Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:
Video conference via Zoom
Meeting date: 28 September 2020
Meeting time: 10.00

For further information contact:
Gareth Williams
Committee Clerk
0300 200 6565
SeneddLJC@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.Senedd.TV

Informal pre-meeting (09.30-10.00)

1 Introduction, apologies, substitutions and declarations of interest

10:00

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

10:00-10:05 (Pages 1 – 2)

CLA(5)-27-20 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 **SL(5)609 – The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2020**

Made Affirmative Resolution Instruments

2.2 **SL(5)618 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020**

(Pages 3 – 15)

CLA(5)-27-20 – Paper 2 – Regulations

CLA(5)-27-20 – Paper 3 – Explanatory Memorandum

CLA(5)-27-20 – Paper 4 – Letter from the First Minister, 22 September 2020

CLA(5)-27-20 – Paper 5 – Written statement, 21 September 2020

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

10:05–10:15

Negative Resolution Instruments

3.1 SL(5)608 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020

(Pages 16 – 28)

CLA(5)-27-20 – Paper 6 – Report

CLA(5)-27-20 – Paper 7 – Regulations

CLA(5)-27-20 – Paper 8 – Explanatory Memorandum

CLA(5)-27-20 – Paper 9 – Letter from the Minister for Finance and Trefnydd, 8 September 2020

CLA(5)-27-20 – Paper 10 – Written statement, 8 September 2020

3.2 SL(5)610 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020

(Pages 29 – 41)

CLA(5)-27-20 – Paper 11 – Report

CLA(5)-27-20 – Paper 12 – Regulations

CLA(5)-27-20 – Paper 13 – Explanatory Memorandum

CLA(5)-27-20 – Paper 14 – Letter from the Minister for Finance and Trefnydd, 11 September 2020

CLA(5)-27-20 – Paper 15 – Written statement, 10 September 2020

3.3 SL(5)617 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020

(Pages 42 – 55)

CLA(5)-27-20 – Paper 16 – Report

CLA(5)-27-20 – Paper 17 – Regulations

CLA(5)-27-20 – Paper 18 – Explanatory Memorandum

CLA(5)-27-20 – Paper 19 – Letter from the Minister for Finance and Trefnydd, 18 September 2020

CLA(5)-27-20 – Paper 20 – Written statement, 17 September 2020

3.4 SL(5)614 – The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020

(Pages 56 – 81)

CLA(5)-27-20 – Paper 21 – Report

CLA(5)-27-20 – Paper 22 – Order

CLA(5)-27-20 – Paper 23 – Explanatory Memorandum

CLA(5)-27-20 – Paper 24 – Letter from the Minister for Finance and Trefnydd, 17 September 2020

Affirmative Resolution Instruments

3.5 SL(5)583 – The Greenhouse Gas Emissions Trading Scheme Order 2020

(Pages 82 – 204)

CLA(5)-27-20 – Paper 25 – Report

CLA(5)-27-20 – Paper 26 – Order

CLA(5)-27-20 – Paper 27 – Explanatory Memorandum

CLA(5)-27-20 – Paper 28 – Letter from the Minister for Environment, Energy and Rural Affairs, 18 September 2020

CLA(5)-27-20 – Paper 29 – Letter from the Minister for Environment, Energy and Rural Affairs, 10 September 2020

CLA(5)-27-20 – Paper 30 – Letter from the Minister for Environment, Energy and Rural Affairs to the Chair of the Climate Change, Environment and Rural Affairs Committee, 15 July 2020

CLA(5)-27-20 – Paper 31 – Written statement, 15 July 2020

Made Affirmative Resolution Instruments

3.6 SL(5)615 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No.10) (Rhondda Cynon Taf) Regulations 2020

(Pages 205 – 222)

CLA(5)-27-20 – Paper 32 – Report

CLA(5)-27-20 – Paper 33 – Regulations

CLA(5)-27-20 – Paper 34 – Explanatory Memorandum

CLA(5)-27-20 – Paper 35 – Letter from the First Minister, 17 September 2020

CLA(5)-27-20 – Paper 36 – Written statement, 16 September 2020

3.7 **SL(5)616 – The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020**

(Pages 223 – 254)

CLA(5)-27-20 – Paper 37 – Report

CLA(5)-27-20 – Paper 38 – Regulations

CLA(5)-27-20 – Paper 39 – Explanatory Memorandum

CLA(5)-27-20 – Paper 40 – Letter from the First Minister, 17 September 2020

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

10:15–10:20

4.1 **SL(5)588 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020**

(Pages 255 – 257)

CLA(5)-27-20 – Paper 41 – Report

CLA(5)-27-20 – Paper 42 – Welsh Government response

5 Papers to note

10:20–10:25

5.1 **Letter from the Minister for Housing and Local Government: National Development Framework**

(Pages 258 – 259)

CLA(5)-27-20 – Paper 43 – Letter from the Minister for Housing and Local Government, 21 September 2020

Draft National Development Framework 2020–2040

Draft National Development Framework: Consultation report

National Development Framework: Schedule of Changes

Draft National Development Framework: Integrated sustainability appraisal

National Development Framework: Monitoring and review

National Development Framework: Working draft

5.2 **Letter from the Minister for Finance and Trefnydd: The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020**

(Page 260)

CLA(5)-27-20 – Paper 44 – Letter from the Minister for Finance and Trefnydd, 21 September 2020

5.3 **Correspondence with the Secretary of State for Wales: UK Internal Market Bill**

(Pages 261 – 263)

CLA(5)-27-20 – Paper 45 – Letter to the Secretary of State for Wales, 18 September 2020

CLA(5)-27-20 – Paper 46 – Letter from the Chair of the Committee for the Executive Office, Northern Ireland Assembly, to the Secretary of State for Wales, 24 September 2020

5.4 **Letter from the Chair of the Finance Committee: Scrutiny of EU withdrawal arrangements**

(Pages 264 – 265)

CLA(5)-27-20 – Paper 47 – Letter from the Chair of the Finance Committee, 24 September 2020

6 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

10:25

7 Renting Homes (Amendment) (Wales) Bill – consideration of draft report

10:25–10:40 (Pages 266 – 293)

CLA(5)-27-20 – Paper 48 – Draft report

8 Legislative Consent Memorandum: Medicines and Medical Devices Bill - consideration of key issues

10:40-10:50 (Pages 294 - 304)

CLA(5)-27-20 - Paper 49 - Legislative Consent Memorandum

CLA(5)-27-20 - Paper 50 - Letter from the Minister for Health and Social Services to the Chair of the Health, Social Care and Sport Committee, 1 September 2020

CLA(5)-27-20 - Paper 51 - Legal advice note

9 Legislative Consent Memorandum: Domestic Abuse Bill - consideration of key issues

10:50-11:05 (Pages 305 - 317)

CLA(5)-27-20 - Paper 52 - Legislative Consent Memorandum

CLA(5)-27-20 - Paper 53 - Legal advice note

10 Letter from the Minister for Environment, Energy and Rural Affairs: Basic Payment Scheme and rural support legislative framework from 2021 - consideration of response

11:05-11:15 (Pages 318 - 319)

CLA(5)-27-20 - Paper 54 - Letter from the Minister for Environment, Energy and Rural Affairs, 6 August 2020

11 SICM(5)29 - The Waste (Circular Economy) (Amendment) Regulations 2020 - consideration of draft report

11:15-11:25 (Pages 320 - 323)

CLA(5)-27-20 - Paper 55 - Draft report

Date of the next meeting - 5 October 2020

Statutory Instruments with Clear Reports

28 September 2020

SL(5)609 – The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 2) Regulations 2020

Procedure: Negative

Section 82 of the Coronavirus Act 2020 ensures that re-entry or forfeiture for non-payment of rent may not be enforced in relation to all types of commercial tenants during the "relevant period". Section 82(12) of the Coronavirus Act 2020 defines the "relevant period" as beginning on 26 March 2020 and ending on 30 June 2020, or such later date as may be specified in regulations made by the relevant national authority.

The Welsh Ministers are the "relevant national authority" in relation to Wales, and are therefore able to make regulations to extend the "relevant period" for protections beyond 30th June 2020, thereby maintaining the protection provided by section 82 of the Act to such later date specified in regulations.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2020 extended the "relevant period" from 30 June 2020 to 30 September 2020.

These Regulations extend the "relevant period" by a further three months to 31 December 2020. As a result, the moratorium provided by section 82 of the Coronavirus Act 2020 is extended until 31 December 2020.

Parent Act: Coronavirus Act 2020
Date Made: 07 September 2020
Date Laid: 09 September 2020
Coming into force date: 30 September 2020

SL(5)618 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020

Procedure: Made affirmative

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the "principal Regulations"). The amendments—

- designate Blaenau Gwent, Bridgend, and Merthyr Tydfil County Boroughs, and the City and County Borough of Newport, as local health protection areas that are subject to specific restrictions and requirements;

- provide that one of the requirements is that licensed premises must close at 11 p.m. in all local health protection areas (including Caerphilly County Borough);

- provide that it is a reasonable excuse for persons living in accommodation where certain facilities are shared to gather indoors as if they were a single household (this includes houses in multiple occupation and student accommodation);

- make minor amendments to the Welsh language text of regulation 14C of the principal Regulations.

Parent Act: Coronavirus Act 2020
Date Made: 07 September 2020
Date Laid: 09 September 2020
Coming into force date: 30 September 2020

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

WELSH STATUTORY INSTRUMENTS

2020 No. 1022 (W. 227)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the "principal Regulations"). The amendments—

(a) designate Blaenau Gwent, Bridgend, and Merthyr Tydfil County Boroughs, and the City and County Borough of Newport, as local health protection areas that are subject to specific restrictions and requirements;

(b) provide that one of the requirements is that licensed premises must close at 11 p.m. in all

local health protection areas (including Caerphilly County Borough);

(c) provide that it is a reasonable excuse for persons living in accommodation where certain facilities are shared to gather indoors as if they were a single household (this includes houses in multiple occupation and student accommodation);

(d) make minor amendments to the Welsh language text of regulation 14C of the principal Regulations.

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

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

WELSH STATUTORY INSTRUMENTS

2020 No. 1022 (W. 227)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020

Made	*at 12.25 p.m. on 22 September 2020*
Laid before Senedd Cymru	*at 4.00 p.m. on 22 September 2020*
Coming into force	*at 6.00 p.m. on 22 September 2020*

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

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

The Welsh Ministers consider that the amendments made by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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

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

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020 and they come into force at 6.00 p.m. on 22 September 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020(**1**) are amended as follows.

(2) In regulation 14, after paragraph (2) insert—

"(2A) It is also a reasonable excuse for no more than 6 people to gather in (any) premises indoors where all the persons in the gathering—

(a) live in the same premises, and

(b) share toilet, washing, dining or cooking facilities with each other."

(3) In regulation 14C, in the Welsh language text, in both places it occurs (including in the heading), for "leol" substitute "lleol".

(4) In Schedule 4A—

(a) in paragraph 1, after paragraph (b) insert—

"(c) Blaenau Gwent County Borough;

(d) Bridgend County Borough;

(e) Merthyr Tydfil County Borough;

(f) the City and County Borough of Newport.";

(b) immediately before paragraph 7, omit the heading ("PART 3") and the sub-heading below it ("Restrictions applying only in respect of Rhondda Cynon Taf County Borough");

(c) in paragraph 7—

(i) insert the following as a heading—

(**1**) S.I. 2020/725 (W. 162), as amended by S.I. 2020/752 (W. 169), S.I. 2020/803 (W. 176), S.I. 2020/820 (W. 180), S.I. 2020/843 (W. 186), S.I. 2020/867 (W. 189), S.I. 2020/884 (W. 195), S.I. 2020/912 (W. 204), S.I. 2020/961 (W. 215), S.I. 2020/984 (W. 221), S.I. 2020/985 (W. 222), S.I. 2020/1007 (W. 224) and S.I. 2020/1011 (W. 225).

"Restrictions on licensed premises"

(ii) in sub-paragraph (1), in the words before paragraph (a), for "Rhondda Cynon Taf County Borough" substitute "a local health protection area";

(iii) for sub-paragraph (2) substitute—

"(2) Sub-paragraph (1)—

(a) does not allow the licensed premises to be open in contravention of an authorisation granted or given in respect of the premises;

(b) does not prevent the sale or supply of alcohol by a hotel or other accommodation as part of room service.";

(iv) in sub-paragraph (3)(a) for "are premises" substitute "means a public house, bar (including a bar in a members' club, hotel or other accommodation), café or restaurant (including a restaurant or dining room in a members' club, hotel or other accommodation)".

Mark Drakeford
First Minister, one of the Welsh Ministers
At 12.25 p.m. on 22 September 2020

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020.

Mark Drakeford
First Minister

22 September 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 ("the principal Regulations").

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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) ("the 1984 Act"). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions now being imposed in relation to Blaenau Gwent County Borough, Bridgend County Borough, Merthyr Tydfil County Borough and the City and County Borough of Newport are necessary and proportionate as a public health response to the current threat posed by coronavirus.

The Welsh Ministers must review the restrictions and requirements imposed by the Regulations by 24 September and at least once every seven days thereafter.

<u>European Convention on Human Rights</u>

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations impose restrictions and requirements in relation to individual local health protection areas, which for the purposes of the principal Regulations will now also include Blaenau Gwent County Borough, Bridgend County Borough, Merthyr Tydfil County Borough and the City and County Borough of Newport, as well as Caerphilly County Borough and Rhondda Cynon Taf County Borough. In particular these restrictions and requirements prohibit leaving or remaining away from or entering the areas without reasonable excuse; provide that no household within the

areas being treated as forming part of an extended household and prohibit the formation of an extended household by such a household and require licensed premises to close by 11pm each day. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of information); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely and is proportionate to that aim. The requirements not to leave or enter the areas are subject to a person having a reasonable excuse to do so, which includes being able to access essential services and public services and to provide care to vulnerable persons. Additionally the Welsh Ministers must, by 24 September, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve, and do so at least once every seven days thereafter.

The Regulations also permit up to six people who live in shared accommodation within premises to gather indoors. This will enable those in shared student accommodation and other accommodation to gather, for example in using shared facilities within their homes. It will help enable people to exercise rights under Article 8 (right to respect for family and private life), albeit within a limited context, reflecting the risks posed to public health by wider indoor, social interaction.

3. Legislative background

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

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

4. Purpose and intended effect of the legislation

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

The principal Regulations were amended[1] with effect from 8 September 2020 to introduce restrictions in respect of a ‘local health protection area’, and apply those restrictions to the area of Caerphilly County Borough Council. These Regulations now extend restrictions to other local health protection areas, namely Blaenau Gwent County Borough, Bridgend County Borough, Merthyr Tydfil County Borough and the City and County Borough of Newport. The effect of this in respect of these new areas is to:

[1] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 SI 2020/961 (W. 215)

- provide that no household within each area may be treated as forming part of an extended household and prohibiting the formation of an extended household by such a household;

- prohibiting persons living in each area from leaving or remaining away from the area without reasonable excuse;

- require residents of the area to work from home, unless it is not reasonably practicable for them to do so;

- prohibit people outside of the areas entering the areas without reasonable excuse. It is not a reasonable excuse to enter an area to work, if it is reasonably practicable for that work to be done outside the area.

- require licensed premises to close by 11pm each evening and not open prior to 6am any morning. In this context "licensed premises" means public houses, bars (including bars in members' clubs, hotels or other accommodation), cafés and restaurants (including restaurants or dining rooms in members' clubs, hotels or other accommodation) in respect of which an authorisation has been granted or given for the sale or supply of alcohol.

In addition, the restrictions on opening hours of licensed premises will now also apply in Caerphilly County Borough.

These Regulations also amend the principal Regulations, to provide that it is a reasonable excuse for no more than 6 persons living in accommodation where certain facilities are shared, to gather indoors as if they were a single household (this includes houses in multiple accommodation and student accommodation.

The Regulations come into force at 6.00 p.m. on 22 September 2020. The restrictions and requirements introduced by these amendments in relation to local health protection areas must be reviewed on or before 24 September, and at least once every seven days thereafter.

These Regulations also make minor technical and consequential amendments to the principal Regulations.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

The Welsh Ministers consider that introducing these requirements and restrictions by means of the amendments made to the principal Regulations is proportionate to what the principal Regulations seek to achieve, which is to respond to a serious and imminent threat to public health.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales and myself. In making the Regulations today there has been ongoing discussions with Public Health Wales, local authorities and NHS bodies for the areas now included as well as for Caerphilly and Rhondda Cynon Taf.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Health and Social Services explained in a press conference yesterday the intention to impose the restrictions and requirements achieved through these Regulations; the proposed changes have been widely reported by the media.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health.

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

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

22 September 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 11) (Blaenau Gwent, Bridgend, Merthyr Tydfil and Newport etc.) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at 6.00pm today. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 19 October 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in the Plenary on 29 September 2020.

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

Yours sincerely

Mark Drakeford

MARK DRAKEFORD

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **Local coronavirus restrictions update**

DATE **21 September 2020**

BY **Vaughan Gething MS, Minister for Health and Social Services**

We have introduced local restrictions in **Caerphilly borough** and **Rhondda Cynon Taf** to control a rapid and sharp increase in coronavirus cases in those two areas.

We have been closely monitoring the developing situation in **Blaenau Gwent, Bridgend, Merthyr Tydfil** and **Newport** – the rates in these areas are now higher than the Welsh average.

We been working closely with the local authorities and public health experts, which have been meeting daily to review the position in each area and what measures are needed to control the spread of coronavirus. In many of these areas, local actions have already been taken by local authorities, including restricting visits to care homes, encouraging people to work from home wherever possible and asking people to limit journeys on public transport.

However, as cases have continued to increase, we now need to introduce local restrictions in each of these areas to protect people's health and control the spread of coronavirus.

