Food and Feed Safety and Hygiene (22 January 2019)
- Nutritional Health Claims, Composition and Labelling (30 January 2019)
- Public Health (7 February 2019)
- Plant Health (12 February 2019)
- Agriculture - Fertiliser Regulations (21 February 2019)
- Public Procurement (11 March 2019)
- Nutritional Health Claims, Composition and Labelling (20 March 2019)

1.12 In the absence of Northern Ireland Executive Ministers, officials from the Northern Ireland Civil Service continue to participate in this work on a factual and analytical basis.

1.13 Within the latest reporting period (26 December 2018 to 25 March 2019), where possible policy teams have continued to develop "outline agreements" in the 24 priority areas where frameworks are likely to require legislative elements, in whole or in part, at this time. In addition "outline agreements" have been developed in a few areas where frameworks are likely to be primarily non-legislative.

1.14 Among the policy and operational issues being considered are: the scope of the frameworks and where, if any, legislation may be required; decision making processes and the potential use of third parties; mechanisms for monitoring, reviewing and amending frameworks; the roles and responsibilities of each administration; and the detail of future governance structures, including arrangements for resolving disputes and information sharing.

1.15 The Fisheries, Management and Support framework for example is intended to be implemented through a limited set of legislative provisions, partially established in

the Fisheries Bill, supplemented by a concordat that includes ways of working, dispute resolution and enforcement processes.

1.16 Policy teams are also now considering the development of the 78 non-legislative policy areas where common rules or ways of working are likely to be needed. Where such agreements are necessary, we expect them to be implemented through non-legislative common framework agreements (e.g. concordats). In some of these areas, consistent fixes to retained EU law (made using secondary legislation) may create a unified body of UK law alongside the non-legislative framework agreement.

1.17 The UK Government will work with the Scottish and Welsh Governments and the Northern Ireland Civil Service, to seek to develop a shared approach to the internal market, including exploring a range of evidence and ideas, and together will continue to support policy teams in considering how to manage internal market-related issues in individual framework areas. The UK Government has led work to explore the evidence base for the level of economic integration between different nations and across different sectors in the UK; look at relevant international examples; and considered the case for principles and governance structures which could be applied to the UK internal market, including how these could be put into practice. The UK, Scottish and Welsh Governments and Northern Ireland Civil Service recognise that mutual cooperation is vital to ensure that the interests of other governments, businesses and consumers, are fully taken into account in decision making in areas where frameworks are being considered.

1.18 A programme of informal multilateral engagements with stakeholders has begun. On 19 March 2019, the 'Hazardous Substances Planning' policy teams from the UK, Welsh and Scottish Governments, and the Northern Ireland Civil Service consulted with interested stakeholders to test provisional conclusions made within the framework outline.

1.19 The UK, Scottish and Welsh Governments and Northern Ireland Civil Service recognise the importance of engaging Parliament, the devolved legislatures and wider stakeholders in the work on common frameworks, as activity moves into the third phase of work described above. The Northern Ireland Civil Service will continue to participate in this area of work.

## Northern Ireland

1.20 Frameworks need to ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. As set out in the agreed principles frameworks will also adhere to the Belfast Agreement.

1.21 Due to the absence of a Northern Ireland Executive, there remain significant limits to the decision-making capacity of the Northern Ireland Civil Service. Guidance issued by the Secretary of State under the Northern Ireland (Executive Formation and Exercise of Functions) Act (EFEF) - legislation which enables senior officers of NI departments to continue to take a limited range of decisions, where they are satisfied that it is in the public interest to do so - provides departments with increased clarity and certainty about when they can make decisions in the absence of Ministers. The Secretary of State for Northern Ireland issued guidance under the Act on 5 November 2018. This guidance has, and will continue to inform our ongoing collective processes regarding changes to primary and secondary legislation, as well as non-legislative mechanisms. The Secretary of State extended the Act for a period of 5 further months on the 21st March. Pending the agreement of Parliament the Act will expire at the end of August.

1.22 Officials from the Northern Ireland Civil Service have engaged in the common frameworks process where the policy area intersects with the devolved competence of the Northern Ireland Assembly. However, in the absence of the Northern Ireland Executive, officials' input has been limited to analytical and factual responses only. Where framework arrangements have been developed, they are without prejudice to the views of future Northern Ireland Executive Ministers.

## **Common Frameworks Analysis**

1.23 We published a revised copy of the common frameworks analysis on 4th April 2019, which sets out the progress we have made to develop common frameworks in collaboration with the devolved administrations since the first analysis was published in March 2018. The analysis has been published during the reporting period of the next statutory common frameworks report and will be covered in that report.

1.24 Updates on the progression of work in the policy areas set out in the frameworks analysis will be provided in future publications of this report. This will enable us to show progress in these areas on a more regular basis.

## Legislation Relating to Retained EU Law Restrictions

2.1 Section 12 of the EU (Withdrawal) Act removes the current requirements in each of the devolution statutes that the devolved legislatures can only legislate in ways that are compatible with EU law. The Act then replaces those requirements with powers for the UK Government to apply, by regulations, a temporary ‘freeze’ on devolved competence in specified areas, subject to the approval of the UK Parliament, via the draft affirmative scrutiny procedure.

2.2 The process for making, agreeing and revoking these regulations can be found in our first report: The European Union (Withdrawal) Act and Common Frameworks - 26 June 2018 to 25 September 2018<sup>1</sup>.

### Regulations to ‘Freeze’ Devolved Competence

#### Retained EU law restrictions applied during reporting period

2.3 No regulations have been made to apply retained EU law restrictions under these powers during the reporting period.

#### Progress towards removal of retained EU law restrictions

2.4 No retained EU law restrictions made under the powers in sections 30A and 57(4) of the Scotland Act 1998, sections 80(8) and 109A of the Government of Wales Act 2006, or sections 6A and 24(3) of the Northern Ireland Act 1998 had effect at the end the reporting period.

### Regulations to Repeal the ‘Freezing’ Powers

2.5 In addition to the ‘freezing’ powers inserted into the devolution statutes by the EU (Withdrawal) Act, section 12(9) confers a power on UK Ministers to repeal, by regulations, the new provisions containing those powers.

#### Powers to apply retained EU law restrictions repealed during reporting period

2.6 No regulations have been made under section 12(9) of the EU (Withdrawal) Act to repeal the powers to apply retained EU law restrictions during the reporting period.

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<sup>1</sup><https://www.gov.uk/government/publications/the-european-union-withdrawal-act-and-common-frameworks-report>

## **Progress required in order to repeal the powers to apply retained EU law restrictions**

2.7 The UK Government has not sought to make use of the powers to apply retained EU law restrictions at this juncture. As outlined earlier in this report, significant progress is being made across the policy areas where it is envisaged that legislative frameworks will be needed, and where there is outstanding disagreement on the boundaries of devolved competence. Our priority is to continue working with the devolved administrations to establish a shared understanding of where common approaches will need to be given effect through shared legislation, so that we can jointly design and implement those approaches.

2.8 The ‘freezing’ powers provide a mechanism to give certainty across those areas where common rules do need to be maintained, by ensuring that there will not be substantive policy change in different parts of the UK until those future arrangements are in place. In order to remove those powers from the statute book, further progress towards the implementation of those future frameworks would be needed. We will keep this position under review, in line with the statutory duty in section 12(10) of the EU (Withdrawal) Act.

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## Revised Frameworks Analysis:

Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland

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Policy areas where no further action to create a common framework is required	<b>14</b>
Policy areas where we think that common rules or ways of working will be needed and we expect to implement this through a non-legislative common framework agreement	<b>22</b>
Policy areas where future legislation may be needed to implement the common rules and ways of working	<b>35</b>
Policy areas that the UK Government believes are reserved, but are subject to ongoing discussion with the devolved administrations	<b>39</b>

# A Collaborative Approach to Common Frameworks

EU rules currently create consistent approaches across the UK in policy areas within devolved competence, although the UK, Scottish and Welsh Governments and the Northern Ireland Executive (when in place) make different choices on how to implement the rules in some of these policy areas. When the UK leaves the European Union, powers previously exercised at EU level that intersect with devolved competence will flow back directly to Edinburgh, Cardiff and Belfast. In some areas, the UK Government and the Scottish and Welsh Governments agree it will be necessary to maintain UK-wide approaches, or common frameworks, after we leave the EU.

## Principles for Common Frameworks

In October 2017, the UK, Scottish and Welsh Governments agreed a set of principles to underpin this work. They agreed that common frameworks will be established where they are necessary in order to: enable the functioning of the UK internal market, while acknowledging policy divergence; ensure compliance with international obligations; ensure the UK can negotiate, enter into and implement new trade agreements and international treaties; enable the management of common resources; administer and provide access to justice in cases with a cross-border element, and safeguard the security of the UK.<sup>1</sup>

It was further agreed that the frameworks established would respect the devolution settlements and democratic accountability of the devolved legislatures. They would maintain current levels of flexibility; increase the decision making powers of the devolved institutions; and would be based on existing conventions and practices, such as those around not normally adjusting devolved competence without their consent.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652285/Joint\\_Ministerial\\_Committee\\_communique.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf)

## Northern Ireland

Frameworks also need to ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.

Officials from the Northern Ireland Civil Service have engaged in the common frameworks process where the policy area intersects with the devolved competence of the Northern Ireland Assembly. However, in the absence of the Northern Ireland Executive, officials' input has been limited to analytical and factual responses only. Where framework arrangements have been developed, they are without prejudice to the views of future Northern Ireland Executive Ministers.

## Progress to Date

A detailed programme of collaboration between the UK, Scottish and Welsh Governments and the Northern Ireland Civil Service has been undertaken to agree the scope of where common frameworks areas are needed and how they might be implemented. This work has been undertaken without prejudice to ongoing negotiations with the EU. Whilst our future partnership with the EU is being agreed, it has been important that we make progress on common frameworks, so that businesses and consumers can be confident that appropriate arrangements will be put in place and in recognition of the importance of those arrangements for co-operation in related areas, notably wider international obligations and ensuring that the UK internal market functions once we leave the EU. This work has been underpinned by strong intergovernmental structures and overseen by the Joint Ministerial Committee (EU Negotiations).

This work to establish common frameworks has five phases. The first phase took place between October 2017 and March 2018 and focused on establishing the principles and proof of concept for this programme of joint work between the UK Government and the devolved administrations. During this phase, the UK Government published an initial common frameworks analysis, which set out 153 areas where EU law intersected with devolved competence, including 24 areas where legislation may be needed in whole or in part, 82 areas where non-legislative frameworks may be required and 49 areas where no further action was identified. The initial analysis also listed 12 areas that the UK Government believed were reserved, subject to ongoing discussions with the devolved administrations.

The second phase of this work, running from April 2018 onwards, has focused on more detailed policy development, including iterative multilateral engagement on the 24 priority framework areas. Alongside this, work continued on cross-cutting issues, notably work streams on the internal market, future free trade agreements and a review of intergovernmental relations. This work is subject to the need for consideration by Ministers.

The third phase of work will provide a review of progress to date, from March 2019 wider engagement and consultation with interested stakeholders and more detailed policy development will take place. This will lead to further phases in due course for the preparation and implementation of final frameworks.

The cooperative approach on frameworks so far demonstrates the progress that can be achieved through proceeding collaboratively. The UK, Scottish and Welsh Governments remain committed to the direction of travel set out in the work to date, including committing to continuing to work together to develop common frameworks in line with the principles. We are also committed to cooperative working in line with the arrangements for intergovernmental working, including in areas where no formal framework is required.

To date, less emphasis has been given to establishing frameworks in the areas classified as potentially requiring non-legislative frameworks, due to their relative risk assessments, but this work is now being taken forward on a similar basis as policy areas initially identified as requiring legislation, in whole or in part. In some areas where action isn't needed to retain a common approach, cooperation will continue. Further updates on the progression of work in these areas will be provided in future European Union (Withdrawal) Act and Common Frameworks statutory reports.

## Common Frameworks Analysis

In March 2018 the UK Government published the first iteration of the common frameworks analysis, which set out 153 areas where EU law intersected with devolved competence, including 24 areas where legislation may be needed in whole or in part, 82 areas where non-legislative frameworks may be required and 49 areas where no further action was identified.

Progress over the last year has been set out publicly in the two reports the UK Government has presented to Parliament on common frameworks. These have underlined the positive nature of this collaboration by setting out that the UK Government has not brought forward section 12 regulations under the EU (Withdrawal) Act to “freeze” devolved competence in any of these policy areas, and the commitment by the Scottish and Welsh Governments not to pursue policy divergence where we agree frameworks are necessary or while discussions are ongoing. The UK, Scottish and Welsh Governments continue to maintain this reciprocal arrangement.

This second iteration of the common frameworks analysis provides a snapshot of how the underlying risk analysis and categorisation of policy areas is evolving in light of this programme of work. It remains part of an ongoing dialogue that will continue to change and develop as work continues. The frameworks analysis is being published now, in advance of Exit Day, as part of our collective commitment to transparency within this process and to provide a platform for a more detailed multilateral and bilateral programme of engagement with external stakeholders.

This analysis sets out a number of changes. The descriptors for each category have been amended to provide a more accurate picture of the way in which future frameworks will be implemented. For example, it acknowledges the need for continuing co-operation in areas where no further action to create a common framework is required, and the relevance of the amended retained EU law framework, to areas where otherwise only non-legislative framework arrangements are required. There is an increase in the number of policy areas within the analysis from 153 to 160 and some change in the number of policy areas in each category, including a reduction from 24 to 21 in the category where legislation may be required in whole or in part. The number of areas non-legislative arrangements are being considered has reduced from 82 to 78. The number of areas where no further action

is required to create a common framework has increased from 49 to 63. There are now four policy areas that the UKG believes are reserved but remain subject to ongoing discussion with the devolved administrations; the other areas listed in this category in the initial analysis have been resolved.