From 6pm on Tuesday September 22, the following local restrictions will come into effect for people living in **Blaenau Gwent, Bridgend, Merthyr Tydfil** and **Newport** local authority areas:

- People will not be allowed to enter or leave their local authority areas without a reasonable excuse, such as travel for work or education.
- People will only be able to meet outdoors. People will not be able to meet members of their extended household indoors or form an extended household.
- All licensed premises will have to close at 11pm.
- Everyone over 11 must wear face coverings in indoor public places – as is the case throughout Wales.

We will keep these measures under constant review and they will be formally reviewed in two weeks' time.

From 6pm on Tuesday September 22, we will also be extending the requirement for all licensed premises to close at 11pm in **Caerphilly borough**.

The initial restrictions in **Caerphilly borough** were introduced almost two weeks' ago and will be formally reviewed this week. The seven-day rolling incidence rate in Caerphilly borough has shown some positive movement downwards and we are cautiously optimistic that the restrictions are having an impact.

The additional restriction in relation to licensed premises will strengthen the position further and bring consistency across the areas subject to local restrictions.

Our ability to make a difference to the spread of the virus rests in all our hands – we can only do this together. Every one of us has a responsibility to make the right choices and to follow the measures, which will keep us and our loved ones safe from this infectious and harmful virus:

- We all need to keep our distance from each other when we're out and about.
- We need to wash our hands often.
- We need to work from home wherever possible.
- We need to wear a face covering in indoor public places.
- We need to stay at home if we've got symptoms and while we're waiting for a test result.
- And we need to follow any restrictions in place locally.

A large proportion of the population of South East Wales will now be living under local coronavirus restrictions.

The First Minister and I will call an urgent meeting of all local authorities, health boards and police forces in South Wales – from Bridgend to the English border – to discuss the wider regional situation and whether further measures are necessary to protect people's health, prevent the spread of coronavirus and keep Wales safe.

I hope to make an oral statement tomorrow to keep Members fully informed of the latest developments.

SL(5)608 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (the "International Travel Regulations"). The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations ("exempt countries and territories") are not required to isolate. These Regulations amend the list of exempt countries and territories to remove the Greek territories of Santorini, Serifos and Tinos from the list, and make an amendment correcting the spelling of Mykonos. The Regulations also add further events to the list of sporting events in Schedule 4 for which those involved are either exempted or excepted from isolation requirements.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the following explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 8 September 2020:

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
18 September 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 962 (W. 216)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the "International Travel Regulations"). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment)

(No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);

- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as "exempt countries and territories".

Part 2 of these Regulations amends the list of exempt countries and territories.

Regulation 2 of these Regulations amends the International Travel Regulations to remove the Greek territories of Santorini, Serifos and Tinos from the list of exempt countries and territories. This regulation also makes an amendment correcting the spelling of Mykonos.

Regulation 3 of these Regulations makes transitional provision relating to these territories' change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulation 2 of these Regulations. This regulation also makes an amendment correcting the spelling of Mykonos at regulation 3(2)(a) of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020.

Regulation 4 of these Regulations adds further events to the list of specified sporting events in Schedule 4 to the International Travel Regulations.

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

as to the likely cost and benefit of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2020 No. 962 (W. 216)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020

Made	*8 September 2020*
Coming into force	*at 4.00 a.m. on 9 September 2020*
Laid before Senedd Cymru	*at 11.00 a.m. on 9 September 2020*

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

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 9 September 2020.

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

(3) In these Regulations, the "International Travel Regulations" means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(**1**).

PART 2

Amendments to the list of exempt countries and territories in Schedule 3 to the International Travel Regulations

Amendments to the list of exempt countries and territories

2. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), in the entry relating to Greece—

(a) for "Mykanos" substitute "Mykonos";

(b) after "Paros," insert "Santorini, Serifos, Tinos".

Transitional etc provision in connection with regulation 2

3.—(1) Paragraph (2) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 9 September 2020, and

(b) was last in Santorini, Serifos or Tinos—

(i) within the period of 14 days ending with the day of P's arrival in Wales, and

(ii) before 4.00 a.m. on 9 September 2020.

(2) P is, by virtue of having been in Santorini, Serifos or Tinos, to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt territory.

(3) In regulation 3(2)(a) of the Health Protection (Coronavirus International Travel) (Wales) (Amendment) (No. 8) Regulations 2020(**2**) for "Mykanos" substitute "Mykonos".

(**1**) S.I. 2020/574 (W. 132) amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205) and S.I. 2020/944 (W. 210).

(**2**) S.I. 2020/944 (W. 210).

PART 3

Amendments to the list of sporting events in Schedule 4 to the International Travel Regulations

Additions to the list of specified sporting events

4.—(1) Schedule 4 (specified sporting events) to the International Travel Regulations is amended as follows.

(2) In paragraph 2, at the end insert—

"(d) England and Wales Cricket Board - T20 Blast;

(e) England and Wales Cricket Board - The Rachael Heyhoe Flint Trophy."

(3) In paragraph 10, at the end insert—

"(f) Matchroom – Championship League Snooker Tournament."

(4) In paragraph 14, at the end insert—

"(f) World Boxing Organization European Super Bantamweight Championship Title;

(g) World Super Lightweight Championship Title."

(5) At the end insert—

"**18.** Gymnastics - British Gymnastics Under 18 4-Way Match.

19. Mixed Martial Arts - Cage Warriors Trilogy Series."

Vaughan Gething
Minister of Health and Social Services, one of the Welsh Ministers
8 September 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

9 September 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as "exempt countries".

These Regulations further amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health. The Regulations also make amendments to the list of sporting events at Schedule 4 of the International Travel Regulations.

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

Coming into force

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations came into force before they were laid.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

3. Legislative background

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

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to self-isolate upon arrival in Wales – most recently on 4 September 2020.

Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in Greece is currently categorised as medium risk. However, the advice considers that there is a high risk posed to public health by travellers returning to the UK from certain territories within Greece. On the basis of this advice the Government consider that isolation requirements should now be introduced for travellers coming into Wales from the Greek islands of Santorini, Serifos and Tinos.

An amendment is also being made to the International Travel Regulations to add further sporting events to the list in Schedule 4 for which those involved are either exempted or excepted from isolation requirements.

These revised requirements will come into effect for any travellers entering the Common Travel Area from these countries or territories on or after 4.00 am on 9 September 2020. None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

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

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

6. Regulatory Impact Assessment (RIA)

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

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/2948/20

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

8 September 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this Statutory Instrument came into force before it was laid. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

The Regulations made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove the following countries and territories from the list of exempt countries and territories:

- the following Greek islands: Santorini, Serifos and Tinos

The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from those countries and islands.

The Regulations also make a further amendment in respect of the insertion of additional sporting events into Schedule 4.

Not adhering to the 21 day convention and bringing them into force before they were laid allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

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

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Yours sincerely,

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Health Protection (Coronavirus, International Travel) (Wales) Amendments**
DATE	**8 September 2020**
BY	**Vaughan Gething Minister for Health and Social Services**

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on Monday 8 June 2020.

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

Since then these regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made.

Yesterday I reviewed the latest JBC assessments and I have decided that the Greek islands of Santorini, Serifos and Tinos will be removed from the list of exempt countries and territories. Today I will lay the necessary regulations which will come into force at 04:00 on Wednesday 9 September.

An amendment is also being made to the International Travel Regulations to add further sporting events to the list in Schedule 4 for which those involved are either exempted or excepted from isolation requirements.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

SL(5)610 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations"). The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations ("exempt countries and territories") are not required to isolate. These Regulations amend the list of exempt countries and territories to:

1. add Sweden; and
2. remove Hungary and Reunion.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative resolution instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 11 September 2020.

In particular, we note that the letter confirms as follows:

"Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case."

Implications arising from exiting the European Union

None

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
21 September 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 981 (W. 220)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the "International Travel Regulations"). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment)

(No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);

- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/962) (W. 216).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as "exempt countries and territories".

Regulation 2 of these Regulations amends the International Travel Regulations to add Sweden to the list of exempt countries and territories.

Regulation 4 of these Regulations amend the International Travel Regulations to remove Hungary and Reunion from the list of exempt countries and territories.

Regulations 3 and 5 of these Regulations make transitional provision relating to these countries' and territories' change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulations 2 and 4 of these Regulations.

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

WELSH STATUTORY INSTRUMENTS

2020 No. 981 (W. 220)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020

Made	*at 11.40 a.m. on 11 September 2020*
Laid before Senedd Cymru	*at 5.00 p.m. on 11 September 2020*
Coming into force	*at 4.00 a.m. on 12 September 2020*

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

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 12 September 2020.

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

(3) In these Regulations, the "International Travel Regulations" means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(**1**).

Addition to the list of exempt countries and territories

2. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), at the appropriate place insert—

"Sweden".

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where, immediately before 4.00 a.m. on 12 September 2020—

(a) a person ("P") was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in Sweden, and

(b) P's last day of isolation is 12 September 2020 or a day after that day.

(2) The addition of Sweden to Part 1 of Schedule 3 to the International Travel Regulations does not affect the isolation requirement as it applies to P, nor affect how P's last day of isolation is determined under the International Travel Regulations.

(3) Paragraph (4) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 12 September 2020, and

(b) was in Sweden within the period of 14 days ending with the day of P's arrival in Wales.

(4) For the purposes of regulations 7(1) and 8(1) of the International Travel Regulations, the question of whether P has arrived in Wales from, or having been in, a non-exempt country or territory is, in relation to Sweden, to be determined by reference to whether Sweden was a non-exempt country when P was last there (and not by reference to the Sweden's status upon P's arrival in Wales).

(5) In this regulation, "isolation requirement" has the meaning given by regulation 10(2) of the International Travel Regulations; and references to P's last day of isolation are to be interpreted in accordance with regulation 12 of those Regulations.

(**1**) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196),S.I. 2020/917 (W. 205), S.I. 2020/944 (W. 210) and S.I. 2020/962 (W. 216).

Removal of countries and territories from the list of exempt countries and territories

4. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit—

"Hungary"

"Reunion".

Transitional provision in connection with regulation 4

5.—(1) Paragraph (2) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 12 September 2020, and

(b) was last in a country or territory listed in regulation 4—

(i) within the period of 14 days ending with the day of P's arrival in Wales, and

(ii) before 4.00 a.m. on 12 September 2020.

(2) P is, by virtue of having been in that country or territory, to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
At 11.40 a.m. on 11 September 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

11 September 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as "exempt countries".

These Regulations further amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health.

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

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been laid.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

3. Legislative background

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

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which

is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to isolate upon arrival in Wales – most recently on 8 September 2020.

Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in Hungary and Reunion has increased. On the basis of this advice the Welsh Government consider that isolation requirements should now be introduced for travellers coming into Wales from Hungary and Reunion.

The Regulations also add Sweden to the list of exempt countries and territories. This is on the basis that the data received from the JBC has indicated the risk to public health posed by arrivals from those countries has now decreased, and as such arrivals should be exempt from the isolation requirements.

These revised requirements will come into effect for any travellers entering the Common Travel Area from these countries or territories on or after 4.00 am on 12 September 2020. None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

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

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

6. Regulatory Impact Assessment (RIA)

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

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/3006/20

Elin Jones, MS
Llywydd
Senedd Cymru

11 September 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020

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

The Regulations made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove Hungary and Reunion from the list of exempt countries and territories and to add Sweden to the list. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from those countries and territories.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

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

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

Yours sincerely,

Rebecca Evans.

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

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Health Protection (Coronavirus, International Travel) (Wales) Amendments**
DATE	**10 September 2020**
BY	**Vaughan Gething Minister for Health and Social Services**

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on Monday 8 June 2020.

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

Since then these regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made.

Yesterday I reviewed the latest JBC assessments and I have decided that Hungary and Reunion will be removed from the list of exempt countries and territories and that Sweden will be added to this list. Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Saturday 12 September.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

SL(5)617 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations"). The International Travel Regulations impose requirements on persons entering Wales having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The International Travel Regulations are subject to exceptions, and certain categories of persons are exempt from being required to isolate and comply with the provisions in the International Travel Regulations.

The list of exempt countries and territories is amended by Part 2 of the Regulations:

- Gibraltar and Thailand are added to the list of exempt countries and territories.
- Guadeloupe and Slovenia are removed from the list of exempt countries and territories.

Transitional provision in relation to the change of status of the countries and territories named above are made in regulations 3 and 5 of these Regulations.

Part 3 makes an amendment to paragraph 38(1) of Schedule 2 to the International Travel Regulations (exempt persons) after a technical error was identified in the Welsh language text.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

These Regulations came into force before they were laid before the Senedd. This also means that there is a breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a negative procedure statutory instrument is laid before the Senedd and the date the instrument comes into force). We note the explanation provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 18 September 2020 that:

> *"Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case."*

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
21 September 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 1015 (W. 226)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the "International Travel Regulations"). The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);
- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment)

(No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);

- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/962) (W. 216);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020 (S.I. 2020/981) (W. 220).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with the Regulations. The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply. Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as "exempt countries and territories".

Part 2 of these Regulations amends the list of exempt countries and territories.

Regulation 2 of these Regulations amends the International Travel Regulations to add Gibraltar and Thailand to the list of exempt countries and territories.

Regulation 4 of these Regulations amends the International Travel Regulations to remove Guadeloupe and Slovenia from the list of exempt countries and territories.

Regulations 3 and 5 of these Regulations make transitional provision relating to these countries' and territories' change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulations 2 and 4 of these Regulations.

In Part 3 of these Regulations, Regulation 6 corrects a technical error identified in the Welsh language text at paragraph 38(1) of Schedule 2 to the International Travel Regulations (exempt persons).

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

WELSH STATUTORY INSTRUMENTS

2020 No. 1015 (W. 226)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020

Made	*at 1.17 p.m. on 18 September 2020*
Laid before Senedd Cymru	*at 4.30 p.m. on 18 September 2020*
Coming into force	*at 4.00 a.m. on 19 September 2020*

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

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020.

(2) These Regulations come into force at 4.00 a.m. on 19 September 2020.

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

(3) In these Regulations, the "International Travel Regulations" means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(**1**).

PART 2

Amendments to the list of exempt countries in Schedule 3 to the International Travel Regulations

Addition to the list of exempt countries and territories

2.—(1) In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), at the appropriate place insert—

"Thailand".

(2) In Part 2 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), at the appropriate place insert—

"Gibraltar".

Transitional provision in connection with regulation 2

3.—(1) Paragraph (2) applies where, immediately before 4.00 a.m. on 19 September 2020—

(a) a person ("P") was subject to an isolation requirement by virtue of having arrived in Wales from, or having been in a country or territory listed in regulation 2, and

(b) P's last day of isolation is 19 September 2020 or a day after that day.

(2) The addition of the country and territory listed in regulation 2 to Parts 1 and 2 of Schedule 3 to the International Travel Regulations does not affect the isolation requirement as it applies to P, nor affect how P's last day of isolation is determined under the International Travel Regulations.

(3) Paragraph (4) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 19 September 2020, and

(**1**) S.I. 2020/574 (W. 132) as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216) and S.I. 2020/981 (W. 220).

(b) was in a country or territory listed in regulation 2 within the period of 14 days ending with the day of P's arrival in Wales.

(4) For the purposes of regulations 7(1) and 8(1) of the International Travel Regulations, the question of whether P has arrived in Wales from, or having been in, a non-exempt country or territory is, in relation to a country or territory listed in regulation 2, to be determined by reference to whether the country or territory was a non-exempt country or territory when P was last there (and not by reference to the country's or the territory's status upon P's arrival in Wales).

(5) In this regulation, "isolation requirement" has the meaning given by regulation 10(2) of the International Travel Regulations; and references to P's last day of isolation are to be interpreted in accordance with regulation 12 of those Regulations.

Removal of countries and territories from the list of exempt countries and territories

4. In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit—

"Guadeloupe"

"Slovenia".

Transitional provision in connection with regulation 4

5.—(1) Paragraph (2) applies where a person ("P")—

(a) arrives in Wales at or after 4.00 a.m. on 19 September 2020, and

(b) was last in a country or territory listed in regulation 4—

(i) within the period of 14 days ending with the day of P's arrival in Wales, and

(ii) before 4.00 a.m. on 19 September 2020.

(2) P is, by virtue of having been in that country or territory, to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

PART 3

Amendment to Schedule 2 to the International Travel Regulations

Amendment to Schedule 2 (exempt persons)

6. In Schedule 2 to the International Travel Regulations (exempt persons), for paragraph 38(1) of the Welsh language text substitute—

"**38.**—(1) Person sy'n preswylio fel arfer yn y Deyrnas Unedig—

(a) sy'n athletwr elît a fu'n cymryd rhan mewn cystadleuaeth elît dramor,

(b) a fu'n darparu cymorth i athletwr elît mewn cystadleuaeth elît dramor neu a fu fel arall yn ei hyfforddi, neu

(c) a fu'n gwasanaethu fel swyddog mewn cystadleuaeth elît dramor neu a fu fel arall yn ymwneud â'i rhedeg,

pan fo'r person wedi teithio i'r Deyrnas Unedig i ddychwelyd o'r gystadleuaeth elît dramor."

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
At 1.17 p.m. on 18 September 2020

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020

Vaughan Gething
Minister for Health and Social Services

18 September 2020

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as "exempt countries".

These Regulations further amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health.

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

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been laid.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

3. Legislative background

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

4. Purpose and intended effect of the legislation

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which

is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to isolate upon arrival in Wales – most recently on 12 September 2020.

Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in Guadeloupe and Slovenia has increased. On the basis of this advice the Welsh Government consider that isolation requirements should now be introduced for travellers coming into Wales from those countries.

The Regulations also add Thailand and Gibraltar to the list of exempt countries and territories. This is on the basis that the data received from the JBC has indicated the risk to public health posed by arrivals from those countries and territories has now decreased, and as such arrivals should be exempt from the isolation requirements.

These revised requirements will come into effect for any travellers entering the Common Travel Area from these countries or territories on or after 4.00 am on 19 September 2020. None of the amendments to the International Travel Regulations will affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendments.

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

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

6. Regulatory Impact Assessment (RIA)

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

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/3088/20

Elin Jones, MS
Llywydd
Senedd Cymru

18 September 2020

Dear Llywydd,

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020

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

The Regulations made today further amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to remove Guadeloupe and Slovenia from the list of exempt countries and territories and to add Gibraltar and Thailand to the list. The Regulations make these changes due to the identified changes in risk to public health posed by arrivals from those countries and territories.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

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

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

Yours sincerely,

Rebecca Evans.

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

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Health Protection (Coronavirus, International Travel) (Wales) Amendments**
DATE	**17 September 2020**
BY	**Vaughan Gething Minister for Health and Social Services**

Members will be aware that the UK Government made provision to ensure that travellers entering the United Kingdom from overseas must self-isolate for 14 days, to prevent the further spread of coronavirus. These restrictions came into force on Monday 8 June 2020.

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

Since then these regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made.

Yesterday I reviewed the latest JBC assessments and I have decided that Guadeloupe and Slovenia will be removed from the list of exempt countries and territories and that Gibraltar and Thailand will be added to this list. Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Saturday 19 September.

SL(5)614 – The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020

Background and Purpose

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 ("the 2012 Order") and the Developments of National Significance (Procedure) (Wales) Order 2016 ("the 2016 Order") to extend the period during which certain requirements are modified or disapplied.

Article 2 amends article 2G(2)(b) of the 2012 Order to extend the emergency period during which the publicity and notice requirements for pre-application consultation are modified. It also extends the emergency period for the purposes of the time which community councils have to make representations on applications notified to them. The emergency period ends on 8 January 2021.

Article 3 amends article 12(6A)(b) of the 2016 Order to extend the period during which hard copies of applications for developments of national significance are not required. That period ends on 8 January 2021.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

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

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

The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented.

The Order was laid on 17 September, and came into force the following day, 18 September. In this case, the Welsh Government considers that the circumstances justify a breach of the

21 day rule. We note the letter sent by Rebecca Evans, Minister for Finance and Trefnydd to the Llywydd, dated 17 September 2020. This states:

> *"The Order seeks to extend the period during which temporary arrangements introduced by The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 ("the first 2020 Order") apply to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (the "DMPWO") and the Developments of National Significance (Procedure) (Wales) Order 2016.*
>
> *The temporary arrangements set out in the first 2020 Order were introduced to overcome the closure of non-essential public buildings and the restrictions on non-essential travel, which were preventing the planning system functioning effectively. These are due to end on 18 September but will be extended to 8 January 2021.*
>
> *As the coronavirus restrictions have gradually been lifted, the need for the temporary arrangements should have fallen away. What we have found however is despite the legal restrictions having been lifted, many public buildings such as libraries and council offices have remained closed, or subject to limited access. As a result, the provisions set out in the first 2020 Order remain necessary to maintain the efficient operation of the planning system.*
>
> *The Order is required to come into force by 18 September to maintain continuity of planning services.*
>
> *Not bringing the Order into force straight away will cause a backlog of planning applications waiting to be submitted, which would have consequential impacts for the construction sector, and economy, at a time when rapid reversal of financial losses is important to lessen the longer term economic and social damage being caused. Not adhering to the 21-day convention is thought necessary and justifiable in this case."*

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

Paragraph 5.1 of the Explanatory Memorandum states that "due to the urgent nature of this amendment, the Welsh Government has not undertaken a consultation on these proposals". The Welsh Government has laid a detailed Explanatory Memorandum, and a Regulatory Impact Assessment has been prepared in respect of this Order. Paragraph 5.2 of the Explanatory Memorandum states as follows:

> *"The amendment is required immediately to extend mitigation measures put in place to manage the effects of COVID-19 restrictions on travel and the opening of premises on specific parts of the planning system. The amendment will enable planning applications to continue to be submitted by developers, avoiding an increasing backlog of cases, and enabling implementation of consents as COVID-19 restrictions ease.*

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
23 September 2020

WELSH STATUTORY INSTRUMENTS

2020 No. 1004 (W. 223)

TOWN AND COUNTRY PLANNING, WALES

The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 ("the 2012 Order") and the Developments of National Significance (Procedure) (Wales) Order 2016 ("the 2016 Order"). It amends provisions in those Orders to extend the period during which certain requirements are modified or disapplied.

Article 2 amends article 2G(2)(b) of the 2012 Order to extend the emergency period during which the publicity and notice requirements for pre-application consultation are modified. It also extends the emergency period for the purposes of the time which community councils have to make representations on applications notified to them. The emergency period ends on 8 January 2021.

Article 3 amends article 12(6A)(b) of the 2016 Order to extend the period during which hard copies of applications for developments of national significance are not required. That period ends on 8 January 2021.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff, CF10 3NQ and is published on the Welsh Government website at www.gov.wales.

WELSH STATUTORY INSTRUMENTS

2020 No. 1004 (W. 223)

TOWN AND COUNTRY PLANNING, WALES

The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020

Made	*16 September 2020*
Laid before Senedd Cymru	*17 September 2020*
Coming into force	*18 September 2020*

The Welsh Ministers, in exercise of the powers conferred on them by sections 61Z(8) and (9), 62(11), 62R and 333(4B) of the Town and Country Planning Act 1990(**1**), and in exercise of the powers conferred on the Secretary of State by sections 59, 62(1) and (2), 71(1), (2)(a) and (2A) and 333(7) of that Act(**2**) now

(**1**) 1990 c. 8. Section 61Z was inserted by section 17(2) of the Planning (Wales) Act 2015 (anaw 4) ("the 2015 Act"). Section 62(11) was inserted by section 17(3) of the 2015 Act (see also section 59(4) of the Town and Country Planning Act 1990 ("the 1990 Act") (referred to in the next footnote) which provides a development order in relation to Wales means a development order made by the Welsh Ministers). Section 62R was inserted by section 25 of the 2015 Act. Section 333(4B) was substituted by section 55 of, and paragraph 6(3) of Schedule 7 to, the 2015 Act. There are other amendments which are not relevant to this instrument.

(**2**) Section 59(2) was amended by section 1 of, and paragraph 4 of Schedule 1 to, the Growth and Infrastructure Act 2013 (c. 27) and by section 27 of, and paragraph 3 of Schedule 4 to, the 2015 Act. Section 59(4) was inserted by section 55 of, and paragraph 5 of Schedule 7 to, the 2015 Act. For the meaning of "prescribed" see section 71(4). Section 71 was amended by section 16(2) of the Planning and Compensation Act 1991 (c. 34). There are other amendments which are not relevant to this instrument.

exercisable by them(**1**) (as applied in the case of section 62(1) with modifications by the Development of National Significance (Application of Enactments) (Wales) Order 2016(**2**)), make the following Order.

Title and commencement

1.—(1) The title of this Order is the Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020.

(2) This Order comes into force on 18 September 2020.

Pre-application consultation: making information available

2.—(1) The Town and Country Planning (Development Management Procedure) (Wales) Order 2012(**3**) is amended as follows.

(2) In article 2G(2)(b), for "18 September 2020" substitute "8 January 2021".

Developments of national significance: making applications

3.—(1) The Developments of National Significance (Procedure) (Wales) Order 2016(**4**) is amended as follows.

(2) In article 12(6A)(b), for "18 September 2020" substitute "8 January 2021".

Julie James
Minister for Housing and Local Government, one of the Welsh Ministers
16 September 2020

(**1**) The functions of the Secretary of State so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry in Schedule 1 for the 1990 Act. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(**2**) S.I. 2016/54 (W. 24).

(**3**) S.I. 2012/801 (W. 110), amended by S.I. 2016/59 (W. 29), S.I. 2017/567 (W. 136) and S.I. 2020/514 (W. 121); there are other amending instruments but none is relevant.

(**4**) S.I. 2016/55 (W. 25), amended by S.I. 2020/514 (W. 121); there are other amending instruments but none are relevant.

Explanatory Memorandum to the Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government

17 September 2020

PART 1

1. Description

1.1 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (the "DMPWO") provides for procedures connected with planning applications, consultations in relation to planning applications, the determination of planning applications, appeals, local development orders, certificates of lawful use or development, the maintenance of registers of planning applications and related matters.

1.2 The Developments of National Significance (Procedure) (Wales) Order 2016 ("the DNSPWO") makes provision for the manner in which applications for planning permission in respect of Developments of National Significance ("DNS") are to be dealt with by the Welsh Ministers.

1.3 The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 ("the first 2020 Order") came into force on 19 May 2020 and modifies or disapplies certain requirements in the DMPWO and DNSPWO in relation to the period beginning with the coming into force date of the Order and ending on 18 September. In particular the Order does the following:

The pre-application procedure for major development

- In relation to pre-application consultation which must be carried out before submitting an application for planning permission for certain development known as major development, the requirement to make copies of documents associated with a proposed planning application available locally for inspection, is replaced with a requirement to make such documents available on a website and in hard copy on request.

- Changes to reflect the above are made to the requisite site notices and letters to owners and occupiers of adjoining land, as well as to notices to community consultees. If hard copies of any documents have been requested, an application must not be submitted before the end of the period of 14 days beginning with the day on which the last document is sent.

- A pre-application consultation report is to include confirmation requirements have been discharged, relating to making information about the proposed application available on a website and to provide hard copies of such information where requested. A statement confirming whether hard copies have been requested is also to be included.

Time for community councils to respond to notifications

- The period of time which community councils have to respond to planning applications notified to them is extended from 14 to 21 days.

Deposit of hard copy DNS applications

- The current requirement in the DNSPWO to deposit a hard copy of an application for planning permission for a DNS, where an application has been submitted by electronic communication is disapplied.

1.4 The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020 seeks to extend the period during which the temporary procedures apply to the 8 January 2021.

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

2.1 In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Order will come into force less than 21 days from the date of laying.

2.2 The Order is required to come into force on 18 September 2020 to provide continuity, maintaining the provisions introduced by the first 2020 Order, which are due to expire on 18 September 2020.

2.3 Not bringing the Order into force by this date will prevent the continuity of measures introduced by the first 2020 Order to assist with the continued operation of the pre-application consultation procedure, community council consultation on planning applications, and the submission of DNS applications. This would likely cause an increasing backlog of planning applications waiting to be submitted, which would have impacts for the construction sector, and longer term economic and social consequences. Not adhering to the 21-day convention is thought necessary and justifiable in this case.

3. Legislative background

3.1 Section 61Z (8) and (9) of the Town and Country Planning Act 1990 (the “1990 Act”) enables the Welsh Ministers to make provision about or in connection with consultation required to be carried out in relation to proposed applications for development specified in a development order. (Major development is specified for these purposes in article 2B(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and major development is defined in article 2 of the same.)

3.2 Section 62(11) enables the Welsh Ministers to make provision by development order about pre-application consultation reports.

3.3 Section 62R enables development orders to make provision about applications for planning permission made to the Welsh Ministers.

3.4 Section 333(4B) of the 1990 Act enables different provision for different purposes, cases and areas.

3.5 The powers conferred on the Secretary of State by sections 59 (power to make development orders), 62(1) and (2) (provision as to applications for planning permission), 71(1), (2)(a), (2A) (consultation on applications for planning permission) and 333(7) (power to vary order) of the 1990 Act were, so far as exercisable in relation to Wales, transferred to and are now vested in the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and the entry in Schedule 1 for the Town and Country Planning Act 1990.

3.6 The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

3.7 Section 62(1) has been applied with modifications by the Developments of National Significance (Application of Enactments) (Wales) Order 2016.

3.8 This Order is being made under the negative resolution procedure.

4. Purpose and intended effect of the provisions

4.1 The COVID-19 emergency remains in effect in the United Kingdom. While workplaces, public buildings, council offices and community centres can now legally open, many remain closed, or subject to limited access.

4.2 In addition, whilst most restrictions on travel have been lifted, the imposition of current local lockdowns and the potential for more in the near future in response to increased transmission of COVID-19, will have the effect of re-imposing limitations on movement.

4.3 The provisions set out in the first 2020 Order therefore remain necessary, to maintain the efficient operation of the planning system in Wales.

4.4 The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020 seeks to extend the periods prescribed in the first 2020 Order to 8 January 2021. The scope of the provisions is described in part 1, the purpose for which is as follows:

Requirement to carry out pre-application consultation

4.5 As part of the measures introduced as part of the ongoing response to COVID-19, all non-essential public buildings were closed and non-essential travel is not permitted. As a consequence, it is difficult for developers to comply with article 2C(1)(b) of the DMPWO.

4.6 The pre-application consultation procedure must be completed before planning applications for major development can be submitted to Local Planning Authorities.

4.7 The aim of the changes to the pre-application procedure provisions described in section 1 above is to enable developers to make information about proposed major development available locally in a practical way while Coronavirus restrictions impede this, so that interested parties have an opportunity to consider and comment if they wish. To maximise inclusivity, the information is available electronically and in hard copy on request.

4.8 The completion of this pre-application process will in turn enable developers to proceed to submit applications for planning permission for major development, avoiding an increasing backlog of planning applications waiting to be taken forward. If the applications are subsequently granted, the construction sector can then implement them as soon as the restrictions are eased, lessening the longer term economic and social damage being caused.

Representations by community councils before determination of applications

4.9 Community councils are the grassroots tier of government in Wales. Community councils have an important role in acting as the local link with communities to improve their understanding of, and participation in, the planning process.

4.10 The extension of the period during which they may make representations on applications notified to them is intended to alleviate the difficulties experienced by community councils in undertaking regular scheduled meetings due to control measures introduced as part of the COVID-19 response.

Removal of the requirement to deposit hard copy of DNS planning application

4.11 Applications for DNS are typically submitted electronically, however, where such an application is made, there is the requirement to deposit a hard copy with the Welsh Ministers and the local planning authority. As a consequence of the ongoing restrictions in response to COVID-19, and the closure of non-essential public buildings, relevant offices are not currently staffed for the purpose of receiving hard copies of applications, and as such, it can be difficult to verify this.

4.12 The purpose of the amendment to the DNSPWO is to disapply an aspect of the current procedure with which it is difficult to verify compliance while Covid-19 related restrictions are in place.

5. Consultation

5.1 Due to the urgent nature of this amendment, the Welsh Government has not undertaken a consultation on these proposals.

5.2 The amendment is required immediately to extend mitigation measures put in place to manage the effects of COVID-19 restrictions on travel and the opening of premises on specific parts of the planning system. The amendment will

enable planning applications to continue to be submitted by developers, avoiding an increasing backlog of cases, and enabling implementation of consents as COVID-19 restrictions ease.

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Pre-application consultation

Options

1.1. Two options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.

- Option 2 - Introduce an Amending Order to extend the emergency period specified in Article 2G(2), maintaining the removal of the requirement that developers make information available for inspection at a location in the vicinity of the proposed development until 8 January 2021.

Option 1 – Do nothing

Description

1.2. The provisions inserted into the DMPWO by the first 2020 Order will lapse on 18 September. Developers would have to fully comply with Article 2C of the DMPWO before they submit a valid planning application for major development. However, as long as buildings normally open to the public remain closed due to COVID-19, developers would find it difficult to fully comply.

Costs

<u>The Welsh Government</u>

1.3. There would be no financial cost to the Welsh Government.

1.4. There would however be a knock-on effect on the delivery of locally and nationally strategic developments as a result of the delay that would inevitably occur as a result of the inability of developers to fully carry out pre-application consultation and then submit a valid application for major development. Major development is development involving any one or more of the following:

a) the winning and working of minerals or the use of land for mineral-working deposits;
b) waste development;
c) the provision of dwellinghouses where—
   i. the number of dwellinghouses to be provided is 10 or more; or
   ii. the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
e) development carried out on a site having an area of 1 hectare or more;

Local Planning Authorities

1.5. Option 1 would result in few to no applications for major development being submitted to local planning authorities for as long as developers are unable to comply with the procedural requirements of the DMPWO.

1.6. The primary source of funding for LPAs is generated from fee income received for determining applications. Our evidence suggests this funding is heavily reliant upon the fees associated with the determination of these types of applications[1].

1.7. A pause in the submission of applications for major development would therefore have detrimental impact upon the funding of local planning authorities.

Development Industry

1.8. The total cost for the developer of undertaking a basic level of pre-application community consultation is estimated to be between £390 and £1,430[2]. Whilst the pausing of the pre-application consultation process would result in these costs being saved, these are likely to be significantly outweighed by the costs incurred as a result of delay. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a financial burden on developers and the Welsh economy.

1.9. Delay is likely to lead to a detrimental impact on how the development and management of land in Wales is delivered by the planning system, which is one of the main levers for economic, social and environmental progress. A healthy, functioning development industry is likely to play a significant role in the recovery process once COVID-19 measures are relaxed.

The Local Community

1.10. Pausing the pre-application system would delay the development of a wide-range of large-scale, socially and economically beneficial, developments to the detriment of local communities, particularly those where there is a need for affordable housing or employment.

Benefits

The Welsh Government

1.11. There are no recognisable benefits to the Welsh Government.

Local Authorities

[1] Changes to planning and related application fees. Welsh Government. December 2019.
[2] EMRIA Planning (Wales) Act 2015 (uprated to current prices using the GDP deflator series')

1.12. At the current time, local authority resources are stretched due to the impacts of COVID-19. A reduction in the number of planning applications will enable planning department staff resources to be reassessed and potentially redeployed to other key areas to meet the temporary needs of the local authority.