Underpinning these changes is a discussion between the UK, Scottish and Welsh Governments and Northern Ireland Civil Service of the relevant policy issues and agreement that new arrangements should be implemented according to the needs of the particular area. At this stage, primary legislation is only likely to be required in a small number of policy areas and in these areas only some elements of the framework will be implemented in primary legislation. In some instances, this will be accompanied by substantive non-legislative arrangements articulating agreed ways of working between the administrations. In the majority of areas, non-legislative arrangements, such as a concordat, are being considered and it is envisaged that the fixes to EU law, being put in place under the EU (Withdrawal) Act, may provide the basis for interim or longer-term framework arrangements, depending on the outcome of negotiations with the EU.

### **Establishing Future Common Frameworks**

The examples set out below illustrate the variety of issues being discussed and what future arrangements could be put in place in a range of policy areas. They demonstrate the consideration that has been given to establishing where it may be necessary to maintain common arrangements. These arrangements are still subject to discussion between the UK, Scottish and Welsh Governments and an incoming Northern Ireland Executive. Northern Ireland Civil Service are providing analytical and factual input.

#### **FISHERIES MANAGEMENT AND SUPPORT**

Current proposals state that, where necessary, parts of the existing EU framework could be replaced by a UK framework. This would comprise a limited set of legislative provisions, partially established in the Fisheries Bill, supplemented by a concordat that

includes ways of working, dispute resolution and enforcement processes. This will ensure common control and compliance standards, preserve equal access for UK vessels throughout UK waters and require a joint statement on fisheries management.

## **AGRICULTURE - ZOOTECH**

Secondary EU Exit legislation will amend the directly effective provisions of EU law. Further EU Exit domestic legislation is planned for each part of the UK to ensure the competent authority or Secretary of State has the right powers (e.g. to take enforcement against breed societies). The framework will set out how joint decision making will work, expand on safeguards, and make sure the devolved administrations and their Ministers have the necessary input in legislating in this area. Work is being done to ensure the UK's ability to meet international standards is preserved.

The framework will seek to provide recognition of breed societies, standards for controlling/regulating breed societies, recognition of non-UK breed societies operating in the UK and approach to EU third country approvals and other trade matters.

Discussions are ongoing as to whether the Farm Animal Genetic Resources Committee (FAnGR) continues to serve as an independent source of advice on zotech and wider genetic resource issues. International Reference Centres will be used in preference to the EU Reference Centre.

## **ANIMAL HEALTH AND WELFARE**

The existing EU framework for Animal Health and Welfare (AHW) is set through a combination of rules and regulations covering animal health, welfare and traceability. The framework would include high-level principles (including minimum standards), as well as mechanisms for new joint governance, decision making and dispute resolution. The framework will be designed to permit NI to continue to benefit from cross-border agrifood supply chains, while also maintaining unfettered access across the UK internal

market. This would ensure the framework operates in a way that allows each administration the flexibility to diverge, as currently afforded by EU rules, and leaves decision making authority with the relevant Minister.

Engagement continues between the UK Government and devolved administrations on the use of existing UK-level fora, groups and structures, including roles and responsibilities. UK-wide specialist policy and information-sharing groups may be used to replicate or mitigate the loss of certain functions currently undertaken by EU institutions. This is likely to be supplemented by a new dispute resolution body to ensure the smooth running of the framework. Discussions continue on high-level principles and the need for overarching UK committee/body that would, among other things, provide a home for the UK replacement for the Santé F function. This would provide international quality assurance to the countries where the UK exports live animals and other agrifood products.

### **FOOD AND FEED SAFETY AND HYGIENE**

The framework is intended to provide an enduring agreement to a common approach, where deemed necessary, based on the recognition that businesses and consumers in all four nations (as well as international trading partners) benefit from the existence of UK-wide legislation in this area. The framework will also manage divergence in a way that fully respects the devolution settlements.

Engagement continues on the principles for joint framework governance, covering risk assessment, arrangements for joint policy development, decision making and dispute prevention/dispute resolution processes for managing issues of divergence.

### **HAZARDOUS SUBSTANCES (PLANNING)**

Draft proposals indicate that the existing EU regulations could be replaced by an administrative framework that sets out agreed ways of joint working, including a number of high-level principles, set against the background of continuing international

obligations. The intention is to set a framework for continued close co-operation between the UK Government, including local planning and hazardous substances authorities, and the devolved administrations, with the overall objective of maintaining safety standards and honouring international obligations.

It is proposed that the Health and Safety Executive and the Health and Safety Executive Northern Ireland continue to play their existing role in advising local planning authorities and hazardous substances authorities and the devolved administrations on the risks associated with hazardous substances; discussions are ongoing.

**MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS (MRPQ)**

The need for a framework within this area is dependent on our future economic relationship with the European Union. The UK Government and devolved administrations are working together to consider a framework for the recognition of EEA and Swiss professional qualifications. This will be based largely on the existing arrangements for MRPQ, and will be implemented via EU Exit secondary legislation.

## Cross-Cutting Issues

Work has also taken place to develop a collective position on some of the key issues relevant to all the policy areas within the scope of the analysis. In relation to the governance arrangements for future frameworks, consideration is being given to the degree to which a consistent approach is required in areas such as information sharing, decision making, dispute resolution and the role of evidence, including in some cases, expert opinion/technical advice. The UK, Scottish and Welsh Governments and Northern Ireland Civil Service are working together to ensure consistency and the sharing of learning and best practice across individual framework areas. There are a wide variety of approaches, levels of detail and progression among the framework outlines currently being developed by policy teams.

There is a recognition that, in the place of overarching arrangements provided for by EU membership, detailed technical arrangements will, in some areas, be supplemented by additional arrangements for policy cooperation and political engagement. The UK, Scottish and Welsh Governments and Northern Ireland Civil Service are working together to promote the establishment of such arrangements, as part of a broader review of intergovernmental relations commissioned by the Joint Ministerial Committee.

The UK Government will work with the Scottish and Welsh Governments and the Northern Ireland Civil Service, to seek to develop a shared approach to the internal market, including exploring a range of evidence and ideas, and together will continue to support policy teams in considering how to manage internal market-related issues in individual framework areas. The UK Government has led work to explore the evidence base for the level of economic integration between different nations and across different sectors in the UK; look at relevant international examples; and considered the case for principles and governance structures which could be applied to the UK internal market, including how these could be put into practice. The UK, Scottish and Welsh Governments and Northern Ireland Civil Service recognise that mutual cooperation is vital to ensure that the interests of other governments, business and consumers, are fully taken into account in decision making in areas where frameworks are being considered.

Other relevant issues include the approach to the relationship with EU negotiations, involvement in future free trade agreements and international obligations, and decision making and agreement in Northern Ireland in the absence of an Executive.

# Next Steps for Common Frameworks

## Future Publications

Work to develop future common frameworks is ongoing and this publication is a snapshot of the work to date. To date, work has been prioritised to address those frameworks that might need legislative underpinning, but as we move into the next phase we will also be working on those policy areas that might need a non-legislative framework. In some areas where action isn't needed to retain a common approach, cooperation will continue.

As we leave the EU the context of these frameworks will become clearer and in those areas which are dependent on our future relationship with the EU, such as the Justice and Home Affairs policy areas, swift progress will be able to be made. Further updates on the progression of work in all areas, including these, will be provided in future European Union (Withdrawal) Act and Common Frameworks statutory reports.

## Next Steps

The UK, Scottish and Welsh Governments and Northern Ireland Civil Service recognise the importance of engaging Parliament, the devolved legislatures and wider stakeholders in the work on common frameworks. As activity moves into the third phase of work described above. We will look to develop a wider programme of stakeholder engagement, to ensure that proposals for future frameworks meet the needs of those who will be impacted by them. The Northern Ireland Civil Service will continue to participate in this area of work.

# Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland

This analysis sets out each of the 160 areas of EU law that intersect with devolved competence in one or more devolved administrations. As the devolution settlements are asymmetrical, a different range of powers is relevant to Scotland, Wales and Northern Ireland.

This analysis is the second iteration of the [working document](#) that was published on 9 March 2018 and sets out the latest policy positions, including the reclassification of some policy areas and further detail on the shape that some of these frameworks might take. The analysis sets out:

1. 63 policy areas where no further action to create a common framework is required, and the UK Government and devolved administrations will continue to cooperate.
2. 78 policy areas where we think that common rules or ways of working will be needed and we expect to implement this through a non-legislative common framework agreement (e.g. a concordat). In some of these areas, consistent fixes to retained EU law (made using secondary legislation) will create a unified body of UK law alongside the non-legislative framework agreement.
3. 21 policy areas where future legislation may be needed, in whole or in part, to implement the common rules and ways of working, alongside a non-legislative framework agreement and - potentially - a consistent approach to retained EU law.<sup>2</sup>

In some instances, policy areas include a mixture of reserved and devolved competence, including where technical standards that derive from EU law are relevant. These policy areas are marked with an asterisk. The analysis also includes 4 policy areas that the UK Government believes are reserved; which are subject to ongoing discussion with the devolved administrations.

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<sup>2</sup>In total, 160 individual policy areas sit within these categories. Two policy area appears in the analysis twice, in different categories, depending on the devolution intersect. These are 'Equal Treatment Legislation' and 'High efficiency cogeneration/Combined heat and power'.

The analysis will be refined further in the coming months as the UK, Scottish and Welsh Governments continue to work together. All positions are set out without prejudice to the outcome of negotiations with the European Union. They are also subject to the need to find practical solutions that recognise the unique economic, social and political context of the land border between Northern Ireland and Ireland; frameworks will adhere to the Belfast Agreement.

### 63 Policy areas where no further action to create a common framework is required, and the UK Government and devolved administrations will continue to cooperate

Responsible UK Government Department	Area of EU Law	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
BEIS	<b>Consumer law including protection and enforcement</b>	x			A body of law providing rights and protections for consumers consisting of principles-based, enforcement and sector-specific legislation, including Unfair Contract Terms (93/13/EC), Consumer Rights (2011/83/EC), Unfair Commercial Practices (2005/29/EC) and a cross-border Consumer Protection Cooperation Regulation (EC 2006/2004).
BEIS	<b>Carbon capture and storage</b>	x*	x*	x*	Directive 2009/31/EC on the geological storage of CO2 establishes a legal framework for the environmentally safe geological storage of CO2 to contribute to combating climate change.
BEIS	<b>Elements of employment law</b>	x			Employment law is not an exclusive EU competence but there are a number of directives concerning individual and collective rights implemented in UK law, including the Working Time Directive 2003/88/EC and Pregnant Workers Directive 1992/85/EEC. EU law sets the minimum standards and Member States (and DAs, where competence is devolved) may legislate freely above this level.
BEIS	<b>Environmental law concerning energy industries</b>	x*	x*	x*	EU legislation contains rules and environmental standards relevant to offshore oil and gas exploration and production, offshore gas unloading and storage, and offshore carbon dioxide storage activities.
BEIS	<b>Heat metering and billing information</b>	x	x*		Energy Efficiency Directive 2012/27/EU sets duties for heat suppliers in respect of installing and maintaining heat metering devices and billing, minimum requirements for billing information, and determination of cost effectiveness and technical feasibility.
BEIS	<b>High efficiency</b>	x*			Measures that promote the use of high-efficiency cogeneration (Combined Heat and Power) in

	<b>cogeneration / Combined Heat and Power (CHP) [NB - this appears in category 2 for Scotland]</b>				order to increase the energy efficiency and improve the security of supply of energy (Energy Efficiency Directive 2012/27/EU).
BEIS	<b>Internal energy market / Third Energy Package</b>	x			Package of legislation on the development of the internal energy market, particularly cross-border trading.
BEIS	<b>Onshore hydrocarbons licensing</b>	x	x	x	Directive 94/22/EEC sets the conditions for tendering and determining applications for hydrocarbon licenses and imposes restrictions on the terms which may be included in licences and their extension.
BEIS	<b>Renewable Energy Directive</b>	x*	x*	x*	The Renewable Energy Directive (2009/28/EC) places a 15% renewable energy target, and a 10% renewable energy sub target for the transport sector on the UK. The Directive sets out a number of other measures and frameworks to support the production and promotion of energy from renewable sources.
BEIS	<b>Security of supply (emergency stocks of oil)</b>	x*			Directive 2009/119/EC obligates Member States to maintain emergency stocks of crude oil and petroleum products.
BEIS	<b>Security of supply (gas)</b>	x			Regulations concerning the security of gas supply, preventing potential supply disruptions and supporting a response to them should they occur. The regulations also create common standards to measure serious threats and define how much gas is needed to be able to supply households and vulnerable consumers.
BEIS	<b>Environmental law concerning energy planning consents</b>	x*		x*	Directives set out provisions for Environmental Impact Assessments for generating stations and overhead lines (85/337/EEC, 97/11/EC, 2003/35/EC, 2009/31/EC, 2011/92/EU and 2014/52/EU).
BEIS	<b>Transport of dangerous goods and transportable pressure equipment - Class 7 only</b>	x			Regulation establishes a common regime for all aspects of the transport of radiological (Class 7) dangerous goods, by road, rail, and inland waterway subject to some national derogations. It links to the Euratom legislation Directive 2008/68/EC on the inland transport of dangerous goods.
BEIS	<b>GEO-Blocking</b>	x*	x*	x*	Regulation prohibits blocking or redirecting users away from versions of websites available to