1.13. However, the redeployment of staff, if not returned as COVID-19 restrictions begin to lift, could impact upon the functioning of the planning service to the detriment of the ability of the planning system being able to function in its role as a key tool, assisting with the recovery process.

Development Industry

1.14. There are no benefits to the development industry.

The Local Community

1.15. Under option 1, the pre-application consultation process will likely be paused until public buildings widely reopen so developers can use these facilities to host information relating to the proposed development for inspection by the public.

Option 2 - Introduce an Amending Order extending the emergency period.

Description

1.16. Option 2 would result in the provisions inserted into the DMPWO by the first 2020 Order being extended until 8 January 2021. The first 2020 Order has the following effect:

- Removes the requirement to make information available for inspection at a location in the vicinity of the proposed development and replaces it with a requirement to make the information available on a website.
- Replaces Schedule 1B, the 'requisite notice', to reflect all information being stored online only. The notice must now also include a contact telephone number for the developer/agent. Upon request, information must be provided in hard copy at the developers cost.

1.17. These changes would be temporary until 8 January 2021, or until such time a further amending Order is made to remove or extend the temporary changes following government advice concerning COVID-19.

Costs

The Welsh Government

1.18. There would be no additional financial cost to the Welsh Government.

1.19. All costs associated with the making of the legislation and dissemination of relevant guidance will be met from existing budgets.

Local Planning Authorities

1.20. There would be no additional costs to local planning authorities. Normal pre-COVID-19 business would continue.

Development Industry

1.21. There may be an additional cost to the development industry for the posting a hard copies of information requested by those who do not have internet access. Of all households in Great Britain, 93% had access to the internet in 2019[3] therefore such requests are expected to be minimal.

1.22. The cost of producing a printed copy of a major planning application varies on a case by case basis, and depends on the extent of the application and the supporting material required to describe the development. Those who request information may only want to see a particular plan or survey and not the all the information relevant to the application. Nonetheless, the additional costs incurred are insignificant compared to the potential costs incurred through delay.

The Local Community

1.23. There are no financial costs to the local community, normal pre-Covid-19 business would continue.

1.24. Mitigation has been put in place to ensure those who do not have internet access can still access the relevant information. A telephone number will be provided on the site notice which those without internet access can contact to request a hard copy of the relevant information. They may also discuss the development with the developer/agent.

1.25. There is a risk that, due to people observing social distancing and/or self-isolating, those who are not directly consulted may not see the site notice and therefore may not be aware of the consultation. Whilst the publication of a site notice and direct neighbour notification are the only statutory publicity requirements, developers often go beyond the minimum requirements to ensure their consultation has maximum exposure, such as posting on local social media pages.

1.26. Developers will be reminded to exploit social media to publicise their consultations to ensure the widest possible reach. Word of mouth will also continue to assist with awareness within communities.

1.27. Notwithstanding this, following the submission of a planning application, a formal consultation and publicity process will be undertaken by the local

[3] Office for National Statistics. Internet Users, UK 2019.

planning authority. This will provide a second opportunity for those with an interest in the development to make representations before a final decision is made to grant or refuse planning permission.

Benefits

The Welsh Government

1.28. The legislative amendment proposed under option 2 would enable the pre-application consultation process to continue.

1.29. Prosperity for All[4] acknowledges planning decisions affect every area of a person's life and sends a message of working differently. The strategy states the right planning system is critical to delivering the Welsh Government's objectives. Amending procedures will ensure the smooth functioning of the planning application system, supporting local planning authorities to deliver sustainable development, and supporting businesses by maintaining an effective planning system which provides the means for creating economic opportunities for all.

Local Planning Authorities

1.30. Local planning authorities would continue to receive fee income from applications for major development.

1.31. Planning departments would retain staff to ensure they are sufficiently resourced. This will ensure they are in a state of readiness for applications to be submitted post-Covid-19 as part of the economic recovery process.

Development Industry

1.32. Under option 2, the development industry would continue the pre-application consultation process, the end product of which is the ability to submit planning applications for major development. This will prevent widespread delays in the submission of planning applications, and the knock-on impacts for the construction sector.

1.33. The development industry can maintain business continuity through the continued submission of planning applications. This will contribute towards ensuring people with roles linked to the planning system remain in employment during this national emergency, supporting wealth creation and a vibrant economy.

The Local Community

[4] Prosperity for All: the national strategy. Taking Wales Forward. The Welsh Government. 2017

1.34. Under option 2, the local community will benefit directly from the development industry being able to continue – from affordable housing to business building new premises which will create employment, both in the construction industry and to the end user of those facilities.

Summary and Preferred Option

1.35. Option 1 would once again pause the development industry for major development. This would have economic implications for developers, local planning authorities and the wider economy. The delay could impact upon the readiness of the planning system to assist in the recovery process post-Covid-19.

1.36. Option 2 would ensure the submission of planning applications for major development could continue, preventing delay to the development industry and planning system.

1.37. Option 2 is therefore the preferred option.

2. Community Council consultation

Options

2.1. Two options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.
- Option 2 - Introduce an Amending Order extending the emergency period, maintaining the 21 day period for consultation responses

Option 1 – Do nothing

Description

2.2. In respect of the planning application process, upon notifying the local planning authority that they wish to be notified on a particular application, Article 16 of the DMPWO prescribes a statutory period of 14 days (30 days in the case of an EIA application) in which Community Councils must make those representations to the local planning authority. The local planning authority are prevented from determining the application during this period.

2.3. Amendments inserted into the DMPWO by the Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 extended this period to 21 days.

2.4. Doing nothing would mean the timescale would revert to 14 days.

Costs

<u>The Welsh Government</u>

2.5. There would be no financial cost to the Welsh Government.

<u>Local Planning Authorities</u>

2.6. Whilst there would be no financial cost to Local Planning Authorities, there could be a democratic impact with applications potentially being determined without receiving representations from Community Councils.

2.7. The representation of Community Councils could have impacted upon the determination of planning applications.

<u>Community Councils</u>

2.7 Whilst there would be no financial cost to Community Councils, there is a risk that they would be unable to participate in the planning process as a result of being unable to coordinate a remote meeting and provide representations to the Local Planning Authority within the current 14 day timescale.

2.8 This would result in democratic deficit in the decision-making process.

Benefits

The Welsh Government

2.9 There are no benefits to the Welsh Government.

Local Planning Authorities

2.10 There are no benefits to Local Planning Authorities.

Community and Town Councils

2.11 There are no benefits to Community and Town Councils.

Option 2 - Introduce an Amending Order extending the emergency period, maintaining the 21 day period for consultation responses

Description

2.12 Option 2 would result in the extended 21 day period during which Community and Town Councils must make representations to Local Planning Authorities following a request be retained until 8 January 2021.

2.13 Maintaining this extended period would provide additional time for a response in light of difficulties experienced by Community Councils in undertaking regular scheduled meetings due to government control measures introduced in as part of the COVID-19.

Costs

The Welsh Government

2.14 There would be no additional financial cost to the Welsh Government.

2.15 All costs associated with the making of the legislation and dissemination of relevant guidance will be met from existing budgets.

Local Planning Authorities

2.16 There would be no financial cost to Local Planning Authorities.

Community and Town Councils

2.17 There would be no financial cost to Community and Town Councils.

Benefits

The Welsh Government

2.18 There are no direct benefits to the Welsh Government.

Local Planning Authorities

2.19 Maintaining the extended time period for responses by Community Councils at 21 days would bring the timeframe in line with that currently afforded to general members of the public as part of the statutory publicity period.

2.20 A single date on which all consultation responses are expected to be received will assist in the management of the application process.

Community and Town Councils

2.21 COVID-19 has impacted upon the ability of Community Councils to undertake their regular meetings due to meeting places being closed and members observing social distancing.

2.22 The additional time provides Community Councils will flexibility to arrange remote meetings and provide timely responses to Local Planning Authorities.

Summary and Preferred Option

2.23 Option 1 would revert the timescale for community and town councils to make representations on planning applications follow a request to be consulted to 14 days. Delays in the ability of Community Councils to host meetings is likely to result in their responses being delayed, potentially being submitted to the local planning authority after they have determined the planning application.

2.24 Option 2 would maintain the extended period during which Community Councils must make representations at 21 days, in line with general public consultation timeframes. The additional time would assist Community Councils to provide timely responses to planning applications, ensuring maximum democratic involvement in the decision-making process.

2.25 Option 2 is therefore the preferred option.

3. Changes to DNS

Options

3.1. Two options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.

- Option 2 – Extend the period during which the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA is disapplied, where an application is made electronically.

Option 1 – Do nothing

Description

3.2. Prior to the provisions inserted into the DNSPWO by the first 2020 Order, where a DNS planning application is made electronically, the DNSPWO contains provision which requires the applicant to deposit a hard copy of the planning application to both the Welsh Ministers and the LPA. The purpose of this is for practical reasons, such as to enable the LPA and for the Welsh Ministers to have a hard copy at hand to analyse the application, which is the preferred format of many officers and appointed persons who will examine the application.

3.3. Doing nothing would mean this requirement would be reinstated, were an application submitted electronically.

Costs

<u>The Welsh Government</u>

3.4. There would be no financial cost to the Welsh Government.

<u>Local Planning Authorities</u>

3.5. There would be no financial cost to LPAs.

<u>Development Industry</u>

3.6. The cost of producing a printed copy of a DNS planning application varies on a case by case basis, and depends on the extent of the application and the supporting material required to describe the development. An estimate has been drawn of £120, based on the cost of printing 1,000 pages in colour, binding costs and the cost to plot 25 drawings at A1 size. The cost for two applications, including delivery, is estimated to be £260 on a per application basis.

Benefits

<u>The Welsh Government</u>

3.7. There are no major benefits to the Welsh Ministers as a copy of the application will have been submitted electronically. The receipt of a hard copy would be a matter of convenience for officials in analysing the application.

<u>Local Planning Authorities</u>

3.8. There are no major benefits for the LPA as a copy of the application will have been submitted electronically. The receipt of a hard copy would be a matter of convenience for officers in analysing the application. While the hard copy may be made available for inspection, the duty to hold a planning register is generally undertaken and discharged electronically.

Development Industry

3.9. There are no known benefits to the Development Industry. As the Development Industry would be unable to comply with the requirements of the DNSPWO, there would be the inability to submit a valid application.

Option 2 – Extend the period during which the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA is disapplied, where an application is made electronically, and extend the period for consultation responses

Description

3.10. Applications for DNS are typically submitted electronically. During the COVID-19 outbreak, practical issues may arise with the deposit of hard copies as the relevant offices are not currently staffed for the purpose of receiving it, and receipt of it cannot always be verified.

3.11. The first 2020 order amended the DNSPWO by removing the requirement for a hard copy to be submitted to be deposited with the Welsh Ministers and LPA, were the application made electronically, for reasons of practicality.

3.12. The amendment expires on 18 September 2020.

Costs

The Welsh Government

3.13. There would be no additional financial cost to the Welsh Government.

3.14. All costs associated with the making of the legislation will be met from existing budgets.

Local Planning Authorities

3.15. There would be no additional financial cost to LPAs. As offices are not currently staffed, there would be no facility to print the application. Officers must analyse all applications electronically.

Development Industry

3.16. There would be a cost saving of approximately £260 per application.

Benefits

The Welsh Government

3.17. There are no direct benefits to the Welsh Government.

Local Planning Authorities

3.18. There are no direct benefits to LPAs.

Development Industry

3.19. COVID-19 has impacted upon the ability of the Development Industry to comply with the requirements of the DNSPWO. Maintaining the change at option 2 will enable the Development Industry to continue to submit applications and comply with the relevant requirements.

Summary and Preferred Option

3.20. Option 1 would revert to the status-quo, however, could result in applications not complying with the relevant requirements and subsequently not being made. Option 2, allows for continuity of the amended process, while removing a requirement which prevents applications from effectively being submitted.

3.21. Option 2 is therefore the preferred option.

4. Competition Assessment

4.1. A competition filter test has been completed. The proposals are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

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

Llywodraeth Cymru
Welsh Government

Our ref: MA-JJ-2895-20

Elin Jones AS/MS
Llywydd
Senedd Cymru
Bae Caerdydd
Caerdydd CF99 1SN

17 September 2020

Dear Llywydd,

The Planning Applications (Temporary Modifications and Disapplication) (No.2) (Wales) (Coronavirus) Order 2020 ("the Order")

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument has come into force less than 21 days from the date of laying. The explanatory memorandum which accompanies the Order is attached for your information.

The Order seeks to extend the period during which temporary arrangements introduced by The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 ("the first 2020 Order") apply to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (the "DMPWO") and the Developments of National Significance (Procedure) (Wales) Order 2016.

The temporary arrangements set out in the first 2020 Order were introduced to overcome the closure of non-essential public buildings and the restrictions on non-essential travel, which were preventing the planning system functioning effectively. These are due to end on 18 September but will be extended to 8 January 2021.

As the coronavirus restrictions have gradually been lifted, the need for the temporary arrangements should have fallen away. What we have found however is despite the legal restrictions having been lifted, many public buildings such as libraries and council offices have remained closed, or subject to limited access. As a result, the provisions set out in the first 2020 Order remain necessary to maintain the efficient operation of the planning system.

The Order is required to come into force by 18 September to maintain continuity of planning services.

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Not bringing the Order into force straight away will cause a backlog of planning applications waiting to be submitted, which would have consequential impacts for the construction sector, and economy, at a time when rapid reversal of financial losses is important to lessen the longer term economic and social damage being caused. Not adhering to the 21-day convention is thought necessary and justifiable in this case.

Due to the immediate need for the Order it has not been subject to consultation, however, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

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

SL(5)583 – The Greenhouse Gas Emissions Trading Scheme Order 2020

Background and Purpose

This Order establishes a new emissions trading scheme covering greenhouse gas emissions from power and heat generation; energy intensive industries; and aviation. The scheme is to be known as the UK Emissions Trading Scheme ("UK ETS"), and will be the successor in the UK to the EU Emissions Trading System ("EU ETS").

The UK ETS will cover greenhouse gas emissions from:

- power and heat generation;
- energy intensive industries; and
- aviation.

The Order is made in exercise of powers conferred by the Climate Change Act 2008 and contains 77 articles, divided into 9 Parts, and 11 Schedules.

Part 1 includes definitions used throughout the Order, the activities covered by the scheme and the different greenhouse gases covered by the scheme, the participants in the scheme and who is to be the scheme's regulator (for different purposes).

Part 2 introduces the scheme and establishes a review requirement, and sets out other elements of the scheme relevant to both operators of installations, and to aircraft operators.

Parts 3 and 4 make specific provision in respect of operators of installations and to aircraft operators. Part 5 contains provision allowing the regulators to charge for the performance of their regulatory functions under the Order.

Part 6 contains provision enabling the regulators to monitor compliance with the Order, including through inspections and the exercise of powers of entry. Part 7 contains provision about enforcement, including a range of civil penalties that may be imposed in respect of specified breaches of the Order or of permit conditions.

Part 8 (which is supplemented by Schedules 9 and 10) contains provision about appeals from decisions made by the regulator about applications and appeals in respect of notices given under the Order. Part 9 makes provision in respect of information notices, Crown application and makes transitional provision (article 77 with Schedule 11).

Procedure

Draft Affirmative

Technical Scrutiny

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

1. Standing Order 21.2 (ix) – that it is not made or to be made in both English and Welsh

The Order has been made in English only. Part 1, Section 2 of The Welsh Government's Explanatory Memorandum (at page 2) states as follows:

> *"As the Order in Council will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually."*

Merits Scrutiny

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

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

The EU Emissions Trading Scheme is and has been a key policy for reducing emissions in the power sector, energy intensive industries, and the aviation sector. Provision is needed to ensure emissions from sectors currently covered by the EU ETS continue to be covered by a carbon pricing policy, following the UK's withdrawal from the European Union.

The objective of the policy is to incentivise cost-effective emissions reductions for sectors currently in scope of the EU ETS. Placing a price on carbon incentivises a reduction in emissions, encouraging the private sector to invest in emissions reduction measures. It is intended that a UK wide scheme will ensure continuity of a carbon pricing policy to stimulate decarbonisation of the power, industrial and aviation sectors.

Many of the design features of the UK ETS mirror the EU ETS, which could in future facilitate linking with the EU system. However, in line with the commitment across the UK to move towards net zero greenhouse gas emissions by 2050, the cap has been set at 5% below the notional UK share of the EU ETS cap.

Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs gave oral evidence to the Committee in relation to the Order on 14 September. Following the evidence session, the Minister wrote to the Committee on 18 September 2020, to provide a definitive list of the installations in Wales captured by the Order, and to answer some additional queries.

Implications arising from exiting the European Union

The establishment of a successor scheme to the EU ETS is one of the jointly agreed common framework areas. The UK's participation in the EU Emissions Trading System, which will cease at the end of the Transition Period on 31st December 2020 (subject to the UK's obligations in the Withdrawal Agreement pursuant to Article 96(2) in respect of 2020 compliance and the Protocol on Ireland/Northern Ireland). The UK ETS will commence on 1 January 2021 to ensure there is a carbon pricing policy in place when the UK ceases its participation in the EU Emissions Trading System (EU ETS). The UK ETS is intended to encourage cost-effective emissions reductions which will contribute to the UK's emissions reduction targets and net zero goal.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
23 September 2020

Draft Order in Council laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru under paragraph 11 of Schedule 3 to the Climate Change Act 2008 for approval by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru

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D R A F T S T A T U T O R Y I N S T R U M E N T S

2020 No. XXX

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme Order 2020

Made - - - - ***

Coming into force in accordance with article 2

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At the Court at Buckingham Palace, the *** day of *** 2020

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 46(3), 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008(**a**).