					other EU nationals. It therefore prohibits discriminatory terms of access on the basis of location in EU when purchasing distance goods, wholly online services, and services tied to a specific location (some exceptions apply), as well as discrimination based on place of issue of payment method.
Cabinet Office	<b>Voting rights and candidacy rules for EU citizens in local government elections</b>		x	x	Article 20(2)(b) TFEU, Article 22 TFEU sets out that all parts of the UK must allow EU citizens the right to vote and stand in local government elections. In England and Wales local elections also include Police and Crime Commissioner elections, mayoral elections and combined authority mayoral elections. This is set out in detail in UK legislation, specifically in Section 4 of the Representation of the People Act 1983.
DCMS	<b>The Rental and Lending Directive (concerning library lending)</b>	x			The lending articles of this Directive give rightholders the right to allow or to prohibit the lending of their work. The Directive also allows Member States to derogate from the lending right in respect of public lending, provided that the rightholder receives remuneration.
DEFRA	<b>Flood Risk Management</b>	x	x	x	These policies and regulations (primarily the EU Floods Directive) aim to reduce the risks to people, properties and infrastructure from flooding and coastal erosion.
DEFRA	<b>Management of Waste from Extractive Industries</b>	x*	x*	x*	The Directive is concerned with the management of waste from extractive (mining) industries. Specific EU Directives 2006/21/EC and the three Seveso-Directives Directives (82/501/EEC, 96/82/EC, 2012/18/EU) relating to the disposal of waste and overlapping safety of operations. Interaction with UNECE workshops in providing best practice guidance and Eurasian standards. Further interactions based on industry specific circumstances e.g. Water Framework Directive 2000/60/EC.  Directive 2011/92/EU outlines future operational planning under Environmental Impact Assessments.
DEFRA	<b>Water Quality</b>	x	x	x	These policies and regulations (primarily the EU Water Framework Directive and the EU Drinking Water Directive) aim to improve the ecological and chemical status of the UK's rivers, lakes, estuaries, coastal waters and groundwater, and provide safe, quality drinking water.
DEFRA	<b>Water Resources</b>	x	x	x	These policies and regulations cover the provision of sustainable, safe and affordable water supplies for households, businesses, energy production and agriculture.
DEFRA	<b>Forestry (domestic)</b>	x*	x*	x*	These policies and regulations cover timber production and woodland management, including EU Environmental Impact Assessment.

DEFRA	<b>Land use</b>	x*	x*	x*	Elements of Environmental Impact Assessment Directive and Strategic Environmental Assessment Directive cover rural land use.
DEFRA	<b>Noise directives</b>	x	x	x	The Directive is concerned with noise mapping and action planning and does not address trade or cross-border issues.
DfT	<b>Airport charges</b>	x			Relating to Directive 2009/12/EC on airport charges.
DfT	<b>Air Passenger Rights</b>	x*			Regulation 1107/2006 imposes certain obligations on airports in respect of passengers with disabilities and reduced mobility (specifically Articles 5-9)
DfT	<b>Aviation - compensating PSO air routes</b>		x*	x	Relating to regulation (EC) 1008/2008 on the Operation of Air Services (Articles 16-18).
DfT	<b>Aviation - groundhandling at airports</b>	x			Relating to Directive 96/67/EC on access to the groundhandling market at certain airports.
DfT	<b>Aviation noise management at airports</b>	x*			Regulation 598/2014, establishing rules and procedures with regard to the introduction of noise-related operating restrictions at airports within a balanced approach.
DfT	<b>Aviation Slots</b>	x			Regulation 95/93 on common rules for the allocation of slots at airports.
DfT	<b>Bus Franchising rules</b>	x	x	x	Regulation (EC) 1370/2007 as amended by 2016/2338 relating to the way in which competent authorities are able to award public passenger services contracts.
DfT	<b>Cableways</b>	x			EU Regulation 2016/424 on cableway installations and repealing Directive 2000/9/EC relating to cableway installations designed to carry persons.
DfT	<b>Driver hours and tachographs</b>	x			Regulations around working hours and break requirements for commercial vehicle drivers and requirements for the installation and use of tachograph devices to record driver activities (EU regulations 561/2006 and 165/2014). Also mobile road transport working time rules (Directive 2002/15/EC).
DfT	<b>Electronic road toll systems</b>	x	x	x	Directive 2004/52/EC on interoperability of electronic road toll systems and EU Regulation 219/2009.
DfT	<b>Elements of</b>	x	x*	x*	Directive 2011/92 amended by Directive 2014/52/EU on the assessment of the effects of certain

	<b>harbours (marine environment issues)</b>				public and private projects on the environment.
DfT	<b>Maritime - public service contracts/obligations, and financial assistance for shipping services which both start and finish within Scotland/to, from and within Wales</b>		x	x	Regulation 3577/92 that applies the principle of freedom to services to provide cabotage maritime transport.
DfT	<b>Maritime – ports services and port reception facilities, including for ship-generated waste</b>	x*	x*	x*	Regulation 2017/352 that establishes a framework for the provision of port services and common rules on the financial transparency of ports. Directive 2000/59 contains a mix of competence and is relevant here insofar as it relates to harbours only.
DfT	<b>Maritime Employment and Social Rights</b>	x			Directives and Regulations relating to employment, social rights and health and safety for seafarers on ships. These rules cover, inter alia, coordination of social security systems, and the minimum safety and health requirements for improved medical treatment on board vessels.
DfT	<b>Passenger rights (rail)</b>	x			Regulation (1071/2009) establishing common rules for the licensing of commercial goods and passenger transport operators.
DfT	<b>Rail franchising rules - insofar as they do not relate to state aid rules</b>	x			Regulation (EC) 1370/2007 as amended by 2016/2338 relating to the way in which competent authorities are able to award public passenger services contracts.

DfT	<b>Rail markets and operator licensing (governance, structure, track access &amp; charging)</b>	x*			Directive 2012/34/EU, to be amended by Directive 2016/2370/EU (both part of the market pillar of the 4th railway package) which recasts a number of EU Directives and establishes a single European railway area with common rules on: the governance of railway undertakings and infrastructure managers, on infrastructure financing and charging, on conditions of access to railway infrastructure and services and on regulatory oversight of the rail market.
DfT	<b>Rail markets - train driving licenses and other certificates</b>	x			Directives 2007/59/EC and 2014/82/EU on train driving licensing rules, setting out the conditions and procedures for the licensing and certification of train drivers operating in the EU.
DfT	<b>Rail safety</b>	x			Directive 2004/49/EC on safety on the Community's railways and amending Council Directive 95/18/EC (which will be replaced by Directive 2016/798 in June 2019 or 2020 - technical pillar of 4th railway package) along with relevant Regulations and Decisions.
DfT	<b>Rail Workers Rights Directive</b>	x			Directive 2005/47/EC on the agreement between the social partners on working conditions of mobile workers engaged in cross-border rail services, supplementing the Working Time Directive (Directive 1993/104/EC).
DfT	<b>Retrofitting of HGV mirrors</b>	x			Directive 2007/38/EC on the retrofitting of mirrors to registered heavy goods vehicles.
DfT	<b>Road infrastructure safety management</b>	x	x	x	Directive 2008/96/EC on that supports road infrastructure safety management.
DfT	<b>Use of goods vehicles hired without drivers</b>	x			Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road.
DfT	<b>Charging of HGVs</b>	x*	x*	x*	Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures.
DfT	<b>Coach and bus services</b>	x			Regulation 181/2011 that set out the rights of passengers on bus and coach transport.
DfT	<b>Roadworthiness Directive</b>	x			Rules (directives 2014/45/EC and 2014/47/EC) relating to roadworthiness tests for motor vehicles and their trailers, plus associated inspections.
DfT	<b>Speed limitation devices</b>	x			Directive 1992/6/EEC on the installation and use of speed limitation devices for certain categories of motor vehicles (amended by Directive 2002/85/EEC).

DfT	<b>Driver CPC (certificates of professional competence)</b>	x			Directive 2003/56/EC - transposed by SI 2007/605 - CPC is a condition of access to EU27 under ECMT permit system and likely to be a condition of negotiated agreements with EEA states.
DfT	<b>Mutual recognition of qualifications (but not CPC)</b>	x			Directive 2005/36/EC on the recognition of professional qualifications.
DfT	<b>Safety specifications</b>	x			Directive 91/671/EEC on the compulsory use of safety belts in vehicles of less than 3.5 tonnes (amended by 2003/20/EC).
DfT	<b>Trans European Transport Network</b>	x*	x*	x*	The EU Regulation establishes the trans European transport network, it includes maps of the core and comprehensive networks and sets specific standards to be implemented by 2030 and 2050 respectively. It is the geographic focus for EU transport regulation referencing individual pieces of legislation in different transport modes. .
DfT	<b>Transporting Dangerous Goods by Rail, Road and Inland Waterway Directive</b>	x			Directive covering the carriage of dangerous goods and use of transportable pressure equipment by road, rail and inland waterway.
DHSC	<b>Implementation of cross-border healthcare rights to treatment and reimbursement</b>	x*	x*	x*	Directive 2011/24/EU codified a series of case law. It sets out the conditions under which a patient may travel to another EU country to receive medical care and reimbursement. The requirements under the Directive have been transposed by England and Wales, Scotland, Northern Ireland and Gibraltar.
DWP	<b>Elements of EU social security coordination</b>	x*	x*		This is an area of shared EU competence for devolved benefits. The EU Social Security Coordination Regulations require Member States to ensure that citizens who exercise their right to free movement are not disadvantaged, e.g. by taking into account periods of residence and work and contributions paid in other Member States when considering the entitlement of claimants for UK benefits, including state pensions. The rules also require the UK to export benefits to persons living in another EU Member State in certain circumstances.

DWP	<b>Private cross border pensions</b>	x			EU legislation on the operation of the EEA internal market in financial services allows occupational pension schemes based in one country to operate (have members) in another.
GEO	<b>Equal treatment legislation</b>		x*	x*	It bans discrimination and harassment in employment on the following grounds: sex, race, age, disability, sexual orientation and religion or belief. It also bans discrimination in the provision of services on grounds of sex and race. It also requires the existence of an equalities monitoring body, such as EHRC.
HSE	<b>Health and safety at work</b>	x			Directives, including the Health and Safety At Work Framework Directive (89/391/EEC), that require employers to protect the health and safety of their employees. Requirements cover, inter alia, the general layout of workplaces, hazards at work, specific sectors (e.g. construction, mining and onshore and offshore drilling) and work equipment.
HSE	<b>Ionising radiation (occupational exposures)</b>	x			Ionising radiation occur as either electromagnetic rays (such as X-rays and gamma rays) or particles (such as alpha and beta particles). It occurs naturally (e.g. radon gas) and can also be produced artificially. Directive 2013/59/Euratom lays down basic safety standards for protection against exposure to ionising radiation. This includes occupational exposures.
MHCLG	<b>Environmental Impact Assessment (EIA) Directive</b>	x	x	x	The Environmental Impact Assessment Directive (85/337/EEC) integrates environmental considerations into the preparation of proposals for development to reduce their impact on the environment.
MHCLG	<b>Energy Performance of Buildings Directive</b>	x	x	x	The Energy Performance of Buildings Directive (2010/31/EU) aims to improve and make transparent the energy performance of buildings.

78 Policy areas where we think that common rules or ways of working will be needed and we expect to implement this through a non-legislative common framework agreement (e.g. a concordat). In some of these areas, consistent fixes to retained EU law (made using secondary legislation) will create a unified body of UK law alongside the non-legislative framework agreement

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
BEIS	<b>Company law</b>	x			These Directives and Regulations cover aspects of the life cycle of a company, including company formation, capital & disclosure requirements, cross border mergers, shareholders rights, accounting and reporting, and audit. Regulations set out the framework for certain EU-specific legal entities. Also includes the establishment of branches, subsidiaries and agencies in other Member States, underpinned by Treaty Article 49.
BEIS	<b>Late payment (commercial transactions)</b>	x*	x		Late Payment Directive (2011/7/EU) protects businesses within the EU against late payment in commercial transactions.
BEIS	<b>Efficiency in energy use</b>	x*	x*	x*	The Energy Efficiency Directive (2012/27/EU) sets energy efficiency targets and other requirements to encourage and improve energy efficiency.
BEIS	<b>High efficiency cogeneration / Combined Heat and Power (CHP) [NB - this appears in category 1 for</b>		x*		Measures that promote the use of high-efficiency cogeneration (Combined Heat and Power) in order to increase the energy efficiency and improve the security of supply of energy (Energy Efficiency Directive 2012/27/EU).

	<b>Northern Ireland]</b>				
BEIS	<b>Radioactive substances</b>	x*	x*	x*	Directive establishes a framework for responsible and safe management of spent fuel and radioactive waste, both for current workers and the general public, and to avoid imposing burdens on future generations.
BEIS	<b>Recognition of insolvency proceedings in EU Member States</b>	x	x*		Regulation 2015/848 on Insolvency Proceedings focusses on resolving conflicts of jurisdiction and cross-border insolvencies, providing rules to determine which EU states' courts have jurisdiction to open insolvency proceedings, ensuring that those proceedings and their effects are recognised throughout the EU, and coordinating between proceedings in different member states. This Regulation recasts and supersedes an earlier instrument, Regulation 1346/2000.
BEIS	<b>Specified quantities and packaged goods legislation</b>	x*			EU law sets the rules for quantity control, quantity labelling and specified quantities for packaged goods.
Cabinet Office	<b>Public procurement</b>	x*	x*	x*	The regime provided by the EU procurement Directives, covering public procurement contracts for supplies, services, works and concessions above certain financial thresholds awarded by the public sector and by utilities operating in the energy, water, transport and postal services sectors (Directives 2014/24/EU, 2014/25/EU and 2014/23/EU).
Cabinet Office	<b>Statistics</b>	x*	x*	x*	Provision of prescribed datasets to the EU on a wide variety of topics (statistics is cross-cutting).
DEFRA	<b>Air Quality</b>	x	x	x	Policies, directives and regulations that aim to reduce harmful emissions and concentrations of air pollutants that can damage human health and the environment, including in relation to national emission ceilings, ambient air quality, industrial emissions and relevant product standards (Directives 2008/50/EC, 2004/107/EC). This includes regulations that implement international commitments under the UNECE Convention on Long-range Transboundary Air Pollution and Kiev Protocol to the UNECE Aarhus Convention.
DEFRA	<b>Biodiversity - Access and Benefit Sharing of Genetic Resources (ABS)</b>	x	x	x	Rules set up under the Nagoya Protocol to help preserve biodiversity. The rules regulate access to the genetic resources of other countries and how the benefits from research and development using these resources are shared with the provider country. Implemented into EU Law under Regulation (EU) No 511/2014 with Regulation (EU) 2015/1866 providing implementation for register of collections, monitoring user compliance and best practices.

DEFRA	<b>Marine Environment</b>	x	x	x	Rules relating to management and protection of, but not limited to, marine pollution, litter, biodiversity, food webs and seafloor integrity. Implemented under Directives 2008/56/EC, 2017/845/EU with reference to the OSPAR Convention between the governments of North-East Atlantic.
DEFRA	<b>Spatial Data Infrastructure Standards</b>	x	x	x	EU INSPIRE system under Directive 2007/2/EC that ensures a harmonised approach to spatial data publishing to improve environmental reporting.
DEFRA	<b>Natural Environment and Biodiversity</b>	x*	x*	x*	Policies and common standards covering the conservation of the UK's terrestrial, freshwater and marine species and habitats in compliance with international obligations such as the Convention on Biological Diversity. This is joined by EU Regulations (EU) No 1143/2014, (EU) No 1143/2014, and (EEC) No 3254/91 and Directives 2009/147/EC, 92/43/EEC, 1999/22/EC, and 83/129/EEC. This particularly concerns the network of sites which currently form part of the EU's Natura 2000 (N2K) network.
DEFRA	<b>Waste Management</b>	x	x	x	Policies and regulations covering waste and its recovery/recycling (Landfill Directive, Waste Framework Directive) including producer responsibility (reuse/recovery/recycling targets under the Waste Electrical and Electronic Equipment Directive, Batteries Directive, End of Life Vehicles Directive and Packaging Directive). Also covering the shipment of waste.
DfT	<b>Access for non-UK hauliers and passenger transport operations, plus combined transport</b>	x			Regulations 1072/2009 (for goods vehicles), 1073/2009 (for road passenger transport), and Directive EC 1992/106/EC Directive for Combined Transport (including access). All these rules involve access arrangements for non-UK vehicles and may be affected (and need to be consistent with) international agreements.
DfT	<b>Intelligent transport systems</b>	x*	x*	x*	Policies and common standards relating to national electronic registers and data for intelligent transport systems. This includes Regulations made under Directive 2010/40.
DfT	<b>Operator licensing (roads)</b>	x			Regulation (1071/2009) establishing common rules for the licensing of commercial goods and passenger transport operators.

DfT	<b>Rail technical standards (Interoperability)</b>	x*			Directive 2008/57/EC establishing interoperability requirements for rail systems (which will be replaced by Directive 2016/797 technical pillar of 4th railway package - soft transposition deadline June 2019, hard transposition deadline June 2020).
DfT	<b>Driver licensing</b>	x			Driver Licensing Directive (roads) and directive and regulations relating to driver certificates of professional competence.
DfT	<b>Compulsory (3rd Party) Motor Insurance - as per Part VI Road Traffic Act 1988</b>	x			Directive 2009/103/EC. Directive relating to insurance against civil liability in respect of the use of motor vehicles.  There are also a number of pieces of domestic HMT legislation which may operate in the area.
DHSC	<b>Clinical trials of medicinal products for human use</b>	x			Regulations and Directives on clinical trials on medicinal products for human use.
DHSC	<b>Elements of the regulation of tobacco and related products</b>	x*	x*	x*	Provision made for print and press advertising and promotion of electronic cigarettes in Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the member states concerning the manufacture, presentation and sale of tobacco and related products. Provision made for print and press advertising, display and promotions in Directive 2003/33/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.
DHSC	<b>Good laboratory practice</b>	x*	x*	x*	Directives relating to the inspection and verification of good laboratory practice and harmonising laws, regulations and administrative provisions on good laboratory practice (Directives 2004/9/EC and 2004/10/EC).
DHSC	<b>Medicinal products for human use</b>	x			EU Directives and Regulations that relate to medicinal products for human use and, inter alia, lay down procedures for the marketing authorisation, supervision and pharmacovigilance of these products.
DHSC	<b>Medicine prices</b>	x			Directive 89/105/EEC relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in national health insurance systems.

DHSC	<b>Nutrition health claims, composition and labelling</b>	x*	x*	x*	Regulations and Directives on the nutrition and health claims made on food; food for special medical purposes and weight control; food intended for infants; the addition of vitamins and other substances to food; and food supplements.
DHSC	<b>Blood safety and quality</b>	x	x	x	Defines the quality and safety standards for blood and its components as set out in Directive 2002/98/EC. It covers all steps in the transfusion process from donation, collection, testing, processing, and storage to distribution. It's implementation is supported by Commission Directive 2004/33/EC, Commission Directive 2005/61/EC and Commission Directive 2005/62/EC. There are also some specific technical requirements in the following commissioning directives 2009/135/EC, 2011/38/EU, 2014/110/EU, 2016/1214.
DHSC	<b>Organs</b>	x	x	x	Directives setting out standards on the quality and safety of human organs intended for transplantation and laying down the information procedures for exchange between Member States (Directives 2010/53/EU and 2012/25/EU).
DHSC	<b>Public health (serious cross-border threats to health) (notification system for pandemic flu, Zika etc)</b>	x*	x*	x*	Decision No 1082/2013/EU on serious cross-border threats to health. This sets rules on epidemiological surveillance, monitoring, early warning of, and combating serious cross-border threats to health, including preparedness and response planning related to those activities, in order to coordinate and complement national policies. It aims to support cooperation and coordination between Member States.
DHSC	<b>Tissues and cells (apart from embryos and gametes)</b>	x	x	x	Directives setting out standards on the quality and safety of human tissues and cells intended for human application as part of medical treatment (Directives 2004/23/EC, 2006/17/EC, 2006/86/EC, 2012/39/EU, 2015/656, 2015/566).
GEO	<b>Equal treatment legislation<sup>3</sup></b>	x*			It bans discrimination and harassment in employment on the following grounds: sex, race, age, disability, sexual orientation and religion or belief. It also bans discrimination in the provision of services on grounds of sex and race. It also requires the existence of an equalities monitoring body, such as EHRC.
HSE	<b>Civil use of explosives</b>	x			Directives setting out the permissions required to transfer, track and trace civil explosives (2008/43/EC) and rules on the product safety and market surveillance of these (2014/28/EU).

<sup>3</sup> This area is in Cat 1 for Scotland and Wales

HSE	<b>Control of major accident hazards</b>	x*	x*	x*	Seveso III Directive on the control of major accident hazards involving dangerous substances (2012/18/EU). This place duties on businesses using dangerous substances to take measures to prevent major accidents to people and the environment. This mainly applies to the chemical manufacture sector but covers any business that uses, produces or stores dangerous substances at or above determined thresholds.
HSE	<b>Genetically modified micro-organisms contained use (i.e. rules on protection of human health and the environment during the development)</b>	x	x*	x*	Directive 2009/41/EC on the contained use of genetically modified microorganisms (GMMs) to protect humans and the environment. This relates to work with GMMs in contained facilities, e.g. a research laboratory or biotechnology production facility, to ensure barriers (containment measures) are in place.
MHCLG	<b>Hazardous substances planning</b>	x	x	x	Ensures that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in land-use policies. This includes controls on the siting of new establishments and modifications to establishments which fall within the scope of the Directive (i.e. storing or using significant amounts of hazardous substances), and on new developments and public areas in the vicinity of such establishments.
MHCLG	<b>Strategic Environmental Assessment (SEA) Directive</b>	x	x	x	The Strategic Environmental Assessment (SEA) Directive on the assessment of the effects of certain plans and programmes on the environment.
HO	<b>Police and criminal justice cooperation - practical cooperation - European Judicial Network</b>	x*	x*		Council Decision 2008/976/JHA on the European Judicial Network aims to facilitate judicial cooperation by establishing a network of Contact Points in Member States who are experts in matters such as Mutual Legal Assistance. These Contact Points assist with establishing direct contacts between competent authorities and by providing legal and practical information necessary to prepare an effective request for judicial cooperation or to improve cooperation more generally.
HO	<b>Police and criminal justice cooperation - practical cooperation - Joint</b>	x*	x*		Joint Action 97/827/JHA establishes a peer-evaluation mechanism that enables Member States to evaluate each other on the application and implementation of instruments designed to combat international organised crime.

	<b>Action on Organised Crime</b>				
HO	<b>Police and criminal justice cooperation - practical cooperation - mutual legal assistance</b>	x*	x*		The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (EU MLAC) encourages and facilitates mutual assistance between the judicial, police and customs authorities of Member States on criminal matters.
HO	<b>Police and criminal justice cooperation - data sharing - False and Authentic Documents Online (FADO)</b>	x*	x*		Joint Action 98/700/JHA establishing the European Image Archiving System, also known as False and Authentic Documents Online (FADO), is an EU database that facilitates the exchange of information between document experts in Member States on genuine and false identity documents, visas and border officer stamps used across the EU.
HO	<b>Police and criminal justice cooperation - agencies - EU-LISA</b>	x*	x*		Regulation 1077/2011/EU establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (EU-LISA) - the European Agency responsible for the operational management of large-scale IT systems in the area of freedom, security and justice, including EURODAC, SIS II and the Visa Information System.
HO	<b>Police and criminal justice cooperation - agencies - Eurojust</b>	x*	x*		Council Decision 2002/187/JHA (as amended) setting up Eurojust with a view to reinforcing the fight against serious crime - the EU's judicial cooperation agency, which supports Member States' investigation and prosecution agencies in tackling serious cross-border and organised crime. Eurojust helps prevent and resolve conflicts of jurisdiction and facilitates the execution of mutual legal assistance and mutual recognition instruments, such as the European Arrest Warrant (EAW). It also provides funding, technical support and legal expertise on the requirements of different legal systems.
HO	<b>Police and criminal justice cooperation - agencies - Europol</b>	x*	x*		Regulation 2016/794/EU on the European Union Agency for Law Enforcement Cooperation (Europol) - an EU agency that assists Member States' law enforcement agencies in tackling cross-border crime by supporting practical cooperation for cross-border investigations; holding central databases with information on suspected criminals and objects associated with crime; and providing analytical support to make links between crimes committed in different countries.

HO	<b>Police and criminal justice Cooperation - data sharing - European Criminal Records Information System (ECRIS)</b>	x*	x*		Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States and Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) - a secure electronic system providing for the exchange of information between Member States' authorities in relation to criminal records. It also places requirements on Member States to hold the criminal records of their nationals for offences committed across the EU.
HO	<b>Police and criminal justice cooperation - data sharing - Prüm framework</b>	x*	x*		Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on implementation of 2008/615/JHA created 'Prüm', which is both a legal framework requiring Member States to allow the reciprocal searching of each other's databases for DNA profiles, vehicle registration data and fingerprint (or dactyloscopic) data, and a legal basis for joint operations relating to police cooperation. There is also a communications network enabling exchange of the forms of data set out above.
HO	<b>Police and criminal justice cooperation - data sharing - Schengen Information System (SIS II)</b>	x*	x*		Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System ('SIS II') (and see also Council Implementing Decision 2015/215) - a system providing law enforcement 'alerts', including on wanted or suspected criminals, suspected terrorists, missing people, and stolen or missing property. SIS II is a 'Schengen' measure. Whilst the UK is not part of the Schengen border-free zone, we have agreed access to SIS II for law enforcement purposes.
HO	<b>Police and criminal justice cooperation - minimum standards legislation - cybercrime</b>	x*	x*		Directive 2013/40/EU establishes common minimum standards for the definition of criminal offences and sanctions in the area of attacks against information systems. This measure also aims to facilitate the prevention of cybercrime and to improve cooperation between judicial and other competent authorities.
HO	<b>Police and criminal justice cooperation - minimum standards legislation - human trafficking</b>	x*	x*		Directive 2011/36/EU establishes common minimum standards for the definition of criminal offences and sanctions in the area of trafficking in human beings. This measure also introduces common provisions on the prevention of human trafficking and the protection of victims of human trafficking.