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to Her Majesty in Council to make this Order was made—

(a) the advice of the Committee on Climate Change, including on the amount of the limit referred to in section 48(2) of that Act, was obtained and taken into account; and

(b) such persons likely to be affected by the Order as the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs considered appropriate were consulted.

In accordance with paragraph 11 of that Schedule, a draft of the instrument containing this Order was laid before Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd

(**a**) 2008 c. 27.

Cymru and approved by resolution of each House of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

PART 1

Preliminary

Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme Order 2020.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on the day after the day on which it is made.

(2) Article 25, Schedule 5 and paragraph 4 of Schedule 8 come into force—

(a) on the day after the day on which this Order is made; or

(b) immediately after IP completion day,

whichever is later.

Extent

3. This Order extends to the whole of the United Kingdom.

Interpretation

4.—(1) In this Order—

"2021-2025 allocation period" means the 2021, 2022, 2023, 2024 and 2025 scheme years;

"2026-2030 allocation period" means the 2026, 2027, 2028, 2029 and 2030 scheme years;

"aerodrome" means a defined area (including any buildings, installations and equipment) on land or water or on a fixed, fixed offshore or floating structure to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

"aircraft operator" has the meaning given in article 6;

"allocation period" means—

(a) the 2021-2025 allocation period; or

(b) the 2026-2030 allocation period;

"allowance" means an allowance created under this Order (see article 18);

"aviation activity" means an activity set out in paragraph 1 of Schedule 1;

"aviation emissions" means emissions of carbon dioxide arising from an aviation activity;

"carbon price", in relation to a scheme year, has the meaning given in article 46;

"CCA 2008" means the Climate Change Act 2008;

"the Chicago Convention" means the Convention on International Civil Aviation which was, on 7th December 1944, signed on behalf of the Government of the United Kingdom at the International Civil Aviation Conference held at Chicago(**a**);

(**a**) Treaty Series No. 8 (1953); Cmd 8742.

"chief inspector" means the chief inspector constituted under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**a**);

"commercial air transport operator" means a person that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail and holds an air operator certificate (AOC) or equivalent document as required by Part I of Annex 6 to the Chicago Convention;

"Directive" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC(**b**);

"emission factor" has the same meaning as in the Monitoring and Reporting Regulation 2018;

"emissions monitoring plan" has the meaning given in article 28(1);

"EU ETS" means the system for greenhouse gas emission allowance trading established by the Directive;

"Eurocontrol" has the meaning given in section 24 of the Civil Aviation Act 1982(**c**);

"excluded flights" means flights set out in paragraph 2 of Schedule 1;

"flight" means one flight sector that is a flight or one of a series of flights which commences at a parking place of the aircraft and terminates at a parking place of the aircraft;

"full-scope flights" means flights departing from, or arriving in, an aerodrome situated in the United Kingdom, Gibraltar or an EEA state, other than excluded flights;

"GGETSR 2012" means the Greenhouse Gas Emissions Trading Scheme Regulations 2012(**d**);

"GGETSR emissions plan" means an emissions plan as defined in regulation 20 of the GGETSR 2012;

"greenhouse gas emissions permit" means a greenhouse gas emissions permit—

(a) issued under paragraph 3 or 9 of Schedule 6; or

(b) converted under paragraph 24 or 26 of Schedule 7 or paragraph 1(4) of Schedule 11;

"hospital and small emitter list for 2021-2025" has the meaning given in paragraph 3(2) of Schedule 7;

"hospital and small emitter list for 2026-2030" has the meaning given in paragraph 5(4)(b) of Schedule 7;

"hospital or small emitter" must be construed in accordance with paragraphs 3 and 4 of Schedule 7;

"hospital or small emitter permit" means a hospital or small emitter permit—

(a) issued under paragraph 9 of Schedule 7; or

(b) converted under paragraph 10 of Schedule 7 or paragraph 1(3) of Schedule 11;

"installation" must be construed in accordance with Schedule 2;

"monitoring and reporting conditions" means—

(a) in relation to a greenhouse gas emissions permit, the conditions referred to in paragraph 4(2) of Schedule 6;

(b) in relation to a hospital or small emitter permit, the conditions referred to in paragraph 11(2) of Schedule 7;

(**a**) S.R. 2013 No. 160.
(**b**) OJ No. L 275, 25.10.2003, p. 32.
(**c**) 1982 c. 16. Section 24 was amended by section 3(1) of the Civil Aviation (Eurocontrol) Act 1983 (c. 11).
(**d**) S.I. 2012/3038, to which there are amendments not relevant to this Order.

"Monitoring and Reporting Regulation 2012" means Commission Regulation (EU) No. 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**a**);

"Monitoring and Reporting Regulation 2018" means Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**b**) as given effect subject to modifications by article 24;

"non-commercial air transport operator" means a person who operates flights and is not a commercial air transport operator;

"NRW" means the Natural Resources Body for Wales(**c**);

"operator", in relation to an installation, has the meaning given in article 5;

"outermost region" means—

(a) the Canary Islands;

(b) French Guiana;

(c) Guadeloupe;

(d) Mayotte;

(e) Martinique;

(f) Réunion;

(g) Saint-Martin;

(h) the Azores; or

(i) Madeira;

"permit" means—

(a) a greenhouse gas emissions permit; or

(b) a hospital or small emitter permit,

and a reference to a permit includes the monitoring plan (see paragraph 4(1)(f) of Schedule 6 and paragraph 11(1)(g) of Schedule 7);

"regulated activity" has the meaning given in paragraph 3(1) of Schedule 2;

"regulator" must be construed in accordance with articles 9 to 13;

"relevant Northern Ireland electricity generator" means an installation within the meaning of GGETSR 2012 to which those Regulations continue to apply to regulate the carrying out of regulated activities at the installation on or after 1st January 2021;

"reportable emissions", in relation to an installation, means the total specified emissions (in tonnes of carbon dioxide equivalent(**d**)) from the regulated activities carried out at the installation;

"scheme year" means the calendar year beginning on 1st January 2021 or any of the 9 subsequent calendar years; and a reference to a scheme year described by a calendar year (for example, the "2021 scheme year") is a reference to the scheme year beginning on 1st January of that year;

"SEPA" means the Scottish Environment Protection Agency(**e**);

"specified emissions" has the meaning given in paragraph 3(7) of Schedule 2;

(**a**) OJ No. L 181, 12.7.2012, p. 30.
(**b**) OJ No. L 334, 31.12.2018, p. 1.
(**c**) The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903 (W.230).
(**d**) Section 93(2) of the Climate Change Act 2008 defines "tonne of carbon dioxide equivalent".
(**e**) The Scottish Environment Protection Agency was established by section 20 of the Environment Act 1995 (c. 25).

"surrender", in relation to an allowance, means use the allowance to account for reportable emissions or aviation emissions in a particular scheme year in such a way that the allowance ceases to be available for any other purpose;

"surrender condition" has the meaning given in paragraph 4(3) of Schedule 6;

"trading period" means the period beginning on 1st January 2021 and ending on 31st December 2030;

"UK coastal waters" has the meaning given in section 89(2) of CCA 2008;

"UK ETS" has the meaning given in article 16(1);

"UK ETS authority" has the meaning given in article 14;

"UK sector of the continental shelf" has the meaning given in section 89(2) of CCA 2008;

"ultra-small emitter" must be construed in accordance with paragraph 2 of Schedule 8;

"ultra-small emitter list for 2021-2025" has the meaning given in paragraph 2(2) of Schedule 8;

"ultra-small emitter list for 2026-2030" has the meaning given in paragraph 3(5) of Schedule 8;

"Verification Regulation 2012" means Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**a**);

"Verification Regulation 2018" means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**b**).

(2) For the purposes of this Order, the amount of an installation's reportable emissions (including reportable emissions within the meaning of GGETSR 2012) from biomass must be treated as zero where the emission factor of the biomass under the Monitoring and Reporting Regulation 2012 or the Monitoring and Reporting Regulation 2018 is zero.

(3) For the purposes of this Order, an installation has ceased operation if—

(a) a regulated activity is no longer being carried out at the installation; and

(b) it is technically impossible to resume operation.

(4) For the purposes of this Order, the question of whether any waters are adjacent to Northern Ireland, Scotland or Wales must be determined in accordance with—

(a) any Order in Council made under section 98(8) of the Northern Ireland Act 1998(**c**);

(b) any Order in Council made under section 126(2) of the Scotland Act 1998(**d**);

(c) any Order in Council made under sections 58 and 158(4), or order made under section 158(3), of the Government of Wales Act 2006(**e**).

Meaning of operator

5.—(1) In this Order, the "operator" of an installation is the person who has control over its operation.

(2) But where—

(**a**) OJ No. L 181, 12.7.2012, p. 1.
(**b**) Commission Implementing Regulation (EU) 2018/2067 is amended prospectively by S.I. 2019/916 with effect from IP completion day and is further amended by this Order.
(**c**) 1998 c. 47.
(**d**) 1998 c. 46.
(**e**) 2006 c. 32. Section 58 was amended by paragraph 6(3) of Schedule 4 to the Marine and Coastal Access Act 2009 (c. 23) and sections 21(1) and 49 of the Wales Act 2017 (c. 4). Section 158(3) was substituted by section 43(3) of the Marine and Coastal Access Act 2009.

(a) a regulated activity has not begun to be carried out at an installation, the operator of the installation is the person who will have control over its operation when a regulated activity is carried out at the installation;

(b) a regulated activity is no longer carried out at an installation, the operator of the installation is the person who holds the permit for the installation or, if no permit authorises a regulated activity to be carried out at the installation, the person who had control over its operation immediately before regulated activities ceased to be carried out at the installation;

(c) the holder of a permit for an installation ceases to have control over its operation, the operator of the installation is the permit holder.

Meaning of aircraft operator

6.—(1) In this Order, a person is an aircraft operator in relation to a scheme year, where in respect of that year that person—

(a) performs an aviation activity; and

(b) is not exempt under article 7 or 8.

(2) For the purposes of paragraph (1)(a), an aviation activity is performed by the person who operates the aircraft at the time of the flight, or where that person is not known, the owner of that aircraft is deemed to be the person that performed the aviation activity.

Exempt commercial air transport operators

7.—(1) A commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates—

(a) less than 243 full-scope flights per period for 3 consecutive 4-month periods; or

(b) full-scope flights with total annual emissions of less than 10,000 tonnes of carbon dioxide.

(2) In this article, "4-month period" means any of the following periods—

(a) January to April;

(b) May to August;

(c) September to December.

(3) For the purposes of this article, a full-scope flight is taken to have occurred in the 4-month period that included its local time of departure.

Exempt non-commercial air transport operators

8. A non-commercial air transport operator is not an aircraft operator for the purposes of this Order in relation to a scheme year, where in respect of that year it operates full-scope flights with total annual emissions of less than 1,000 tonnes of carbon dioxide.

Meaning of regulator

9.—(1) Each of the following is a "regulator" for the purposes of this Order—

(a) the chief inspector;

(b) the Environment Agency(**a**);

(c) NRW;

(d) the Secretary of State;

(e) SEPA.

(**a**) The Environment Agency was established by section 1 of the Environment Act 1995 (c. 25).

(2) In this Order, "regulator" means—

(a) in relation to an installation, the regulator determined in accordance with article 10;

(b) in relation to an aircraft operator, the regulator determined in accordance with articles 11 to 13.

(3) Each regulator is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

Meaning of regulator: installations

10.—(1) This article applies for the purposes of article 9.

(2) The regulator, in relation to an installation set out in column 1 of table A, is the regulator set out in the corresponding entry in column 2.

Table A

Column 1 *Installation*	*Column 2* *Regulator*
Installation in— (a) England; (b) the territorial sea adjacent to England, except where the installation is used for a purpose referred to in paragraph (3)	Environment Agency
Installation in— (a) Northern Ireland; (b) controlled waters adjacent to Northern Ireland; (c) the territorial sea (other than controlled waters) adjacent to Northern Ireland, except where the installation is used for a purpose referred to in paragraph (3)(a)	Chief inspector
Installation in— (a) Scotland; (b) controlled waters adjacent to Scotland; (c) the territorial sea (other than controlled waters) adjacent to Scotland, except where the installation is used for a purpose referred to in paragraph (3)(a)	SEPA
Installation in— (a) Wales; (b) the territorial sea adjacent to Wales	NRW
Installation in— (a) the territorial sea adjacent to England, where the installation is used for a purpose referred to in paragraph (3); (b) the territorial sea (other than controlled waters) adjacent to Northern Ireland and Scotland, where the installation is used for a purpose referred to in paragraph (3)(a); (c) the UK sector of the continental shelf	Secretary of State

(3) The purposes are—

(a) a purpose connected with the exploration for, or exploitation of, petroleum (within the meaning of section 1 of the Petroleum Act 1998(**a**));

(b) a purpose connected with an activity referred to in section 2(3) of the Energy Act 2008(**b**) (unloading and storage of combustible gas);

(c) a purpose connected with an activity referred to in section 17(2) of that Act (storage of carbon dioxide).

(4) In this article—

"controlled waters" means the part of the territorial sea that is between the landward limit of the territorial sea and the line that is 3 nautical miles seaward of the landward limit of the territorial sea;

"territorial sea" means the territorial sea of the United Kingdom;

"territorial sea adjacent to England" means the part of the territorial sea that is not adjacent to Northern Ireland, Scotland or Wales.

(5) In this article, a reference to England, Northern Ireland, Scotland or Wales includes a reference to waters adjacent to England or, as the case may be, Northern Ireland, Scotland or Wales that are landward of the landward limit of the territorial sea.

Meaning of regulator: aircraft operators

11.—(1) This article applies for the purposes of article 9.

(2) Subject to articles 12 and 13 the regulator of an aircraft operator is—

(a) the Environment Agency, where the aircraft operator —

(i) has its registered office or place of residence in England; or

(ii) does not have a registered office or a place of residence in the United Kingdom;

(b) NRW, where the aircraft operator has its registered office or place of residence in Wales;

(c) SEPA, where the aircraft operator has its registered office or place of residence in Scotland;

(d) the chief inspector, where the aircraft operator has its registered office or place of residence in Northern Ireland.

Aircraft operator: change in regulator

12.—(1) This paragraph applies where—

(a) an aircraft operator ("A") does not have a registered office or a place of residence in the United Kingdom;

(b) "B" is the regulator of A; and

(c) a different regulator ("C") is satisfied that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.

(2) Where paragraph (1) applies, on or before 30th June 2025, C must give notice to—

(a) A;

(b) B; and

(c) the UK ETS authority,

that C is the regulator of A from the beginning of the 2026-2030 allocation period.

(**a**) 1998 c. 17.
(**b**) 2008 c. 32.

(3) A notice under paragraph (2) must be accompanied by evidence demonstrating that the highest percentage of aviation emissions of A in the 2023 and 2024 scheme years is attributable to flights departing from aerodromes situated in the area of C.

(4) In this article, "area" in relation to a regulator, means—

(a) in respect of the Environment Agency, England;

(b) in respect of the NRW, Wales;

(c) in respect of the SEPA, Scotland;

(d) in respect of the chief inspector, Northern Ireland.

Aircraft operator: change in registered office

13.—(1) Where—

(a) an aircraft operator ("A") with a registered office or a place of residence in the area of a regulator, in the course of the 2021-2025 allocation period, changes the address of its registered office or place of residence to the area of a different regulator ("R"); and

(b) A's registered office or place of residence is in the area of R at the end of the 2021-2025 allocation period,

R is the regulator of A from the beginning of the 2026-2030 allocation period.

(2) Where—

(a) an aircraft operator ("B") which did not have a registered office or a place of residence in the United Kingdom at the beginning of the 2021-2025 allocation period acquires a registered office or a place of residence in the United Kingdom in the course of that period; and

(b) at the end of the 2021-2025 allocation period that registered office or place of residence is in the area of a regulator ("S") who is not the regulator of B in that allocation period,

S is the regulator of B from the beginning of the 2026-2030 allocation period.

(3) In this article "area" has the same meaning as in article 12.

Meaning of UK ETS authority, etc.

14.—(1) A reference in this Order to the "UK ETS authority" is a reference to all of the national authorities(**a**).

(2) Functions conferred or imposed by this Order on the "UK ETS authority" may be exercised—

(a) by all of the national authorities jointly; or

(b) by one of the national authorities (or by more than one of the national authorities jointly) on behalf of the other national authorities with their agreement.

(3) Where this Order provides for a person to do anything in relation to the "UK ETS authority" (for example, to give a notice to the UK ETS authority), it is sufficient for the person to do it in relation to any of the national authorities.

(4) Each national authority is an administrator of the UK ETS for the purposes of paragraph 21 of Schedule 2 to CCA 2008.

Applications, notices, etc.

15.—(1) Part 1 of Schedule 3 (which makes provision in relation to applications, notices and reports submitted to a regulator) has effect.

(**a**) Section 95(1) of the Climate Change Act 2008 defines "national authority".

(2) Part 2 of Schedule 3 (which makes provision in relation to notices given by a regulator, a national authority or the UK ETS authority) has effect.

PART 2

Basic elements of the UK ETS

CHAPTER 1

Establishment of the UK ETS and requirement for review

UK Emissions Trading Scheme

16.—(1) This Order establishes a trading scheme, known as the "UK Emissions Trading Scheme" or "UK ETS".

(2) The purpose of the UK ETS is to limit, or encourage the limitation of, the emission of greenhouse gases(**a**) in the trading period from the carrying out of—

(a) regulated activities by operators of installations; and

(b) aviation activities by aircraft operators.

Review of UK ETS

17.—(1) The UK ETS authority must before each review date—

(a) carry out a review of the operation of the UK ETS;

(b) publish a report setting out the conclusions of the review.

(2) The review dates are 31st December 2023 and 31st December 2028.