HO	<b>Police and criminal justice cooperation - practical cooperation - asset recovery offices</b>	x*	x*		Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or property related to, crime. AROs are national central contact points that facilitate EU-wide identification and tracing of assets derived from crime. The UK's ARO is housed within the UK Financial Intelligence Unit in the National Crime Agency.
HO	<b>Police and criminal justice cooperation - practical cooperation - basic cooperation legislation on child sexual exploitation</b>	x*	x*		Council Decision 2000/375/JHA sets common rules requiring all Member States to set up 24 hour contact points to receive and act on intelligence related to child pornography or indecent images of children.
HO	<b>Police and criminal justice cooperation - practical cooperation - Convention Implementing the Schengen Agreement (law enforcement cooperation)</b>	x*	x*		The law enforcement cooperation provisions of the Convention implementing the Schengen Agreement aim to tackle the threat of cross-border crime within the Schengen Area by facilitating police cooperation and cross-border surveillance. In particular, Article 40 provides that law enforcement in one Member State who have a suspect under surveillance can continue their surveillance of that suspect in the territory of another Member State as long as the latter has authorised it. Member States can also request for other Member States to undertake the surveillance of a suspect on their behalf.
HO	<b>Police and criminal justice cooperation - practical cooperation - European Investigation Order</b>	x*	x*		The European Investigation Order Directive (2014/41/EU) aims to make judicial cooperation in assisting in the investigation and prosecution of criminal offences on investigations between EU Member States faster and more efficient. The new measure standardised requests made between EU Member States for information and evidence, allows for there to be mutual recognition of judicial decisions from other Member States and sets deadlines for recognising and executing requests.
HO	<b>Police and criminal justice cooperation - practical</b>	x*	x*		Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams. A JIT is an investigation team set up for a specific purpose and a fixed period, which can be extended, between two or more parties (at least two of which must be a competent authority of an EU

	<b>cooperation - joint investigation teams</b>				Member State) to investigate a specific matter or type of crime.
HO	<b>Police and criminal justice cooperation - practical cooperation - mutual recognition of asset freezing orders</b>	x*	x*		Council Framework Decision 2003/577/JHA covers the mutual recognition and execution in one Member State of orders freezing property and evidence that were issued in another Member State.
HO	<b>Police and criminal justice cooperation - practical cooperation - mutual recognition of confiscation orders</b>	x*	x*		Council Framework Decision 2006/783/JHA facilitates the mutual recognition and execution in one Member State of confiscation orders issued in another Member State.
HO	<b>Police and criminal justice cooperation - practical cooperation - Swedish initiative</b>	x*	x*		Council Framework Decision 2006/960/JHA (the 'Swedish Initiative'), simplifies the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The Initiative sets out rules for the cross-border exchanges of criminal information and intelligence, ensuring time-bound procedures for cross-border data exchanges.
HO	<b>Regulatory systems - firearms - deactivation standards and techniques</b>	x*			Regulation 2015/2403/EU establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable.
HO	<b>Regulatory systems - firearms - illicit manufacturing and trafficking</b>	x*			Council Decision 2014/164/EU approving Article 10 of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Counterparts and Ammunition; and Regulation 258/2012/EU implementing that protocol by laying down rules governing export authorisation, and import and transmit measures for firearms, their parts and essential components and ammunition.

HO	<b>Regulatory systems - firearms - control on acquisition and possession of weapons</b>	x*			Directive 91/477/EEC, as amended by Directives 2008/51/EC and EU/2017/853, on the control of the acquisition and possession of weapons, setting out certain minimum standards for the circulation of firearms within the EU.
HO	<b>Police and criminal justice cooperation - practical cooperation - cooperation on football disorder</b>	x*	x*		Council Decision 2002/348/JHA that sets up National Football Information Points in each Member State. These Information Points share information and intelligence for facilitating international police cooperation in connection with international football matches.
HO	<b>Police and criminal justice cooperation - accreditation of Forensic Service Providers (FSP) and mutual recognition of results of FSPs - Prüm Framework</b>	x*	x*		Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities, requires Member States to ensure that FSPs undertaking laboratory activities in relation to DNA and fingerprints are accredited to international standard EN ISO/IEC 17025. Member States must also ensure that national authorities recognise the results of accredited FSPs in other MS as equally reliable as the results of domestic FSPs.
HO	<b>Police and criminal justice cooperation - agencies - CEPOL</b>	x*	x*		Council Decision 2005/681/JHA establishing the European Police College (CEPOL) - a European agency that brings together a network of training institutes for law enforcement officials and supports them in frontline training on security priorities, law enforcement cooperation and information exchange.
HO	<b>Police and criminal justice cooperation - data sharing - passenger name records (PNR)</b>	x*	x*		Directive 2016/681/EU creates a common legal basis for Member States to process passenger name record (PNR) data in order to prevent, detect, investigate and prosecute terrorist offences and serious criminal offences. PNR data is personal information provided by passengers and collected and held by airlines. It includes the name of the passenger, travel dates, itineraries, seats, baggage, contact details and means of payment. It can be used by law enforcement authorities in different countries to identify criminal and terrorist movements.

HO	<b>Regulatory systems - minimum standards legislation - the protection of animals used for scientific purposes</b>	x			Directive 2010/63/EU implementing common minimum standards for the protection of animals used for experimental and scientific purposes. This is implemented through the use of risk-based inspections and increased transparency. Sets out a licencing regime covering establishments, people, and projects using animals in science and broader principles of animal welfare.
MoJ	<b>Civil judicial co-operation - applicable law in contracts and non-contractual obligations</b>	x	x		Rome I Regulation (593/2008) covers applicable law in contracts. Rome II Regulation (864/2007) covers applicable law in non-contractual obligations.
MoJ	<b>Civil judicial co-operation - cross border mediation (Mediation Directive)</b>	x	x		The Mediation Directive (2008/52) facilitates access to alternative dispute resolution and promotes amicable settlement of disputes through the use of mediation in cross-border disputes.
MoJ	<b>Civil judicial co-operation - jurisdiction and recognition and enforcement of judgments in civil and commercial matters</b>	x	x		The Brussels I Regulation (1215/2012) covers jurisdiction and recognition and enforcement of judgments and applies between EU Member States. Insolvency Regulation (1346/2000 and 2015/848) covers jurisdictional rules and applicable law and recognition of insolvency proceedings in cross-border insolvencies.
MoJ	<b>Civil judicial co-operation - jurisdiction and recognition and enforcement of</b>	x	x		The Brussels IIa Regulation (2201/2003) covers jurisdictional rules in matrimonial and parental responsibility matters and the recognition and enforcement of judgments. The Maintenance Regulation (4/2009) covers rules for determining which court has jurisdiction, and the recognition and enforcement of maintenance decisions. Regulation on protection measures in civil matters (606/2013) covers recognition and enforcement of protection measures, including for victims of

	<b>judgments: instruments in family law</b>				domestic violence.
MoJ	<b>Civil judicial co-operation - legal aid in cross border cases</b>	x	x		The Legal Aid Directive (2002/8) establishes common minimum rules for the grant of legal aid in cross-border disputes.
MoJ	<b>Civil judicial co-operation - service of documents and taking of evidence</b>	x	x		EU Service Regulation (2007/1393) covers rules for serving documents in other EU countries. Taking of Evidence Regulation (2001/1206) covers cross-border processing of requests to take evidence. European Judicial Network in Civil and Commercial Matters (2001/470) facilitates cross-border cooperation for judges and practitioners and access to justice for those involved in disputes.
MoJ	<b>Civil judicial co-operation - uniform fast track procedures for certain civil and commercial claims</b>	x	x		The Small Claims (861/2007 revised by 2015/2421), Enforcement Order (805/2004) and Order for Payment (1896/2006) Regulations facilitate means for obtaining decisions on claims that can be enforced throughout the EU.
MoJ	<b>Criminal offences minimum standards measures</b>	x	x		The Combating Child Sexual Exploitation Directive (2011/92) establishes common minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It contains provisions aimed at preventing these crimes and protecting victims.
MoJ	<b>Mutual recognition of criminal court judgments measures and cross border cooperation</b>	x	x		Mutual Recognition of Financial Penalties (MRFP) (2005/214) provides for Member States to recognise and enforce financial penalties (of over 70 euros) issued by judicial or administrative authorities of another Member State, in which the person required to pay the fine is normally resident or has property or income. It covers criminal financial penalties including those imposed for road traffic offences. The Criminal European Protection Order (2011/99) allows individuals, including domestic violence victims, to have the terms of certain protection measures that are issued in one Member State recognised and, if necessary, enforced in any other EU Member State. Prisoner Transfer Framework Decision (PTFD) (2008/909) is the principal mechanism for

				<p>transferring prisoners between EU Member States.</p> <p>European Supervision Order (ESO) (2009/829) establishes a legal framework that enables the court in a Member State which is prosecuting a suspect for a crime committed there to allow the suspect to go to another (usually their 'home') Member State to await trial, and for the "home" country to assume responsibility for supervising compliance with the conditions of that bail.</p> <p>Victims Compensation Directive (2004/80) requires Member States to set up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their respective territories.</p>
MoJ	<b>Procedural rights (criminal cases) – minimum standards measures</b>	x	x	The Right to Information in Criminal Proceedings Directive (20012/13) sets common minimum standards for information to be provided to people suspected or accused of having committed a criminal offence. The Interpretation and Translation Directive (2010/64) sets common minimum standards on interpretation and translation in criminal proceedings throughout the EU.
MoJ	<b>Provision of legal services (temporary and permanent basis)</b>	x	x	Lawyers Establishment Directive (98/5) provides the framework for permanent establishment of lawyers from one EU member state in another, under home or host state title. Lawyers Services Directive (77/249) provides the framework for temporary provision of legal services under home state title (including fly-in/fly-out). (Both Directives apply only to specified titles. In the UK, these are solicitor, barrister, advocate.)
MoJ	<b>Sentencing - taking convictions into account</b>	x	x	Framework Decision on taking convictions into account (2008/675) requires the national criminal courts of all Member States to take account of a defendant's known previous convictions in other Member States to the extent previous national convictions are taken into account.
MoJ	<b>Victims' rights measures in criminal cases – minimum standards (Victims' Rights Directive)</b>	x	x	Victims' Rights Directive (2012/99) sets common minimum standards on the rights, support and protection afforded to the victims of crime across all Member States.

**21 Policy areas where future legislation may be needed to implement the common rules and ways of working, alongside a non-legislative framework agreement and - potentially - a consistent approach to retained EU law**

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
BEIS	<b>Implementation of EU Emissions Trading System (EU ETS)</b>	x*	x*	x*	Directive 2003/87/EC establishes the European Union Emissions Trading System for greenhouse gases. The Scheme sets a maximum volume of gas that can be emitted by all participating installations and aircrafts. These operators then monitor, verify and report their emissions, and must surrender allowances equivalent to their emissions annually. Allowances are issued either by being sold at auction or allocated for free to some operators, and can be traded, with the price determined by the market.
BEIS (DHSC, MHCLG, DEFRA, DfE and MoJ also have interest)	<b>Mutual recognition of professional qualifications (MRPQ)</b>	x*	x*	x*	The Directive creates systems for EU citizens to have their professional qualifications recognised in order to establish or provide services on a temporary and occasional basis in another EU state
BEIS	<b>Services Directive</b>	x*	x*	x*	The Directive seeks to realise the full potential of services markets in Europe by removing legal and administrative barriers to trade, by increasing transparency and by making it easier for businesses and consumers to provide or use services in the EU Single Market. The Directive is implemented by the Provision of Services Regulations in the UK. The Regulations set out rules for how competent authorities can design authorisation schemes for service providers in the UK. The Regulations prevent regulators imposing new regulatory or administrative requirements that act as discriminatory barriers to the provision of services, ensuring authorisation schemes are proportionate and justified by the public interest.
DEFRA	<b>Agricultural support</b>	x*	x*	x*	Policies and Regulations under the EU Common Agricultural Policy covering Pillar 1 (income and market support); Pillar 2 (rural growth, agri-environment, agricultural productivity grants or

					services and organic conversion and maintenance grants); and cross-cutting issues, including cross compliance, finance & controls.
DEFRA	<b>Agriculture - GMO marketing and cultivation</b>	x	x	x	<p>Directive 2001/18 – decisions on authorising GMO trials (delegated to Member States) and on marketing GMOs (decisions taken at EU level).</p> <p>Regulation 1830/2003 – requires the traceability and labelling of GMOs approved for marketing. Regulation 1946/2003 – requires notification to third countries of proposed GMO exports.</p> <p>Enforcement powers for these directly applicable Regulations are set out in parallel SIs in all four nations.</p>
DEFRA	<b>Agriculture - zootech</b>	x*	x*	x*	<p>EU Regulation 2016/1012 replaces a host of current zootech regulations by species from 1 November 2018. For the purpose of this exercise we treat the EU position as it will be at 1 November 2018 as the relevant framework.</p> <p>The EU rules support trade of pedigree breeding animals and germinal products by e.g. defining what constitutes “purebred”. They provide for individual breed societies to be officially recognised and breeding programmes to be approved by competent authorities. The rules impose rights and obligations on societies and proscribe rules when breeding animals and germinal products are traded between recognised breed societies across the EU.</p>
DEFRA	<b>Fisheries management &amp; support</b>	x*	x*	x*	Policies and Regulations relating to rules relating to the sustainability of fisheries (quotas), access to waters, conservation measures, enforcement and financial support.
DEFRA	<b>Ozone depleting substances and F-gases</b>	x	x	x	The UK has international obligations under the Montreal Protocol to phase out the use of ODS, phase down hydrofluorocarbons by 85% by 2036, licence imports and exports and report on usage to the UN. EU Regulations and institutions currently deliver these obligations through quota restrictions, licencing and reporting requirements. The EU Regulations also go further with product bans, leakage controls measures and certification requirements for technicians.