(3) The report must in each case—

(a) review the operation of the UK ETS (including assessing the extent to which the purpose of the UK ETS is being achieved);

(b) make any recommendations that the UK ETS authority considers appropriate as to the future operation and purpose of the UK ETS.

CHAPTER 2

Allowances and caps

Allowances

18.—(1) The UK ETS authority may direct that allowances be created for the purposes of the UK ETS.

(2) An allowance is an allowance to emit 1 tonne of carbon dioxide equivalent.

Cap for trading period

19. The number of allowances created in the trading period may not exceed the sum of—

(a) 736,013,432 multiplied by the 2021-2025 hospital and small emitter reduction factor; and

(b) 630,152,247 multiplied by the 2026-2030 hospital and small emitter reduction factor.

(**a**) Section 92(1) of the Climate Change Act 2008 defines "greenhouse gas".

Cap for scheme years

20.—(1) The number of allowances created in a scheme year may not exceed the base for the scheme year multiplied by—

(a) if the scheme year is in the 2021-2025 allocation period, the 2021-2025 hospital and small emitter reduction factor;

(b) if the scheme year is in the 2026-2030 allocation period, the 2026-2030 hospital and small emitter reduction factor.

(2) Paragraph (1) is subject to any direction given by the UK ETS authority for the creation of allowances for allocation under regulations made by the Treasury under the Finance Act 2020(**a**).

(3) But such a direction may not override article 19.

Cap: hospital and small emitter reduction factors

21.—(1) This article applies for the purposes of articles 19 and 20.

(2) The 2021-2025 hospital and small emitter reduction factor is $(RE_1 – SI_1)/RE_1$, where—

RE_1 is the total reportable emissions (within the meaning of GGETSR 2012) in 2016, 2017 and 2018 of all installations (within the meaning of GGETSR 2012) and all UK aircraft operators (within the meaning of GGETSR 2012);

SI_1 is the total reportable emissions (within the meaning of GGETSR 2012) in 2016, 2017 and 2018 of all installations included in the hospital and small emitter list for 2021-2025.

(3) The 2026-2030 hospital and small emitter reduction factor is $(RE_2 - SI_2)/RE_2$, where—

RE_2 is the total reportable emissions and the total aviation emissions, expressed in tonnes, in the 2021, 2022 and 2023 scheme years of all installations and all aircraft operators;

SI_2 is the total reportable emissions in the 2021, 2022 and 2023 scheme years of all installations included in the hospital and small emitter list for 2026-2030.

(4) In this article, a reference to reportable emissions or aviation emissions is a reference to reportable emissions or aviation emissions—

(a) verified in accordance with the Verification Regulation 2012 or the Verification Regulation 2018;

(b) where relevant, set out in an emissions report accompanied by the notice or declaration referred to in paragraph 3(8)(b)(ii) of Schedule 5 to GGETSR 2012 or paragraph 11(2)(b)(ii) of Schedule 7 to this Order; or

(c) where relevant, considered to be verified under regulation 35(7) of GGETSR 2012 or article 33(2) of this Order.

Cap: base for scheme years

22. For the purposes of article 20, the base for a scheme year set out in column 1 of table B is the value set out in the corresponding entry in column 2.

Table B

Column 1 *Scheme year*	*Column 2* *Base*
2021	155,671,581
2022	151,437,134
2023	147,202,686
2024	142,968,239
2025	138,733,792

(**a**) 2020 c. XXX.

2026	134,499,344
2027	130,264,897
2028	126,030,449
2029	121,796,002
2030	117,561,555

Trading in allowances

23. Allowances may be traded, except where prohibited by other legislation.

CHAPTER 3

Monitoring, reporting and verification

Monitoring and reporting of emissions

24. Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**a**) has effect for the purpose of the UK ETS, subject to the modifications in Schedule 4 and to Part 4 (see also paragraph 13 of Schedule 7 which makes further modifications in relation to hospitals and small emitters and paragraph 5 of Schedule 8 which makes further modifications in relation to ultra-small emitters).

Verification of data and accreditation of verifiers

25. Schedule 5 (amendments to the Verification Regulation 2018 adapting its provisions for the purpose of the UK ETS) has effect.

PART 3

Installations

Installations: requirement for permit to carry out regulated activity

26.—(1) No person may carry out a regulated activity at an installation in a scheme year unless the operator of the installation holds a greenhouse gas emissions permit or a hospital or small emitter permit for the installation that authorises the regulated activity to be carried out.

(2) Paragraph (1) does not apply to a regulated activity carried out at an installation in a scheme year for which the installation is an ultra-small emitter.

(3) Schedule 6 (which provides for applications for greenhouse gas emissions permits and generally for permits) has effect.

(4) Schedule 7 (which provides for hospitals and small emitters) has effect.

(5) Schedule 8 (which provides for ultra-small emitters) has effect.

Installations: requirement to surrender allowances

27. Where the operator of an installation holds a greenhouse gas emissions permit, the operator must surrender allowances in accordance with the surrender condition of the permit for each scheme year (or part of a scheme year) that the permit is in force.

(**a**) OJ No. L 334, 31.12.2018, p. 1.

PART 4

Aviation

Application for emissions monitoring plans

28.—(1) An aircraft operator must apply to the regulator for a plan setting out how the aircraft operator's aviation emissions are to be monitored for the purposes of this Order ("an emissions monitoring plan").

(2) An aircraft operator that has previously been issued with an emissions monitoring plan or a GGETSR emissions plan may not make an application under paragraph (1) without the agreement of the regulator (but see article 29(3)).

(3) An application under paragraph (1) is the means by which an aircraft operator submits a monitoring plan to the regulator for approval under Article 12 of the Monitoring and Reporting Regulation 2018.

(4) An aircraft operator must comply with the requirement in paragraph (1) before the end of the period of 42 days commencing with the day it becomes an aircraft operator.

Issue of emissions monitoring plans

29.—(1) If an aircraft operator applies for an emissions monitoring plan in accordance with article 28(1) and (2), the regulator must issue the emissions monitoring plan unless—

(a) the regulator is not satisfied that the application complies with the Monitoring and Reporting Regulation 2018; and

(b) the aircraft operator has not agreed to amendments of the application required to satisfy the regulator that the application does so comply.

(2) An emissions monitoring plan issued under paragraph (1) replaces any emissions monitoring plan previously issued to the aircraft operator.

(3) The regulator may issue an emissions monitoring plan to a person who was a UK administered operator for the purpose of GGETSR 2012 and held a GGETSR emissions plan.

(4) Subject to paragraph (5), an emissions monitoring plan issued under paragraph (3) must be in substantially the same terms as the GGETSR emissions plan.

(5) An emissions monitoring plan must contain any conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018.

Refusal of application for emissions monitoring plans

30.—(1) If the regulator refuses an application for an emissions monitoring plan the regulator must give notice to the applicant.

(2) A notice under paragraph (1) must state—

(a) the reasons for the decision; and

(b) if amendments of the application are required in order for an emissions monitoring plan to be issued, the nature of those amendments.

(3) An aircraft operator who is given a notice under paragraph (1) must make a revised application to the regulator before the end of the period of 31 days beginning with the day that the notice was given.

(4) Article 29 and this article apply to a revised application under paragraph (3) as they apply to the original application, but for the purposes of such a revised application, the references to the period of 2 months in paragraph 2 of Schedule 3 are to be read as references to a period of 24 days.

Variation of emissions monitoring plans

31.—(1) An aircraft operator—

(a) may apply to the regulator to vary its emissions monitoring plan;

(b) must apply to the regulator to vary its emissions monitoring plan where required to do so by a condition of the emissions monitoring plan.

(2) A variation applied for under paragraph (1) is given effect by the regulator giving notice to the aircraft operator.

(3) Paragraphs (1) and (2) do not affect the operation of any condition of an emissions monitoring plan that allows an aircraft operator to make a variation without applying to the regulator.

(4) The regulator may, by giving notice to an aircraft operator, make any variation of the aircraft operator's emissions monitoring plan that the regulator considers necessary in consequence of a report made by the aircraft operator under Article 69(4) of the Monitoring and Reporting Regulation 2018.

(5) The regulator may, by giving notice to an aircraft operator, vary the aircraft operator's emissions monitoring plan where the aircraft operator has failed to comply with a requirement in the emissions monitoring plan to make or apply for such a variation.

(6) The regulator may, by giving notice to an aircraft operator, vary the aircraft operator's emissions monitoring plan by modifying, adding or removing a condition if the regulator considers it necessary to do so to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.

(7) In this article references to an aircraft operator include any person who has been issued with an emissions monitoring plan.

Monitoring emissions and emissions monitoring plan conditions

32.—(1) Each aircraft operator must monitor its aviation emissions in accordance with—

(a) the Monitoring and Reporting Regulation 2018; and

(b) its emissions monitoring plan, including any written procedures required by Article 12 of the Monitoring and Reporting Regulation 2018.

(2) Each aircraft operator must comply with any condition included in its emissions monitoring plan under article 29(5) or 31(6).

Reporting aviation emissions

33.—(1) A person who is an aircraft operator in relation to a scheme year must prepare a report of its aviation emissions for that scheme year in accordance with the Monitoring and Reporting Regulation 2018; the report must be verified in accordance with the Verification Regulation 2018.

(2) The obligation for the report to be verified in accordance with the Verification Regulation 2018 does not apply, and the aviation emissions stated in the report are considered to be verified, where the person required to prepare the report in relation to a scheme year—

(a) had emissions of carbon dioxide for that scheme year amounting to either—

(i) less than 25,000 tonnes from full-scope flights; or

(ii) less than 3,000 tonnes from aviation activity; and

(b) determined its emissions using the small emitters tool approved under Commission Regulation (EU) No 606/2010, the tool having been populated with data by Eurocontrol.

(3) The report prepared under paragraph (1) must be submitted to the regulator on or before 31st March in the year following the scheme year to which it relates.

Surrender of allowances by aircraft operators

34.—(1) A person who is an aircraft operator in relation to a scheme year must surrender, on or before 30th April in the following year, an amount of allowances equal to its aviation emissions in that scheme year (expressed in tonnes).

(2) Where an aircraft operator's aviation emissions in a scheme year (the "non-compliance year") exceeds the allowances surrendered on or before 30th April in the following year, the aircraft operator's aviation emissions in the relevant scheme year must be treated as being increased by the difference.

(3) In paragraph (2), the relevant scheme year means—

(a) the scheme year following the non-compliance year; or

(b) if the failure to comply with paragraph (1) results from an error in the verified emissions report submitted by the aircraft operator, the scheme year in which the error is discovered.

PART 5

Charging

Charges

35.—(1) The regulator may charge an applicant, operator, aircraft operator or any other person an amount as a means of recovering costs incurred by the regulator in performing activities in accordance with or by virtue of this Order.

(2) The activities referred to in paragraph (1) include—

(a) giving advice in relation to an application under or by virtue of this Order or any other advice in relation to the operation of the UK ETS;

(b) considering an application under or by virtue of this Order;

(c) issuing, varying, transferring, cancelling, surrendering or revoking a permit;

(d) issuing or varying an emissions monitoring plan;

(e) giving any notice or other document provided for by or under this Order;

(f) receiving any notice or other document provided for by or under this Order;

(g) monitoring compliance with this Order;

(h) making a determination of emissions or aviation emissions under article 45.

(3) A charge under paragraph (1) may include an annual or other periodic charge to an operator or aircraft operator that does not relate to any specific activity.

(4) The regulator may apply different charges for different categories of person in relation to the same activity.

(5) Payment of a charge is not received until the regulator has cleared funds for the full amount due and a charge, if unpaid, may be recovered by the regulator as a civil debt.

(6) The regulator may require a charge to be paid before it carries out the activity to which the charge relates.

(7) If the regulator does not require a charge to be paid in accordance with paragraph (6), it is payable on demand.

(8) The regulator is not required to reimburse a charge where—

(a) an activity is not completed; or

(b) the person liable to pay the charge does not remain within the scheme for all of the period in relation to which the charge is payable or has been calculated.

Approval, publication and revision of charges

36.—(1) The regulator must publish a document ("charging scheme") setting out the charges payable in accordance with article 35(1) or how they will be calculated.

(2) Before publishing a charging scheme, the regulator must—

(a) bring its proposals to the attention of the persons likely to be affected by them; and

(b) specify the period within which representations or objections to the proposals may be made.

(3) A charging scheme cannot be published unless it has been approved—

(a) in the case of proposals by the Environment Agency, by the Secretary of State;

(b) in the case of proposals by SEPA, by the Scottish Ministers;

(c) in the case of proposals by NRW, by the Welsh Ministers;

(d) in the case of proposals by the chief inspector, by the Department of Agriculture, Environment and Rural Affairs.

(4) Where a proposed charging scheme has been submitted for approval under paragraph (3), the appropriate national authority—

(a) must consider any representations or objections made under paragraph (2)(b); and

(b) may make such modifications to the proposal as they consider appropriate.

(5) If the regulator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.

(6) Paragraphs (2) to (5) do not apply to a charging scheme prepared and published by the Secretary of State.

Remittance of charges

37.—(1) The Environment Agency must pay the Secretary of State any charge received by it.

(2) SEPA must pay the Scottish Ministers any charge received by it.

(3) NRW must pay the Welsh Ministers any charge received by it.

(4) The chief inspector must pay the Department of Agriculture, Environment and Rural Affairs any charge received by it.

PART 6

Monitoring compliance

Authorised persons

38.—(1) The regulator may authorise a person to exercise, on behalf of the regulator and in accordance with the terms of the authorisation, the regulator's powers set out in this Part.

(2) In this Part, "authorised person" means a person authorised under—

(a) paragraph (1); or

(b) section 108(1) of the Environment Act 1995(**a**).

Inspections

39.—(1) The regulator may, at a reasonable time, inspect any premises and any thing in or on those premises in order to monitor compliance with this Order.

(**a**) 1995 c. 25; section 108(1) was relevantly amended by section 46(2)(a) of the Regulatory Reform (Scotland) Act 2014 (asp 3).

(2) Reasonable prior notice must be given before exercising the powers in this article.

(3) A person in control of the premises to which the regulator or authorised person reasonably requires access must allow the regulator or authorised person to have such access.

(4) The regulator or authorised person may, when inspecting premises—

(a) make any such examination and investigation as may be necessary;

(b) install or maintain monitoring equipment or other apparatus;

(c) request the production of any record;

(d) take measurements, photographs, recordings or copies of any thing;

(e) take samples of any articles or substances found in, or on, the premises and of the air, water or land in, on, or in the vicinity of, those premises;

(f) request any person at the premises to provide facilities or assistance to the extent that is within that person's control.

(5) Except to the extent agreed by the person in control of a place or premises, the power referred to in paragraph (1) does not apply to—

(a) a prohibited place for the purposes of the Official Secrets Act 1911**(a)**; or

(b) any other premises to which the Crown restricts access on the ground of national security.

Powers of entry, etc.

40.—(1) The regulator or an authorised person may—

(a) enter any premises with a warrant issued in accordance with article 41, together with any equipment or material as may be required;

(b) when entering premises by virtue of sub-paragraph (a)—

(i) be accompanied by an authorised person and, if considered appropriate, a constable;

(ii) direct that any part of the premises be left undisturbed for so long as may be necessary;

(c) require any person believed to be able to give information relevant to an examination or investigation—

(i) to attend at a place and time specified by the regulator or authorised person;

(ii) to answer questions (in the absence of any person other than those whom the regulator or authorised person allows to be present and a person nominated by the person being asked questions);

(iii) to sign a declaration of truth of the answers given by that person;

(d) require the production of—

(i) records required to be kept under this Order;

(ii) other records which the regulator or authorised person considers it necessary to see for the purpose of an examination or investigation;

(iii) entries in a record referred to in this sub-paragraph;

(e) inspect and take copies of the records and entries referred to in sub-paragraph (d).

(2) The powers in paragraph (1) may only be exercised where the regulator or an authorised person reasonably believes there has been a failure to comply with the requirements of this Order.

(3) Except to the extent agreed by the person in control of a place or premises, the powers referred to in paragraph (1) do not apply in relation to—

(a) a prohibited place for the purposes of the Official Secrets Act 1911; or

(b) any other premises to which the Crown restricts access on the ground of national security.

(**a**) 1911 c. 28.

(4) It is an offence for a person—

(a) to fail to comply with a requirement imposed pursuant to this article; or

(b) to prevent any other person from—

(i) appearing before the regulator or an authorised person; or

(ii) answering a question to which the regulator or authorised person requires an answer.

(5) A person guilty of an offence under paragraph (4) is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Scotland or in Northern Ireland, to a fine not exceeding the statutory maximum;

(c) on conviction on indictment, to a fine.

Warrants

41.—(1) A judge may issue a warrant in relation to any premises for the purpose of article 40(1)(a) where satisfied that—

(a) there are reasonable grounds for the exercise of the power in that sub-paragraph; and

(b) one or more of the conditions in paragraph (2) are fulfilled in relation to the premises.

(2) The conditions referred to in paragraph (1)(b) are that—

(a) the exercise of the power by consent in relation to the premises has been refused;

(b) a refusal of consent to the exercise of the power is reasonably expected;

(c) the premises are unoccupied;

(d) the occupier is temporarily absent from the premises and the case is one of urgency; or

(e) a request for admission to the premises would defeat the purpose of the entry.

(3) A warrant in accordance with this article continues to have effect until the purpose for which it was issued has been fulfilled.

(4) In paragraph (1), "judge" means—

(a) in England or Wales, a justice of the peace;

(b) in Northern Ireland, a lay magistrate;

(c) in Scotland, a justice of the peace or sheriff.