DEFRA	<b>Animal health and traceability</b>	x	x	x	EU rules and standards that aim to maintain animal health and allow their movement, including policies covering: prevention of disease (entering UK), control of disease (endemic and exotic), surveillance (for exotic disease) movement of livestock, pet passports and veterinary medicines.
DEFRA	<b>Animal welfare</b>	x	x	x	EU rules relating to aspects of animal welfare including on-farm issues, movement of livestock and slaughter.
DEFRA	<b>Chemicals</b>	x*	x*	x*	Regulation of the manufacture, authorisation and sale and use of chemical products primarily through the REACH regulation but also including: Persistent Organic Pollutants (POPs), Polychlorinated Biphenyls (PCBs) and Minamata.
DEFRA	<b>Waste packaging and product regulations</b>	x*	x*	x*	Policies and Regulations that aim to meet certain essential product requirements and set product standards including for packaging (e.g. ROHS in Electrical and Electronic Equipment, Batteries and Vehicles) in order to manage waste.
DEFRA	<b>Pesticides</b>	x	x	x	Regulations governing the authorisation and use of pesticide products and the maximum residue levels in food, and a framework for action on sustainable use of pesticides.
DEFRA	<b>Plant health, seeds and propagating material</b>	x	x	x	Requirements in relation to the import and internal EU movement of plants and plant products, risk assessment of new plant pests and outbreak management. Assurance and auditing of policies across the UK to protect plant biosecurity. Requirements for plant variety rights, registration of plant varieties and quality assurance of marketed seed and propagating material.
DEFRA	<b>Food compositional standards</b>	x	x	x	Minimum standards for a range of specific food commodities such as sugar, coffee, honey, caseins, condensed milk, chocolate, jams, fruit juices and bottled water.
DEFRA	<b>Food labelling</b>	x	x	x	Regulations setting out requirements on provision of information to consumers on food labels.
Defra and HSE	<b>Chemicals Regulation (including pesticides)</b>	x*	x*	x*	There are directly acting EU Regulations on the classification, labelling and packaging of substances and mixtures (CLP); the placing on the market and use of biocidal products ; the export and import of hazardous chemicals (PIC); the registration, evaluation, authorisation and restriction of chemicals (REACH); and plant protection products (e.g. pesticides).

DEFRA	<b>Agriculture - organic farming</b>	x	x	x	Regulation 834/2007 sets out the principles and overarching standards for organic production certification. Specific Regulations also apply such as 889/2008 on labeling of organic produce and 710/2009 on organic aquaculture.
DEFRA	<b>Agriculture - fertiliser regulations</b>	x	x	x	Regulations providing common standards for compositional ingredients, labelling, packaging, sampling and analysis of fertilisers. The UK is also signed up to a number of international agreements (e.g. the Gothenburg Protocol) and EU agreements (the National Ceilings Directive) related to fertiliser regulation.
DHSC	<b>Reciprocal Healthcare</b>	x*	x*	x*	Regulations 1408/71 and 883/2004 are the main pieces of EU legislation providing for reciprocal healthcare.
Food Standards Agency	<b>Food and feed safety and hygiene law</b>	x	x	x	EU Regulations laying down the general principles and requirements of food and feed safety and hygiene; food and feed law enforcement (official controls); food safety labelling; risk analysis; and incident handling. The regulations set out an overarching and coherent framework for the development of food and feed legislation and lay down general principles, requirements and procedures that underpin decision making in matters of food and feed safety, covering all stages of food and feed production and distribution.

#### 4 Policy areas that the UK Government believes are reserved, but are subject to ongoing discussion with the devolved administrations

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information - what the EU law does
		NI	S	W	
BEIS	<b>Elements of product safety and standards relating to explosive atmospheres</b>				ATEX covers equipment and protective systems intended for use in explosive atmospheres, safety devices and components for such equipment.
BEIS	<b>State aid</b>				Articles 107 - 109 of TFEU and associated Treaty articles, Regulations and EU legislation prohibit State aid by Member States and create a framework for assessing compatibility of aid with the internal market, investigating and making complaints about allegedly unlawful aid and creating exemptions for certain categories of aid.
DEFRA	<b>Food Geographical Indications (Protected Food Names)</b>				Geographical Indications (GIs) are a form of intellectual property protection. Under the EU schemes, producers can apply to protect regionally distinct or traditional agri-food products. Once registered, these products are protected throughout the EU against imitation or misuse of their names.
HO	<b>Data sharing - Eurodac</b>				Regulation 603/2013/EU established Eurodac - an EU database containing fingerprints of illegal entrants and asylum applicants. Its primary purpose is to support the effective application of the Dublin Convention by helping to determine which EU Member State is responsible for examining an asylum application.



Our ref: MA-L/JM/194/19

Lynne Neagle AM  
Chair  
Children, Young People and Education Committee  
National Assembly for Wales

[SeneddCYPE@assembly.wales](mailto:SeneddCYPE@assembly.wales)

5 April 2019

Dear Lynne

Following the introduction of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill to the National Assembly on 25 March 2019, I am writing to provide further information in relation to social services data, which is highlighted in the Regulatory Impact Assessment accompanying the Bill.

This information is provided to support the committee's scrutiny of the Bill.

The Welsh Government has not been able to establish a baseline of the number of referrals relating to reasonable punishment received by social services departments using existing social services data. As the defence of reasonable punishment currently exists, social services departments in Wales do not specifically collect information about physical punishment. There is therefore, no published or readily-available data to use as a baseline.

We have carried out a lot of work to try to establish a baseline for social services referrals. As part of this work with local authorities, we have been able to establish that local authorities do not necessarily record the specific details of a referral or report of an incident in the first instance in a searchable form. The details of each individual case, record or report are normally established later in the process. This has presented challenges in separating out data relating to the physical punishment of children where the defence of reasonable punishment would apply.

The recording of incidents differs among the 22 local authorities. For example, some record this under child protection, some under child welfare issues or other categorisations.

We have considered a number of options to enable us to obtain the relevant data, which could then be used as an approximation for a baseline but, to date, we have not yet been able to identify an existing baseline dataset, which is sufficiently robust.

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

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

We are continuing this work and are currently working with a small number of local authorities to try to establish a sufficiently accurate baseline, based on the method the four Welsh police forces were able to use when analysing their data.

I will provide further updates about the process to establish a social services data baseline as they become available and I look forward to providing evidence to the committee in due course.

I am copying this letter to the chairs of the Finance and the Constitutional and Legislative Affairs committees, which are also scrutinising this Bill.

Best wishes

A handwritten signature in black ink that reads "Julie Morgan". The signature is written in a cursive style with a large initial 'J'.

**Julie Morgan AC/AM**

Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol  
Deputy Minister for Health and Social Services

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Ein cyf/Our ref MA-L/JM/0382/19

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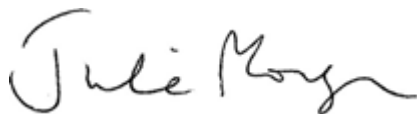
25 April 2019

Dear Lynne,

Thank you for your letter of 5 April, which requested clarification on specific points of interest in relation to the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill.

I trust the Committee will find the information provided in the Annex to this letter helpful. I look forward to discussing how the Bill will protect children's rights with the Committee on 2 May.

Yours sincerely,



**Julie Morgan AC/AM**  
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol  
Deputy Minister for Health and Social Services

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

**Assault and battery**

***“At various points in the Explanatory Memorandum (e.g. para 1.1. and para 1.4) it is stated that the Bill removes the defence of reasonable punishment as a defence to assault or battery against a child. Section 1 of the Bill removes the defence of reasonable punishment in relation to corporal punishment of a child by parents or those acting in loco parentis. Corporal punishment is defined in section 1 (5) of the Bill to mean battery carried out as a punishment. Can you confirm how the defence is removed in cases of assault?”***

The approach taken in the Bill is consistent with what was done in relation to corporal punishment in schools by section 548 of the Education Act 1996. We are not aware of any suggestion or concern that section 548 left open the possibility of teachers being able to defend threats to carry out corporal punishment against pupils as lawful.

For an assault to occur, a person must apprehend the immediate infliction of unlawful violence or force. It follows that the apprehension of the immediate infliction of *lawful* force is not an assault (anticipating a collision in a game of rugby, for example; where consent to participation renders the contact lawful). Any action which currently causes a child to apprehend the infliction of a smack, for example, is potentially defensible, and lawful, by reference to the current defence (assuming that the adult in question is a parent or is in loco parentis).

The defence’s abolition in relation to any form of corporal punishment, irrespective of the level of harm caused, will mean that all acts of battery captured by the definition in section 1 of the Bill will be unlawful. By extension, any action which involves the immediate apprehension of “corporal punishment” will be incapable of being defended in respect of an allegation of assault or of a trespass against the person. The interaction between, on the one hand, the abolition by statute of the defence in relation to a particular type of battery, and, on the other, the existing common law of assault achieves the correct result.

In other words, once the defence is abolished in relation to acts of battery constituting corporal punishment, it follows that an assault by way of a threat to carry out any degree of corporal punishment (which will be unlawful once the Bill is in force, irrespective of severity) cannot be defended in legal proceedings.

## Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

### Implementation and training needs

***“What assessment/discussions have taken place with CAFCASS about the anticipated impact of this Bill on their work and caseloads in terms of both private law and public law cases.”***

Officials have had regular discussions with Cafcass Cymru regarding the potential impact of the Bill on their work. Cafcass Cymru already responds to allegations made by separating couples within private law proceedings. This is a complex issue and professionals already make balanced decisions to ensure children are kept safe, and are able to maintain relationships with both parents where this is safe and in the child’s best interests. The Bill does not change this.

There is no precedent in the UK for removing the defence and, therefore accurately predicting the impact is difficult. It is possible there will be an impact on caseloads, at least initially, due to increased public and professional awareness of the issue.

We will continue to work closely with Cafcass Cymru, to consider how we can monitor the impact of the Bill. A representative from Cafcass Cymru will be invited to be part of the Implementation Group which is meeting on 14 May. Work by the Group will help us develop monitoring and reporting processes for future evaluation of the impacts of the change in the law (if passed).

I recognise parental separation affects many children and their families. Where it is handled well, the adverse impact on children is minimised. In 2017, Welsh Government provided £32,000 to make the Cafcass Cymru Working Together for Children course more widely available to parents. The course helps parents understand how best to work together to support their children during and after separation.

***“What assessment/discussions have taken place with representatives of the judiciary (civil, family and criminal) regarding the training needs and cross-border issues arising from the implementation of this Bill?”***

Officials have met with representatives of Her Majesty's Courts & Tribunals Service (HMCTS) in July 2018 and a further meeting is planned in April 2019.

HMCTS colleagues highlighted the importance of engaging across the whole justice system and made a number of suggestions for engagement and awareness raising which will be considered through the work of the Implementation Group.

The Lord Chief Justice (LCJ) is responsible for arrangements for training the judiciary in England and Wales. These responsibilities are exercised through the Judicial College. The Welsh Government has a commitment to consult the LCJ and engage with his Judicial Office on proposals which bring changes to the criminal law or which may have an effect on the operation of the judiciary and the courts and tribunals system. As is the case with all Bills, the LCJ’s Office have been kept informed of these proposals and are aware that the Bill has been introduced.

## **Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill**

A representative from HMCTS has been invited to the Implementation Group which is meeting on 14 May and will consider potential training needs and cross-border issues.

***“Please could you provide further details on:***

***The assessments undertaken in respect of the availability of Registered Intermediaries which para 28 of Annex 4 of the EM states ‘must be considered for use at court in every case involving a child witness’.***”

***“The reference in para 29 of Annex 4 of the EM to a current shortage of RIs ‘and a very limited number of Welsh speaking ones’ and that ‘this could create delays in the process’.***”

The Registered Intermediaries (RI) scheme was the subject of a review by the Victims’ Commissioner, Baroness Newlove. The review, ‘A Voice for the Voiceless’, which was published in January 2018 identifies a shortage of RIs to work in some geographical areas, such as North Wales and a lack of Welsh speaking RIs.

Written evidence on the RI scheme has also been provided to the Commission on Justice in Wales, which was set up by the former First Minister in September 2017 to review the operation of the justice system in Wales. Giving evidence to the Commission a RI identified, at the time of submitting his evidence (July 2018), that there was one full time Welsh speaking RI and two part time non Welsh Speaking RIs in Wales. He reported that the majority of intermediaries who work in Wales were traveling from England to conduct assessments and interviews.

Written evidence was also provided to the Commission on Justice in Wales in August 2018, by the Victims’ Commissioner, Baroness Newlove. She reported that victims with communication needs can face a long wait to get access to a RI to help them give evidence with the police and for giving evidence at court.

Her Majesty’s Courts and Tribunals Service and the Ministry of Justice carried out a recruitment exercise between October and December 2018 to recruit additional Registered Intermediaries. Fifteen candidates were successful and twelve have completed the approved assessed training course and will shortly be able to commence practising in the role of RI in Wales.

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### **Guidance and training for frontline professionals (para 4.14-4.15 of the EM)**

***“Please could you provide a list of all relevant public policy and guidance in Wales which you have assessed as needing updating if the Bill passes, along with the date it was last updated”***

***“Please could you provide the estimated cost of updating: all Welsh Government guidance in respect of Social Care, Education (para 61 of Annex 4 of the EM), Health, Parenting, and third sector (para 8.19 of the EM)”***

The updating of Welsh Government guidance is a routine activity which officials regularly undertake to ensure such guidance remains compliant with any changes to legislation or procedures. As such, we would expect this to be covered by administrative running costs, with little or no additional costs in this respect.

The Implementation Group will consider whether guidance provided by other public bodies needs updating. As we are not creating a new offence we expect existing guidance, across public bodies, to be updated, rather than produced from scratch. The organisations responsible for this guidance, for example the CPS or National College of Policing regularly update guidance to reflect changes in law and practice. We anticipate they would use existing resource to do this. In many cases guidance on the operation of the defence of reasonable punishment is only one aspect of broader guidance which covers a wide range of safeguarding or criminal justice issues. The CPS Charging Standard, for example, provides guidance to prosecutors and police officers in relation to a number of different offences against the person, of which the approach to the reasonable punishment defence in cases of common assault is only one part.

***“Para 8.47 of the EM refers to the All Wales Child Protection Procedures 2002 being ‘regularly updated’. Since the 2008 revision to these procedures, please could you indicate:***

- how often it has been updated;***
- when it was last updated;***
- how long the updating work took;***
- the total costs of this work in terms of redrafting, dissemination, and training.”***

The All Wales Child Protection Procedures 2008 (AWCPP) were produced and adopted by all Safeguarding Children Boards in Wales. This is not Welsh Government guidance. The All Wales Child Protection Procedures Review group (now disbanded) was responsible for keeping the procedures up to date and added a number of protocols to the core procedures.

Currently the AWCPP and the Policy and Procedures for the Protection of Vulnerable adults (POVA) are being revised by Cardiff and the Vale Safeguarding Board on behalf of all Safeguarding Boards in Wales to take account of the Social Services and Well-being (Wales) Act 2014, which came in force 6 April 2016, and its accompanying statutory guidance. The work is overseen by a Project Board chaired by the Director of Social Services of the Vale of Glamorgan with representatives from

## **Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill**

all Safeguarding Boards and partners. The intention is for the new Wales Safeguarding Procedures (WSP), which will replace both the AWCPP and the POVA procedures, to be launched in the autumn 2019.

The Welsh Government have also co-ordinated with stakeholders the production of a number of practice guides which replace existing AWCPP protocols for the safeguarding of children in specific circumstances, for example, in relation to child trafficking and children missing from home or care.

The WSP will be hosted by Social Care Wales (SCW) in a digital format which will enable ease of access, review and update. The Project Board is considering formal arrangements for keeping the WSP current and informed by changes to practice and guidance. This will be the responsibility of the Safeguarding Boards.

The current project is a substantial revision, rather than an update and was commenced in 2017. Funding of £185,000 to produce, digitalise and translate the Wales Safeguarding Procedures has been made available over the last two years. Additional funding for implementation and training resources will now be required. The Welsh Government has provided the funding for the review and agreement will be sought by the Welsh Government to provide funding for a launch and implementation. This includes SCW working with the Project Board to produce training materials for use by all Safeguarding Boards in Wales.

The Project Board have received a briefing on the Bill. As part of their work they will consider the consequent implications (should the Bill be passed) for updating the WSP as part of the sustainable arrangements made to keep the WSP current and informed by changes to practice, case law and guidance. The WSP Project Board members will be invited to contribute to the work of the Implementation Group.

***“Please could you provide further information about the costs associated with social services workload arising from para 50 of Annex 4 of the EM. This states that there may ‘be an increase in reporting incidents from individuals and community organisations such as schools’ in line with the ‘duty to report’ in the Social Services and Well-being Act.”***

There is no precedent in the UK for removing the defence of reasonable punishment and, therefore, no requirement on public services to record or report incidents of physical punishment. There is therefore, no published or readily available data to use as a baseline or experience from another country to make a robust estimate of what the potential increase in social services referrals might be. As a consequence it is difficult to accurately predict the costs associated with a potential increase in workload for social services. As now, it is anticipated that, if the legislation is enacted, a significant proportion of incidents of physical punishment will not require a response under the child protection process.

We are working with a small number of local authorities to try to establish a sufficiently accurate baseline; however there are a number of issues associated with this. These were outlined in my letter to the Chair, Lynne Neagle AM on 5 April. One of the reasons why we are working to establish a baseline and will be putting in place

## **Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill**

systems to better record cases is to enable us to look at resource requirements and understand cost implications.

There will be ongoing work, via the Implementation Group, with social services to establish a recording and monitoring system to develop a reliable system to collect relevant data for a period prior to implementation to establish baselines, and following commencement in order to monitor the impact of the Bill.

***“What discussions have taken place with the Crown Prosecution Service regarding amending the Charging Standard for Offences Against the Person to ensure that Section 58 of the 2004 Children Act does not apply in Wales as per paragraph 3.23 of the Explanatory Memorandum? How much time will this revision take, how much is it expected to cost and who will be responsible for this cost?”***

The former Minister for Children, Older People and Social Care, Huw Irranca-Davies met with the Chief Crown Prosecutor for Wales and CPS colleagues on 9 October 2018 and I met with them on 7 March 2019. Officials have also had regular contact with CPS colleagues during which there has been discussion on a range of issues including amending the Offences Against the Person Charging Standard.

The CPS is a non-devolved organisation which has a policy department that updates guidance documents as part of the work they are employed to do. Between July and August 2017 the CPS consulted on revisions to and amended its Charging Standard. This was done as part of their periodic refresh, to reflect a number of legal and social developments and to clarify aspects of the Standard. The amendments included clarification on the approach required where the defence of reasonable punishment falls for consideration. Changes to the application of the defence in Welsh legislation will again be reflected in updates to the CPS Charging Standard in line with CPS normal practice.

The CPS meets the costs incurred of reviewing and updating its legal guidance. Following discussions it is understood that, in line with their normal practice, the CPS will meet costs incurred in reviewing its Charging Standard to reflect legislation that ensures Section 58 of the 2004 Children Act does not apply in Wales.

## **Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill**

***“What discussions have taken place with the Police regarding the amended guidance referred to in para 15 of Annex 4 of the EM? How much time will this revision take, how much it is expected to cost and who will be responsible for this cost?”***

***“What discussions have taken place with the Police regarding the difference in recording requirements between England and Wales for the National Law Enforcement database referred to in paras 14 and 15 of Annex 4 of the EM? How has the feasibility of this work been assessed, how much is it expected to cost and who will be responsible for this cost?”***

The former Minister for Children, Older People and Social Care, Huw Irranca-Davies met with the four Chief Constables (or their Deputies) of the four police forces in Wales on 3 August 2018 and I also met them on 24 January 2019. Officials have also had regular contact with representatives of the four police forces in Wales in which there has been discussion on a range of issues including guidance and recording requirements.

As explained at paragraph 14 of Annex 4 of the EM, the National Law Enforcement Database (LEDS) will be set up to replace both the existing Police National Database (PND) and Police National Computer (PNC). Currently, conviction information is held on the PNC, and records on non-conviction information (e.g. intelligence, non-statutory out of court disposals such as community resolutions) are held on the PND.

The need to consider how the LEDS will distinguish between the fact that certain common assaults on children may be non-conviction information in England and conviction information in Wales has been raised in our discussions with police as an issue to work through.

At this stage, our view is that there would be no difficulty in terms of accommodating this difference within a combined database which contains records about both conviction and non-conviction information. Removing the defence of reasonable punishment in Wales does not create a new offence; the offence of common assault already exists in common law across England and Wales, therefore it should be possible to report incidents of common assault against children, either as conviction information (e.g. if a caution has been accepted by the perpetrator) or as non-conviction information.

Clear guidance about the inputting of information to LEDS, so that there is clarity about whether cases of ‘reasonable punishment’ are recorded as conviction or non-conviction information will be essential. Once recorded, it should be clear to disclosure units which non-conviction information they should consider for release for the purpose of an enhanced Disclosure and Barring Service check.

We consider that any costs attached to such guidance would be minimal, and part of much wider guidance likely to be required regarding the inputting of information to LEDS. However, these are matters of detailed implementation which we will discuss further with the police and others as required.

## Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

***“Please could you provide details of any costs associated with attending a course as part of a conditional caution referred to in para 21 of Annex 4 of the EM. Will a course need to be developed for this type of offence? If yes, who will be expected to develop and fund this course?”***

***“Please could you provide details of progress and costs associated with the community resolutions referred to in para 24 of Annex A of the EM?”***

The former Minister for Children, Older People and Social Care, Huw Irranca-Davies met with the Police and Crime Commissioners on 29 October 2018 and I also met them on 24 January 2019. Officials have also had regular contact with the CPS and representatives of the four police forces in Wales in which there has been discussion on a range of issues including on out of court disposals.

Conditional cautions are issued by the police in accordance with Ministry of Justice guidelines. Decisions around the use of out of court disposals and the most appropriate conditions to attach to a caution are a non-devolved responsibility. We will continue to work with the Home Office, Ministry of Justice, CPS, Police and Police and Crime Commissioners to consider suitable interventions.

The way courses are funded varies between police forces. They are usually paid for through funding from the PCC; by the offender themselves, or are already available and funded in the community. It is possible that existing provision could be utilised. The Implementation Group, which will include representatives from key organisations, will consider the use of out of court disposals, including community resolutions and conditional cautions. Planning around implementation will also consider the most appropriate models of delivery, guidance, funding and resourcing arrangements.

## Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

### **Awareness raising campaign and costs (paras 3.63-3.66 of the EM).**

***“Please could you clarify the target audience for the awareness raising campaign.”***

The communications campaign will target the entire population of Wales as most people come into contact with children.

The audience will also be broken down and messages will be tailored for a number of different groups. We will carry out scoping work over the coming months to consider what messages resonate best with and the most effective ways to communicate with different groups.

The communications plan will include extensive engagement with stakeholders who are key to the implementation of the legislation, for example the police, Crown Prosecution Service, Disclosure and Barring Service, and frontline professionals and organisations who work with children and families including social services, health and education professionals.

***“Please could you provide details of the methods and costs for awareness raising with visitors to Wales, how this will be delivered and the costs associated for this for 3 years (para 9.2 of the EM)?”***

Work will be carried out during the passage of the Bill to establish the most effective methods of raising awareness with visitors to Wales. We recognise that citizens of Wales and visitors to our country should be able to find the law, and to understand it, with reasonable ease in advance so that they can enjoy the benefits, and respect the obligations, that the law confers or imposes on them.

***“Please could you provide details of the assessment made as to whether to include this awareness raising campaign on the face of the Bill.”***

We have given careful and detailed consideration to the need to raise awareness of the change in the law, both prior to and after commencement, should the Bill achieve Royal Assent.

We commissioned a report by the Public Policy Institute for Wales (now the Wales Centre for Public Policy) on legislating to prohibit the physical punishment of children ( <https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/> ), which considered the experience from other countries which have legislated in this area.

As highlighted at paragraph 8.24 to 8.25 of the Explanatory Memorandum, the report showed that a change in the law, accompanied by an awareness raising campaign and support for parents, can lead to a decline in physical punishment and a change in attitudes. It also found that where a change in the law is not accompanied by a publicity campaign, or a campaign is not sustained, knowledge of the law is less widespread.

## **Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill**

We are therefore committed to running a sustained awareness raising campaign, and have confirmed this commitment in Chapter 8 of the Explanatory Memorandum.

A duty on Welsh Ministers to carry out an awareness raising campaign is not necessary in light of this firm commitment and the fact that Welsh Ministers already have sufficient powers to be able to raise awareness of the legislation.

## **Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill**

### **Implementation group (para 8.9 of the EM)**

***“Please could you provide details of the role, membership and terms of reference for the implementation group and how often it has met to date, and an outline of the reasons why this information was not included in the Explanatory Memorandum”***

The remit of the Implementation Group will be to consider and make recommendations about how to implement any changes required in most practical and effective way. I have invited representation from a wide range of stakeholders including the police, Police and Crime Commissioners, social services, and the public sector in Wales including health and education sectors. The first meeting has been arranged for 14 May 2019.

From previous engagement with stakeholders, we anticipate the workstreams could include: - advice, guidance, support and information for parents; data collection, monitoring and evaluation; operational processes, procedures, guidance and interaction between agencies; and out of court disposals, including possible diversionary schemes. The full range of work to be covered will be tested with the Implementation Group.

### **Other**

***“In relation to paragraph 3.42 of the EM, are you assured that all other academic references have been represented correctly?”***

The overarching aim of the Bill is to help protect children's rights.

The intention was to provide a balanced summary of evidence in the consultation document and the Explanatory Memorandum, rather than provide a comprehensive academic review. The conclusions from our consultation document are broadly consistent with the findings set out in the Wales Centre for Public Policy (WCPP) report 'Parental Physical Punishment: Child Outcomes and Attitudes'. The WCPP report was an independent review of the available literature which had the findings peer reviewed by experts in the field. Officials have endeavoured to read and check all academic references which have been referred to in the Explanatory Memorandum and consultation document. To the best of our knowledge academic references have been represented correctly.

## Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

***“Please could you provide more clarity about the published data referred to in para 8.20 of the EM in New Zealand in terms of cases reported to the police service before and after the law change.”***

The New Zealand legislation, The Crimes (Substituted Section 59) Amendment Act 2007, came into force on 22 June 2007. Its purpose was to abolish the use of parental force for the purpose of correction.

New Zealand police have published a number of reviews of the impact of the New Zealand legislation. The reviews are available at:  
<https://www.police.govt.nz/about-us/publication/crimes-substituted-section-59-amendment-act-2007>

The reviews were based on data collected by the New Zealand police, with a view to providing information on volumes of calls to police about child assaults involving ‘smacking’ and ‘minor acts of physical discipline’, as opposed to other child assaults.

In the period of three months prior to commencement of the legislation, and five years afterwards, the New Zealand police examined offences recorded under the following seven offence codes:

- Assault Child (Manually)
- Assault Child (Other Weapon)
- Common Assault (Domestic)(Manually)
- Common Assault (Manually)
- Other Assault on Child (Under 14 Years)
- Common Assault Domestic (Other Weapon)
- Other Common Assault #1649

The offences under these seven codes were examined for the purpose of the reviews, because they were considered to be the offence types most likely to include ‘smacking’ type incidents. The review reports indicate that the child assault events identified under these codes are not the total number of child assault events attended by the New Zealand police in any review period, as assault events which were not considered to be likely to include ‘smacking’ type incidents were not examined.