Admissible evidence

42.—(1) An answer given by a person in compliance with article 40(1)(c)(ii) is admissible in evidence—

(a) in England, Wales and Northern Ireland, against that person in any proceedings;

(b) in Scotland, against that person in criminal proceedings.

(2) In criminal proceedings in which the person referred to in paragraph (1) is charged with an offence, no evidence relating to the person's answer may be adduced and no question relating to it may be asked by, or on behalf of, the prosecution unless evidence relating to it has been adduced by, or on behalf of, the person.

(3) Paragraph (2) does not apply to an offence under—

(a) section 5 of the Perjury Act 1911(**a**);

(b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995(**b**); or

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(**a**) 1911 c. 6.

(**b**) 1995 c. 39; section 44(2) was amended by section 200(2)(b) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(c) article 10 of the Perjury (Northern Ireland) Order 1979(**a**).

Legal professional privilege

43. Nothing in this Part requires any person to produce a document which that person would be entitled to withhold the production of on grounds of legal professional privilege.

PART 7

Enforcement

CHAPTER 1

Enforcement notices and determination of emissions by regulator

Enforcement notices

44.—(1) Where the regulator considers that a person has contravened, is contravening or is likely to contravene a relevant requirement, the regulator may give notice (an "enforcement notice") to the person.

(2) In paragraph (1), "relevant requirement" means—

(a) a requirement imposed on the person by or under—

(i) this Order;

(ii) the Monitoring and Reporting Regulation 2018;

(b) a condition of a permit;

(c) a condition of an emissions monitoring plan.

(3) An enforcement notice must set out—

(a) the relevant requirement that the regulator considers has been contravened, is being contravened or is likely to be contravened;

(b) details of the contravention or likely contravention;

(c) the steps that must be taken to remedy the contravention or to ensure that a contravention does not occur;

(d) the period within which the steps must be taken;

(e) information about rights of appeal.

(4) The person to whom the enforcement notice is given must comply with the requirements of the notice within the period set out in the notice.

(5) The regulator may withdraw an enforcement notice at any time by giving notice of the withdrawal to the person to whom the enforcement notice is given.

Determination of reportable emissions or aviation emissions by regulator

45.—(1) The regulator must make a determination of emissions of an installation or an aircraft operator in either of the following circumstances—

(a) if the operator of the installation fails to submit a report of the installation's reportable emissions in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 or paragraph 11(2)(b) of Schedule 7;

(b) if the aircraft operator fails to submit a report of aviation emissions in accordance with article 33.

(**a**) 1979 No. 1714 (N.I. 19).

(2) Where a verifier states in a verification report under the Verification Regulation 2018 that there are non-material misstatements in the annual emissions report of the operator of an installation or of an aircraft operator that have not been corrected by the operator or the aircraft operator before the verification report is issued—

(a) the regulator must—

(i) assess the misstatements;

(ii) if the regulator considers it appropriate, make a determination of emissions of the installation or the aircraft operator; and

(iii) give notice to the operator or the aircraft operator as to whether or not corrections are required to the annual emissions report and, if corrections are required, set out the corrections in the notice; and

(b) the operator or the aircraft operator must make the information referred to in sub-paragraph (a)(iii) available to the verifier.

(3) The regulator may make a determination of emissions of an installation or of an aircraft operator in any of the following circumstances—

(a) if the operator of the installation fails to satisfy the regulator in accordance with a condition of a permit included under paragraph 4(2)(c) of Schedule 6 (as to sustainability criteria in respect of the use of bioliquids);

(b) if the operator of the installation fails to submit a report in accordance with paragraph 11(4)(b) of Schedule 6;

(c) if the operator of the installation fails to submit a report in accordance with paragraph 12(5)(b) of Schedule 6;

(d) if the regulator considers that the determination of emissions is necessary for the purpose of imposing, or considering whether to impose, a civil penalty under article 47.

(4) In making a determination under paragraph (3)(a), the regulator may substitute an emission factor of greater than zero for the factor reported in respect of the bioliquids concerned.

(5) A regulator who makes a determination of emissions must give notice of the determination to the operator, the aircraft operator or the person on whom the civil penalty may be imposed.

(6) A notice of a determination of emissions determines for the purposes of this Order (including for calculating a civil penalty under article 47) the installation's reportable emissions or the aviation operator's aviation emissions for the period to which the determination relates.

(7) Where, after making a determination of emissions (including a rectified determination of emissions, or a further rectified determination of emissions, made under this paragraph), the regulator considers that there is an error in the determination, the regulator must—

(a) withdraw any notice of the determination given under paragraph (5);

(b) make a rectified determination of the emissions; and

(c) give notice of the rectified determination in accordance with paragraph (5),

and paragraph (6) applies to a notice of the rectified determination as it does to the notice of the previous determination.

(8) For the purposes of this article, emissions must be determined on the basis of a set of assumptions designed to ensure that no under-estimation occurs.

CHAPTER 2

Civil penalties

Carbon price

46.—(1) This article applies for the purpose of determining the price (the "carbon price") per tonne of carbon dioxide equivalent for a scheme year.

(2) The carbon price for the 2021 scheme year is the sum of the relevant amount for each auction of allowances held in the period beginning on 1st January 2021 and ending on 11th

November 2021 under regulations made by the Treasury under the Finance Act 2020 divided by the sum of the allowances sold at all those auctions.

(3) In paragraph (2), the relevant amount for an auction is the auction clearing price (that is to say, the price per allowance that, in accordance with the auction rules, each successful bidder must pay, irrespective of the original bid) multiplied by the number of allowances sold at the auction.

(4) The carbon price for the 2022 scheme year or any subsequent scheme year (the "relevant scheme year") is the average end of day settlement price, calculated over the relevant period, of the December futures contract for the relevant scheme year, as traded on the relevant carbon market exchange.

(5) For the purposes of paragraph (4), the "average" end of day settlement price is calculated by dividing the sum of the end of day settlement price for each day in the relevant period for which an end of day settlement price is published by the number of days in the relevant period for which an end of day settlement price is published.

(6) In paragraphs (4) and (5)—

"end of day settlement price", in relation to a futures contract, means the end of day settlement price per tonne of carbon dioxide equivalent published by the carbon market exchange on which the futures contract is traded;

"futures contract" means a futures contract for allowances;

"relevant carbon market exchange", in relation to a relevant scheme year, means the largest carbon market exchange as determined by volume of sales in the relevant period of the December futures contract for the relevant scheme year traded on the exchange;

"relevant period" means—

(a) in relation to the carbon price for the 2022 scheme year, the period beginning on 1st January 2021 and ending on 11th November 2021;

(b) in relation to the carbon price for the 2023 scheme year and any subsequent scheme year, the 12-month period ending on 11th November in the year preceding the relevant scheme year.

(7) The UK ETS authority must publish the carbon price for the 2021 scheme year on or before 30th November 2021.

(8) The UK ETS authority must publish the carbon price for subsequent scheme years on or before 30th November in the year preceding the scheme year.

Penalty notices

47.—(1) Where the regulator considers that a person is liable to a civil penalty under any of articles 50 to 68 the regulator may impose a civil penalty on the person.

(2) But where the regulator considers that a person is liable to a civil penalty under any of the following, the regulator must impose a civil penalty on the person——

(a) article 52 (failure to surrender allowances), but only if the person is liable to the excess emissions penalty referred to in article 52(2);

(b) article 54 (hospitals and small emitters: exceeding emissions target), except where paragraph (3) of that article applies;

(c) article 59 (ultra-small emitters: reportable emissions exceeding maximum amount).

(3) A civil penalty is imposed on a person by giving a notice (a "penalty notice") to the person.

(4) Where the civil penalty to which the person is liable consists of a non-escalating penalty only (or where the civil penalty consists of both a non-escalating penalty and a daily penalty, but the regulator decides not to impose a daily penalty), the penalty notice must set out—

(a) the grounds for liability;

(b) the amount of the non-escalating penalty (and, where relevant, how the amount is calculated);

(c) the date by which the non-escalating penalty must be paid (the "due date"), which must not be less than 28 days after the day on which the notice is given;

(d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);

(e) how payment may be made;

(f) information about rights of appeal.

(5) Where the civil penalty to which the person is liable consists of both a non-escalating penalty and a daily penalty and the regulator considers that the regulator may wish to impose a daily penalty, the regulator must, before giving a penalty notice to the person, first give a notice (an "initial notice") to the person.

(6) The initial notice must set out—

(a) the grounds for liability;

(b) the maximum amount of the non-escalating penalty that may be imposed;

(c) that the daily penalty that may be imposed begins to accrue on the day on which the initial notice is given;

(d) the maximum daily rate of the daily penalty and the maximum amount of the daily penalty that may be imposed.

(7) Where, after an initial notice is given to a person, the regulator considers that the total amount of the daily penalty to which the person is liable can be calculated (including where the daily penalty reaches its maximum amount), the regulator may give a penalty notice to the person.

(8) The penalty notice must set out—

(a) the grounds for liability;

(b) the amount of the civil penalty (including how the amount is calculated), which may include—

(i) a non-escalating penalty; and

(ii) a daily penalty;

(c) the date by which the civil penalty must be paid (the "due date"), which must not be less than 28 days after the day on which the notice is given;

(d) the person to whom payment must be made (which must be either the regulator or the appropriate national authority);

(e) how payment may be made;

(f) information about rights of appeal.

(9) The person to whom a penalty notice is given must pay the civil penalty set out in the notice to the person set out in the notice on or before the due date.

(10) A civil penalty imposed by a penalty notice is recoverable by the regulator as a civil debt.

(11) The regulator must, as soon as reasonably practicable—

(a) inform the appropriate national authority of a penalty notice given by the regulator;

(b) pay all sums received or recovered under a penalty notice to the appropriate national authority.

(12) In this article and article 48—

"appropriate national authority" means—

(a) in the case of a penalty notice given by the chief inspector, the Department of Agriculture, Environment and Rural Affairs;

(b) in the case of a penalty notice given by SEPA, the Scottish Ministers;

(c) in the case of a penalty notice given by NRW, the Welsh Ministers;

(d) in any other case, the Secretary of State;

"daily penalty" means a daily penalty set out in articles 51(3)(b), 55(2)(b), 61(2)(b), 62(2)(b), 63(2)(b), 64(2)(b), 65(2)(b) or 66(2)(b);

"non-escalating penalty" means a civil penalty under articles 50 to 68 that is not a daily penalty.

(13) This article is subject to article 48.

Penalty notices: supplementary

48.—(1) Subject to paragraph (3), a penalty notice imposing a civil penalty under any of articles 50 to 68 (the "relevant provision") may set out—

(a) a non-escalating penalty of an amount lower than the amount referred to in the relevant provision;

(b) where the civil penalty consists of both a non-escalating penalty and a daily penalty—

(i) a daily penalty based on a daily rate of an amount lower than the amount referred to in the relevant provision; or

(ii) no daily penalty.

(2) Subject to paragraphs (3) and (4), the regulator may, by giving notice to the person to whom a penalty notice is given—

(a) extend the due date for payment set out in the penalty notice;

(b) amend the penalty notice by substituting a lower non-escalating penalty or a daily penalty based on a lower daily rate;

(c) withdraw the penalty notice.

(3) Paragraphs (1) and (2) do not apply to—

(a) a penalty notice imposing the excess emissions penalty referred to in article 52;

(b) a penalty notice imposing a civil penalty under article 54, except where paragraph (3) of that article applies;

(c) a penalty notice imposing a civil penalty under article 59.

(4) But the regulator may withdraw a penalty notice referred to in paragraph (3) if there is an error in the notice (including an error in the basis on which the civil penalty imposed by the notice is calculated).

Regulator must publish names of persons subject to civil penalty under article 52

49.—(1) The regulator must publish the name of every person on whom the excess emissions penalty referred to in article 52 is imposed as soon as reasonably practicable after—

(a) the expiry of the period for bringing an appeal against the penalty notice imposing the penalty; or

(b) if an appeal is brought, the determination or withdrawal of the appeal.

(2) But paragraph (1) does not apply if, following an appeal, the person is found not to be liable to a civil penalty.

Installations: carrying out regulated activity without permit contrary to article 26

50.—(1) Where a regulated activity that is not authorised by a permit is carried out at an installation in a scheme year, contrary to article 26, the operator of the installation is (after the end of the scheme year) liable to a civil penalty.

(2) Subject to paragraph (3), the civil penalty is CA + (RE x CP), where—

CA is an estimate of the costs avoided by the operator in the scheme year as a result of carrying out the regulated activity without the authorisation of a permit;

RE is an estimate of the installation's reportable emissions in the part of the scheme year during which a regulated activity that was not authorised by a permit was carried out;

CP is the carbon price for the scheme year.

(3) When setting the amount of the civil penalty to be imposed, the regulator may increase the amount calculated under paragraph (2) by a factor designed to ensure that the amount of the civil penalty exceeds the value of any economic benefit that the operator has obtained as a result of failing to comply with article 26.

(4) The regulator must—

(a) estimate CA and RE under paragraph (2); and

(b) exercise the regulator's functions under paragraph (3),

in accordance with a direction given by the relevant national authority under section 52 of CCA 2008.

(5) This article is subject to paragraph 7(6)(b) of Schedule 8.

Installations: failure to comply with conditions of permit, etc.

51.—(1) The operator of an installation is liable to the civil penalty referred to in paragraph (3) where the operator fails to comply (or to comply on time) with—

(a) a condition of a greenhouse gas emissions permit;

(b) a condition of a hospital or small emitter permit;

(c) a requirement of a surrender notice set out in paragraph 11(4)(b)(i) or (ii) of Schedule 6;

(d) a requirement of a revocation notice set out in paragraph 12(5)(b)(i) or (ii) of that Schedule.

(2) But an operator is not liable to the civil penalty referred to in paragraph (3) where the failure to comply with a condition of a permit gives rise to liability for a civil penalty under—

(a) article 52;

(b) article 56.

(3) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the operator fails to comply with the condition or requirement, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Failure to surrender allowances

52.—(1) Subject to paragraphs (4) to (9), the operator of an installation or an aircraft operator is liable to the civil penalty (the "excess emissions penalty") referred to in paragraph (2) where—

(a) in the case of the operator, the operator fails to surrender sufficient allowances, contrary to—

(i) article 27;

(ii) the requirement of a surrender notice set out in paragraph 11(4)(b)(iii) of Schedule 6;

(iii) the requirement of a revocation notice set out in paragraph 12(5)(b)(iii) of that Schedule;

(b) in the case of the aircraft operator, the aircraft operator fails to surrender sufficient allowances, contrary to article 34.

(2) The excess emissions penalty is £100 multiplied by the inflation factor for each allowance that the operator or the aircraft operator fails to surrender.

(3) For the purpose of calculating the excess emissions penalty—

(a) under paragraph (1)(a)(i), a deemed increase in the installation's reportable emissions under paragraph 4(4) of Schedule 6 must be disregarded;

(b) under paragraph (1)(b), a deemed increase in an aircraft operator's aviation emissions under article 34(2) must be disregarded.

(4) This paragraph applies where—

(a) the regulator becomes aware that an installation's reportable emissions (as determined by the regulator under article 45) in a scheme year exceed the installation's verified reportable emissions for that year; and

(b) the operator of the installation failed to surrender allowances equal to the difference—

(i) on or before 30th April in the year following the scheme year referred to in sub-paragraph (a); or

(ii) where the end date set out in a surrender notice under paragraph 11 of Schedule 6 or a revocation notice under paragraph 12 of that Schedule falls in the scheme year referred to in sub-paragraph (a), on or before the date set out in the notice for the surrender of allowances.

(5) In paragraph (4), "verified reportable emissions" means reportable emissions—

(a) verified in accordance with a condition of a permit included under paragraph 4(2)(b) of Schedule 6 (including for the purpose of complying with the requirements of a surrender notice under paragraph 11, or a revocation notice under paragraph 12, of that Schedule); or

(b) previously determined by the regulator under article 45.

(6) Where paragraph (4) applies, the operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (4)(b).

(7) This paragraph applies where the regulator becomes aware that—

(a) an aircraft operator's aviation emissions (as determined by the regulator under article 45) in a scheme year exceed the aircraft operator's verified aviation emissions for that year; and

(b) the aircraft operator failed to surrender allowances equal to the difference on or before 30th April in the year following the scheme year referred to in sub-paragraph (a).

(8) In paragraph (7), "verified aviation emissions" means aviation emissions—

(a) verified under article 33(1);

(b) considered verified under article 33(2); or

(c) previously determined by the regulator under article 45.

(9) Where paragraph (7) applies, the aircraft operator is liable to the civil penalty referred to in paragraph (10) (and not the excess emissions penalty) in respect of the failure to surrender allowances referred to in paragraph (7)(b).

(10) The civil penalty is £20 multiplied by the inflation factor for each allowance that the operator or the aircraft operator failed to surrender.

(11) For the purposes of this article, the inflation factor is $(CPI_2\text{-}CPI_1)/CPI_1$ or 1, whichever is greater, where—

CPI_2 is the consumer prices index for the most recent March for which the consumer prices index is published when the penalty notice is given;

CPI_1 is the consumer prices index for March 2021.

(12) In paragraph (11), "consumer prices index" means—

(a) the all items consumer prices index published by the Statistics Board(**a**); or

(**a**) The Statistics Board was established by section 1 of the Statistics and Registration Service Act 2007 (c. 18).

(b) if that index is not published for a month, any substituted index or index figures published for that month by the Statistics Board.

Installations: failure to transfer or surrender allowances where underreporting discovered after transfer

53.—(1) A person is liable to a civil penalty where the person fails—

(a) to effect a transfer (or to effect a transfer on time) of allowances, contrary to paragraph 10(3) of Schedule 6 (transfer of permits: underreporting discovered after transfer);

(b) to surrender (or to surrender on time) allowances, contrary to paragraph 10(4) of that Schedule.