Based on this examination, the events recorded under each of these offences were allocated to one of each of the following categories: ‘smacking’, ‘minor acts of physical discipline’ and ‘other child assault’.

The rationale used to allocate each event to one of these categories involved consideration of the:

- actual physical action used in the child assault; and
- the context and the surrounding circumstances.

We have summarised the data collected for each of the 12 review periods in the table below. The first review period of 17/03/2007 – 22/06/2007 is the three month period prior to commencement of the New Zealand Act:

## Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

### New Zealand review of cases since enactment of Section 59

	Law passed											Numbers of cases		
	Baseline	Review	Review	Review	Review	Review	Review	Review	Review	Review	Review	Review	Review	Review
	Period	Period 1	Period 2	Period 3	Period 4	Period 5	Period 6	Period 7	Period 8	Period 9	Period 10	Period 11	Period 11	
	17/03/2007	23/06/2007	29/09/2007	05/04/2008	04/10/2008	05/04/2009	24/06/2009	23/12/2009	23/06/2010	22/12/2010	22/06/2011	22/12/2011		
	-	-	-	-	-	-	-	-	-	-	-	-	-	
	22/06/2007	28/09/2007	04/04/2008	03/10/2008	04/04/2009	23/06/2009	22/12/2009	22/06/2010	21/12/2010	21/06/2011	21/12/2011	21/06/2012		
Smacking	3	3	13	9	8	3	11	25	18	18	23	12		
Minor Acts of Physical Discipline	10	12	69	49	39	10	39	38	45	58	45	31		
Other Child Assaults/No offence disclosed	82	96	206	200	232	114	318	353	381	380	432	312		
<b>Total</b>	<b>95</b>	<b>111</b>	<b>288</b>	<b>258</b>	<b>279</b>	<b>127</b>	<b>368</b>	<b>416</b>	<b>444</b>	<b>456</b>	<b>500</b>	<b>355</b>		

*Note: Review periods vary in length and so are not directly comparable*

*Source: New Zealand Police*

## **Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill**

As we indicate in paragraph 8.20 of the Explanatory Memorandum, there are differences between the situations in New Zealand and Wales which must be borne in mind when comparing the two. Subject to the caveats listed at paragraph 8.34 and annex 6 of the Explanatory Memorandum, we have used the New Zealand data as a proxy to estimate the potential increase in reporting to the police and prosecutions in the courts.

In the case of the police, baseline data specific to Wales was identified through a retrospective audit carried out by the four police forces in Wales (see table on page 50 of the Explanatory Memorandum). The potential scale of increase was calculated by reference to the New Zealand data, on the basis that incidents categorised in New Zealand as 'smacking' or 'minor acts of physical discipline' would roughly equate to offences at the level of 'reasonable punishment' in Wales. The table at page 51 of the Explanatory Memorandum explains that, on average, such incidents occurred twice as frequently in the five years following commencement of the legislation in New Zealand. An average increase has been used as reporting periods in New Zealand were not uniform, so attempting to forecast on a year by year basis is complex.

In the case of the courts, the New Zealand data has been used as a proxy to provide an estimate of the potential numbers of cases prosecuted in Wales in the five years following commencement – again, bearing in mind the caveats around the differences between the situations in Wales and New Zealand. As explained at paragraphs 8.40 and 8.41 of the EM, the estimated number has been calculated on the basis that the number of 0-14 year olds in Wales is around 60% of the number of 0-14 year olds in New Zealand (the legislation in New Zealand applies to 0-14 year olds).

In the five years of the review period, there were eight prosecutions for 'smacking' and 55 for 'minor acts of physical discipline', so 63 prosecutions in total. We have, therefore, estimated 37 or 38 prosecutions over a five year period in Wales. This is explained further at pages 8-9 of the Justice Impact Assessment, where it is also noted that the incidence of prosecutions would likely start to decrease after 5 years as a result of the sustained awareness raising campaign planned by the Welsh Government.

Mark Drakeford AM  
First Minister of Wales

20 May 2019

Dear Mark,

### **Attendance of Ministers at committees on a Monday**

Thank you for your letter dated 12 April 2019, which the Committee considered on 29 April 2019.

Firstly, I would like to thank you personally for the flexibility you have shown in attending meetings of the Committee to date. This is both in terms of your appearances as First Minister and during your time as the Cabinet Secretary for Finance. Such attendances have allowed the Committee to undertake its duties and deliver informed and timely outputs for consideration by the whole Assembly.

We are content to reciprocate that flexibility within the constraints of our allocated meeting slot and particularly in circumstances where we seek your attendance, or that of Welsh Ministers, at short notice. We have done so in the past and see no reason as to why this would not continue. Adjusting the start time for our meetings to 1.30pm on occasions where you, or other Welsh Ministers, are attending should be possible on most occasions, though I am sure you appreciate that there could be rare circumstances where it is not. I have asked the Committee's clerks to continue liaising with your officials on a meeting by meeting basis.

In responding, it is important to note that the issue of Ministerial availability on Mondays has arisen due to the recent decision to move Cabinet meetings from Tuesday mornings to Monday afternoons. I am sure that the decision was taken in full knowledge of the fact that this was at a time allocated by the Business Committee for Assembly business, specifically for the Public Accounts Committee, Constitutional and Legislative Affairs Committee and the External Affairs and Additional Legislation Committee to meet. This



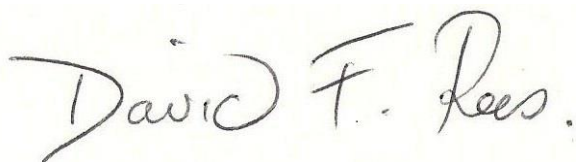
conflict of timing has not arisen as a consequence of any change in this committee's approach, or a change to the pattern of Assembly business.

In your letter you refer to paragraph 6.8 of the Ministerial Code. You will know that one example provided under that paragraph, to illustrate the exceptional circumstances that might prevent a Minister attending a Cabinet meeting, is "Assembly business". Further, we are of the view that whilst it might be appropriate for the Ministerial Code to manage Ministers' time in terms of the business of government, it would be concerning if the Code were to be used as a basis for constraining the availability of Ministers to appear before us as an Assembly committee.

I thank you again for the flexibility you and your Ministers have shown in the past and look forward to your continued engagement with the Committee in the future on that very flexible basis.

I have copied this letter to the Llywydd as Chair of the Business Committee, given the link to the organisation of Assembly business. I have also copied this letter to the Chair of the Constitutional and Legislative Affairs Committee and the Chair of the Public Accounts Committee due to our shared meeting slots.

Yours sincerely,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large initial 'D'.

David Rees AM

Chair of the External Affairs and Additional Legislation Committee

*Croesewir gohebiaeth yn Gymraeg neu Saesneg.*

*We welcome correspondence in Welsh or English.*



Eich cyf/Your ref  
Ein cyf/Our ref

Mick Antoniw AM,  
Chair, Constitutional and Legislative Affairs Committee,  
National Assembly for Wales,  
Cardiff Bay,  
CARDIFF, CF99 1NA

21 May 2019

Dear Mick,

Thank you for your letter relating to the Regulation and Inspection of Social Care (Wales) Act 2016 (Commencement No. 6, Savings and Transitional Provisions) Order 2019 and the Public Health (Wales) Act 2017 (Commencement No. 4) Order 2019.

The former mentioned Order does indeed illustrate the scale of provision that may be necessary when changing from one legislative framework to another. We are always careful when drafting to ensure that Orders of this kind do not overstep the bounds of what is permissible or appropriate.

In respect of the latter mentioned Order, and other example Commencement Orders shown in the annex, it should be noted that these Orders are not in fact required to be laid before the National Assembly for Wales as suggested in your correspondence. Instead such Orders are notified by Welsh Government officials directly to the Constitutional and Legislative Affairs Committee secretariat as a courtesy after being made, specifically in recognition of the Committee's discretionary functions under Standing Order 21.7(iv). Officials endeavour to provide this notification promptly following an Order's registration and publication on legislation.gov.uk, although when volumes are high this may be affected by the processing of business that is required to be laid. On this occasion an internal administrative oversight delayed our notification of the Order.

With regards to your question about the sequencing of such Orders, the timing between the three actions is dependent on the approach being taken to implementation and confirming to stakeholders the date or dates an Act's provisions will come into force, so they can make preparations. In some cases, this is confirmed in legislation some months ahead of time, in others, the Government works closely with stakeholders to ensure they are aware of the planned date of commencement in advance, but the Order itself is not made until close to that date.

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

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

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

I would be happy for my officials and your Committee Secretariat to discuss the current notification arrangement further, if it would be helpful.

I am copying this letter to the Counsel General and Brexit Minister.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a period at the end.

**Rebecca Evans AC/AM**  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd

Ein cyf/Our ref: MA-L/FM/0288/19

Mick Antoniw AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

22 May 2019

*Dear Mick,*

I wish to draw your committee's attention to an updated version of the *Legislation Handbook on Assembly Bills* that has been published on the Welsh Government's website. This latest version reflects changes to the devolution settlement as a result of the Wales Act 2017 coming into force, and other relevant developments such as the government's commitments in its response to the Finance Committee's report on the financial estimates accompanying legislation.

This replaces the previous version of the handbook that my predecessor published in August 2017. The Welsh Government committed to publish the handbook, once it had been updated for the Fifth Assembly, in response to the recommendations of your predecessor committee's report, *Making Laws in Wales*. The handbook is internal guidance for the Welsh Government Civil Service and covers the processes and procedures involved in preparing primary legislation, as well as supporting Ministers to take it through the National Assembly for Wales.

I am copying this letter to the Llywydd and a copy of the updated handbook will be placed in the library.

*Best wishes,  
Mark.*

**MARK DRAKEFORD**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

# Agenda Item 5.6

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



Llywodraeth Cymru  
Welsh Government

Our ref: MA/P/LG/1981/19

Mick Antoniw AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales

24 May 2019

Dear Mick,

I am writing to inform you of the dates of Inter-Ministerial Group Environment, Food and Rural Affairs (IMG EFRA) meetings as per the Inter-Institutional relations agreement between the National Assembly for Wales and the Welsh Government.

There are four meetings of the IMG EFRA scheduled between now and the end of the year. These are on the following dates:

- 24 June
- 16 September
- 28 October
- 25 November.

These meetings focus on key issues relating primarily to EU Exit including governance between the administrations, legislation, and readiness for EU Exit

Yours Sincerely,

**Lesley Griffiths AC/AM**

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

Document is Restricted

## **UK and Welsh Government Bilateral Agreement on WTO provisions within the Agriculture Bill**

### **The initial making of Part 7 regulations**

- Defra will make clear on the floor of the House of Commons at Report, that the UK Government will consult the devolved administrations before bringing forward regulations under this power.
- Defra officials will share with DA counterparts proposals for regulations to be made under the WTO powers in the Agriculture Act including:
  - objective methodology and rationale for determining or changing Amber Box limits, and the resulting limits themselves;
  - the type of information, and its frequency, that should be provided for the purpose of classifying schemes and notifying WTO AoA box usage; and
  - the process to be set out for the classification of schemes and the role of a memorandum of understanding (see below).
- Draft regulations will be presented to the four UK agriculture Ministers with the aim of securing agreement, followed by an exchange of letters. This would provide the opportunity for a devolved administration to set out its position, and for the Defra Secretary of State to explain the reasons for the final form of the regulations and how UKG has sought to reach agreement.
- The process for sharing regulations and consulting the devolved administrations should be guided by the principles set out in the Inter-governmental Agreement. Consistent with those, the administrations are committed to seek to proceed by agreement. But if this is not possible, the matter would be escalated in line with the existing MoU governing Intergovernmental relations and any future agreements in place between Defra and the DAs on dispute resolution. In the event of a dispute, once all these attempts at resolution have been exhausted, the exchange of letters should be made available to both Houses in advance of the affirmative vote on the regulations made under part 7.

### **The ongoing operation of the Part 7 regulations**

**The following process has been designed to deal with decisions related to WTO classifications. It also offers a model for administrations to consider using if needed for dealing with other decisions taken under the Part 7 regulations.**

- The administration intending to introduce or change the way funding supports agricultural producers proposes a WTO classification, consistent with the regulations and the detailed process set out in a Memorandum of Understanding on their operation. Proposed classifications should be discussed by officials, and submitted to the four UK agriculture Ministers, initially by correspondence and if necessary for discussion, with the aim of securing agreement. Proposed classifications will be reviewed, as necessary, before schemes are implemented. Assuming agreement is achieved, the Secretary of State notifies the classifications to the WTO.
- In the event consensus cannot be reached through existing dispute resolution mechanisms, issues will normally be referred to an “expert panel” for independent

advice. The purpose of the panel is to prepare an independent, expert view on the issue being considered. This need not be a standing committee – it may be composed if and when a dispute arises. Membership of the panel should be agreed by the Inter-Ministerial Group (EFRA). If it is not possible to agree on membership of the panel, each of the parties to the dispute (the Secretary of State and the relevant devolved administration) should each appoint one expert and the two nominees between them shall agree a third member before considering the issue. Once the panel has provided its independent advice, the Secretary of State should make a decision.

- The Secretary of State should have regard to the advice and will share with the Devolved Administrations the advice, the decision and the reason for the decision. Agreement of these arrangements reflect the particular, technical nature of WTO rules and is without prejudice to the wider work on dispute resolution which is being taken forward as part of the Intergovernmental Relations Review commissioned by the Joint Ministerial Committee.
- Consideration must be given to avoiding the provocation of a challenge by other WTO members to the UK's notification decision, so the UKG and the devolved administrations will seek to agree the right balance between transparency around, and accountability for, the Secretary of State's final decision.