(2) The civil penalty is £20 multiplied by the inflation factor for each allowance that the person failed to transfer or surrender.

(3) In this article, "inflation factor" has the meaning given in article 52(11).

Hospitals and small emitters: exceeding emissions target

54.—(1) Where an installation's reportable emissions in a scheme year for which the installation is a hospital or small emitter exceed the installation's emissions target for that year, contrary to paragraph 19 of Schedule 7, the operator of the installation is liable to a civil penalty.

(2) The civil penalty is (RE-ET) x CP, where—

RE is the installation's reportable emissions in the scheme year;

ET is the installation's emissions target for the scheme year;

CP is the carbon price for the scheme year.

(3) For the purposes of article 47(2)(b), this paragraph applies where the regulator considers that the installation's emissions target for the scheme year was incorrectly calculated.

(4) In this article, "emissions target" has the meaning given in paragraph 1 of Schedule 7.

Hospitals and small emitters: failure to pay civil penalty for exceeding emissions target

55.—(1) Where the operator of an installation fails to pay a civil penalty (the "first penalty") under article 54 on or before the due date set out in the penalty notice imposing the first penalty, the operator is liable to a further civil penalty.

(2) The further civil penalty is—

(a) 10% of the first penalty; and

(b) a daily penalty at a daily rate of £150 for each day that the operator fails to pay the first penalty beginning with the day on which the initial notice is given, up to a maximum of £13,500.

Hospitals and small emitters: under-reporting of emissions

56.—(1) The operator of an installation is liable to a civil penalty where the installation has unreported emissions in a scheme year for which the installation is a hospital or small emitter, that is to say reportable emissions in the scheme year that—

(a) are not reported in the emissions report submitted for the scheme year under paragraph 11(2)(b) of Schedule 7; but

(b) are determined by the regulator under article 45.

(2) The civil penalty is £5,000 + (UE x CP), where—

UE is the unreported emissions in the scheme year (in tonnes of carbon dioxide equivalent);

CP is the carbon price for the scheme year.

Hospitals and small emitters: failure to notify when ceasing to meet criteria

57.—(1) This article applies where—

(a) either—

(i) a hospital-qualifying installation ceases to be an installation that primarily provides services to a hospital in a scheme year for which the installation is a hospital or small emitter; or

(ii) the reportable emissions of an installation (other than a hospital-qualifying installation) in a scheme year for which the installation is a hospital or small emitter exceed the maximum amount; and

(b) the operator of the installation fails to comply (or to comply on time) with a requirement to give notice on or before 31st March in the following year (the "default year") under a condition of a hospital or small emitter permit included under paragraph 11(3)(a) or (4) of Schedule 7.

(2) Where the operator fails to give notice on or before 31st March in the default year, but does give notice on or before 31st October in that year, the operator is liable to a civil penalty of £2,500.

(3) Where the operator fails to give notice on or before 31st October in the default year—

(a) if there is no penalty year, the operator is liable to a civil penalty of £5,000;

(b) if there is a penalty year, the operator is liable (after the end of the last penalty year) to a civil penalty of the sum of—

(i) £5,000; and

(ii) 2 x the avoided compliance costs for each penalty year.

(4) The avoided compliance costs, for each penalty year, are (RE x CP) – PP, where—

RE is the installation's reportable emissions (determined as if the modification made to Article 38(2) of the Monitoring and Reporting Regulation 2018 by paragraph 13(4)(a) of Schedule 7 did not apply) in the penalty year;

CP is the carbon price for the penalty year;

PP is, where a penalty notice imposing a civil penalty under article 54 in respect of the penalty year has previously been given to the operator, the amount of the civil penalty.

(5) In this article—

"hospital-qualifying installation" has the meaning given in paragraph 1 of Schedule 7;

"maximum amount" has the meaning given in that paragraph;

"penalty year" means a scheme year for which the installation—

(a) is a hospital or small emitter; but

(b) would not have been a hospital or small emitter if, by reason of the matters referred to in paragraph (1)(a)(i) or (ii), the regulator had, in the default year, given a conversion notice as required by paragraph 23(1) to (3) of Schedule 7 to the operator of the installation.

Installations: failure to apply to surrender permit

58. The operator of an installation is liable to a civil penalty of £5,000 where the operator fails to apply (or to apply on time) to surrender a permit, contrary to paragraph 11(1) of Schedule 6.

Ultra-small emitters: reportable emissions exceeding maximum amount

59.—(1) Subject to paragraph (3), where an installation's reportable emissions in a scheme year for which the installation is an ultra-small emitter exceed the maximum amount, the operator of the installation is liable to a civil penalty.

(2) The civil penalty is (RE – maximum amount) x CP, where—

RE is the installation's reportable emissions in the scheme year;

CP is the carbon price for the scheme year.

(3) A civil penalty under this article may be imposed only in respect of—

(a) the first scheme year in an allocation period in which the installation's reportable emissions exceed the maximum amount; and

(b) if the following scheme year is in the same allocation period, that scheme year.

(4) In this article, "maximum amount" has the meaning given in paragraph 1 of Schedule 8.

Ultra-small emitters: failure to notify where reportable emissions exceed maximum amount

60.—(1) Where—

(a) an installation's reportable emissions in a scheme year (the "excess year") for which the installation is an ultra-small emitter exceed the maximum amount; and

(b) the operator of the installation fails to give notice to the regulator under paragraph 6 of Schedule 8 on or before 31st March in the following year (the "default year") or at all,

the operator is liable to a civil penalty.

(2) The civil penalty is the sum of—

(a) £2,500; and

(b) CA + (RE x CP) for each scheme year (or part of a scheme year) falling within the penalty period (if any), where—

CA is an estimate of the costs avoided by the operator in the scheme year (or part of the scheme year) as a result of carrying out a regulated activity without the authorisation of the relevant permit;

RE is an estimate of the installation's reportable emissions in the scheme year (or part of the scheme year) during which a regulated activity that was not authorised by a permit was carried out;

CP is the carbon price for the scheme year.

(3) The penalty period is the period—

(a) beginning on 1st January in the year following the default year; and

(b) ending on the earlier of the following—

(i) the day before the day on which a permit for the installation comes into force; and

(ii) the last day of the same allocation period as the excess year is in.

(4) But there is no penalty period if—

(a) 1st January in the year following the default year is not in the same allocation period as the excess year; or

(b) a permit for the installation is in force on that date.

(5) When setting the amount of the civil penalty to be imposed, the regulator may increase the amount calculated under paragraph (2)(b) by a factor designed to ensure that the amount of the civil penalty exceeds the value of any economic benefit that the operator has obtained as a result of carrying out a regulated activity that was not authorised by the relevant permit.

(6) The regulator must—

(a) estimate CA and RE under paragraph (2); and

(b) exercise the regulator's functions under paragraph (5),

in accordance with a direction given by the relevant national authority under section 52 of CCA 2008.

(7) In this article—

"maximum amount" has the meaning given in paragraph 1 of Schedule 8;

"relevant permit" means—

(a) where a hospital or small emitter permit for the installation comes into force before the last day of the same allocation period as the excess year is in, a hospital or small emitter permit;

(b) in any other case, a greenhouse gas emissions permit.

Aviation: failure to apply or make revised application for emissions monitoring plan

61.—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails—

(a) to apply (or to apply on time) to the regulator for an emissions monitoring plan, contrary to article 28; or

(b) to make a revised application (or to make a revised application on time) for an emissions monitoring plan, where required to do so under article 30(3).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the application is not submitted or, as the case may be, the revised application is not submitted, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Aviation: failure to comply with condition of emissions monitoring plan

62.—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to comply (or to comply on time) with a condition of an emissions monitoring plan, contrary to article 32(2).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the person fails to comply with the condition, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Aviation: failure to monitor aviation emissions

63.—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to monitor aviation emissions in accordance with article 32(1).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the person fails to monitor aviation emissions in accordance with article 32(1), beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Aviation: failure to report aviation emissions

64.—(1) An aircraft operator is liable to a civil penalty where the aircraft operator fails to submit (or to submit on time) a verified report of aviation emissions to the regulator, contrary to article 33(1).

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £500 for each day that the report is not submitted, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Failure to comply with enforcement notice given by regulator

65.—(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of an enforcement notice given by the regulator under article 44.

(2) The civil penalty is—

(a) £20,000; and

(b) a daily penalty at a daily rate of £1,000 for each day that the person fails to comply with the requirements of the notice, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Failure to comply with information notice

66.—(1) A person is liable to a civil penalty where the person fails to comply (or to comply on time) with the requirements of a notice (the "information notice") given under article 75.

(2) The civil penalty is—

(a) £5,000; and

(b) a daily penalty at a daily rate of £500 for each day that the person fails to comply with the requirements of the information notice, beginning with the day on which the initial notice is given, up to a maximum of £45,000.

Providing false or misleading information, etc.

67. A person is liable to a civil penalty of £50,000 where the person provides false or misleading information, or makes a statement that is false or misleading in a material respect, where the information is provided, or the statement is made—

(a) in an application under this Order;

(b) in compliance with a notice given to the person under this Order;

(c) in a notice that the person is required to give under this Order;

(d) in compliance with a condition of a permit or an emissions monitoring plan;

(e) in a report of aviation emissions under article 33.

Inspection: refusal to allow access to premises

68. A person in control of premises is liable to a civil penalty of £50,000 where the person does not allow the regulator or authorised person (within the meaning of Part 6) access to the premises contrary to article 39(3).

PART 8

Appeals

Interpretation

69. In this Part—

"appeal body" has the meaning given in article 71;

"decision" includes a deemed refusal under this Order;

"notice" includes—

(a) in the case of a notice determining an application for a permit or the transfer of a permit, the provisions of any permit attached to the notice; and

(b) in the case of a notice determining an application for an emissions monitoring plan, the conditions included in the plan issued by the notice.

Right of appeal

70.—(1) Subject to paragraph (3), the following may appeal to the appeal body—

(a) a person who is aggrieved by a decision of the regulator determining an application made by the person under this Order;

(b) a person who is aggrieved by a notice given to the person, under a provision referred to in paragraph (2).

(2) Those provisions are—

(a) article 30(1) (refusal of application for an emissions monitoring plan);

(b) article 31(4), (5) or (6) (variation of an emissions monitoring plan);

(c) article 44(1) (enforcement notices);

(d) article 45(5) (determination of reportable emissions by regulator);

(e) article 47(3) or (7) (penalty notices);

(f) article 75(1) (information notices);

(g) paragraph 1(12) of Schedule 3 (application to be treated as being withdrawn);

(h) paragraph 6(4) or (5) of Schedule 6 (variation of permits);

(i) paragraph 10(2) of Schedule 6 (transfer of permits: underreporting discovered after transfer);

(j) paragraph 12(4) of Schedule 6 (revocation of permits);

(k) paragraph 23(1) or (2) of Schedule 7 (conversion notices);

(l) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status);

(m) paragraph 1(3)(b) or (4)(b) of Schedule 11 (permits under GGETSR 2012).

(3) An appeal under paragraph (1) may not be made to the extent that the decision implements—

(a) a direction given under—

(i) section 40 of the Environment Act 1995(**a**);

(ii) section 52 of CCA 2008;

(iii) article 11 of the Natural Resources Body for Wales (Establishment) Order 2012(**b**);

(iv) regulation 40 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**c**);

(b) a direction given by an appeal body under this Order.

(4) To avoid doubt, no appeal may be brought under paragraph (1)(a) in respect of a preliminary assessment under—

(a) paragraph 5(3) of Schedule 7;

(b) paragraph 3(3) of Schedule 8.

Appeal body

71.—(1) In an appeal against a decision of SEPA, the appeal body is the Scottish Land Court(**d**).

(2) In an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission(**e**).

(**a**) Section 40 was amended by S.I. 2011/1043 and 2013/755 and amended prospectively by S.I. 2019/458 with effect from IP completion day.
(**b**) S.I. 2012/1903 (W. 230).
(**c**) S.R. (NI) 2013 No. 160.
(**d**) The Scottish Land Court was established by section 3 of the Small Landholders (Scotland) Act 1911 (c. 49) and continued in being under section 1 of the Scottish Land Court Act 1993 (c. 45).
(**e**) The Planning Appeals Commission was continued by section 203(1) of the Planning Act (Northern Ireland) 2011 (c. 25).

(3) In an appeal against any other decision, the appeal body is the First-tier Tribunal(**a**).

Effect of appeals

72.—(1) Subject to paragraphs (2) to (4), the bringing of an appeal under article 70 (right of appeal) suspends the effect of the decision or notice pending the final determination or withdrawal of the appeal.

(2) The bringing of an appeal does not suspend the effect of—

(a) a decision refusing an application;

(b) a deemed refusal;

(c) a notice under—

(i) article 31(4), (5) or (6) (variation of an emissions monitoring plan);

(ii) article 44(1) (enforcement notices);

(iii) paragraph 6(4) or (5) of Schedule 6 (variation of permits);

(iv) paragraph 23(1) or (2) of Schedule 7 (end of hospital or small emitter status);

(v) paragraph 7(2) of Schedule 8 (end of ultra-small emitter status).

(3) Where a permit has been granted or varied (following an application for a permit or for the transfer of a permit), the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.

(4) Where an emissions monitoring plan has been issued following an application under article 28(1), the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.

(5) The bringing of an appeal against a determination of reportable emissions or aviation emissions under article 45(5) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with article 27 or 34 (surrender of allowances).

Determination of appeals

73.—(1) In determining an appeal under article 70, the appeal body may—

(a) affirm the decision;

(b) quash the decision or vary any of its terms;

(c) substitute a deemed refusal with a decision of the appeal body;

(d) give directions as to the exercise of the regulator's functions under this Order.

(2) The appeal body may not make a determination that would result in a decision which could not otherwise have been made under this Order.

Procedure for appeals

74.—(1) Schedule 9 (which makes provision in relation to appeals to the Scottish Land Court) has effect.

(2) Schedule 10 (which makes provision in relation to appeals to the Planning Appeals Commission) has effect.

(**a**) The First-tier Tribunal was established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

PART 9

Miscellaneous

Information notices

75.—(1) The UK ETS authority, a national authority or a regulator may, by giving a notice (an "information notice") to a person, require the person to provide information for purposes connected with the exercise of functions under—

(a) this Order;

(b) the Monitoring and Reporting Regulation 2018;

(c) the Verification Regulation 2018.

(2) The information notice must set out—

(a) the information to be provided;

(b) the form in which the information must be provided;

(c) the period within which or the time when the information must be provided;

(d) the place where the information must be provided.

(3) The information that a person may be required to provide includes information that, although it is not in the person's possession or it would not otherwise come into the person's possession, is information that it is reasonable to require the person to obtain or compile for the purpose of complying with the information notice.

Crown application

76.—(1) This Order applies to the Crown.

(2) Articles 39 and 40 and Part 2 of Schedule 3 make specific provision relevant to their application to the Crown.

Transitional provisions

77.—(1) Schedule 11 (which makes transitional provision for installations) has effect.

(2) An application for a GGETSR emissions plan under regulation 32A of GGETSR 2012 that has not been determined under GGETSR 2012 may be treated by the regulator as an application made under article 28.

(3) An application for the variation of a GGETSR emissions plan that has not been determined under GGETSR 2012 may be treated by the regulator as an application made under article 31.

Name
Clerk of the Privy Council

SCHEDULE 1

Article 4(1)

Aviation activity

Aviation activity

1.—(1) An aviation activity consists of any of the following activities other than excluded flights—

(a) a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated—

(i) in the United Kingdom;

(ii) in an EEA State;

(iii) in Gibraltar;

(iv) on an offshore structure in the UK sector of the continental shelf or an offshore structure in the continental shelf of an EEA state;

(b) a flight arriving in an aerodrome situated in the United Kingdom from an aerodrome situated in Gibraltar.

(2) In this paragraph a reference to a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated in an EEA state does not include a reference to a flight departing from an aerodrome situated in the United Kingdom and arriving in an aerodrome situated in an outermost region.

(3) In this paragraph, "continental shelf of an EEA state" means an area beyond the territorial sea of an EEA state, within which rights with respect to the seabed and subsoil and their natural resources are exercisable by that EEA state.

Excluded flights

2.—(1) For the purposes of this Order, subject to sub-paragraph (2), all of the following are excluded flights—

(a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and their immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than the United Kingdom;

(b) military flights;

(c) customs and police flights performed by both civil registered and military aircraft;

(d) search and rescue flights;

(e) firefighting flights;

(f) humanitarian flights;

(g) emergency medical service flights;

(h) flights performed exclusively under the visual flight rules set out in Annex 2 to the Chicago Convention;

(i) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;

(j) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew, provided that the flights do not serve for the transport of passengers or cargo;

(k) flights performed exclusively for the purpose of scientific research partially or totally performed in-flight;

(l) flights performed exclusively for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;

(m) flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kilograms.

(2) Excluded flights referred to in sub-paragraph (1)(a), (j), (k) and (l) do not include flights for the positioning or ferrying of the aircraft.

(3) In this paragraph—

"emergency medical service flights" means flights for the exclusive purpose of facilitating emergency medical assistance, where immediate and rapid transportation is essential, by carrying medical personnel, medical supplies, including equipment, blood, organs, drugs, or ill and injured persons and other persons directly involved;

"firefighting flights" means flights performed exclusively to combat wildfires;

"Government Ministers" are the members of the government as listed in the national official journal of the country concerned, excluding members of regional or local governments of a country;

"humanitarian flights" means flights operated exclusively for humanitarian purposes which carry relief personnel and relief supplies such as food, clothing, shelter, medical and other items during or after an emergency or disaster, or are used to evacuate persons from a place where their life or health is threatened by such emergency or disaster to a safe haven in the same State or another State willing to receive such persons;

"immediate family" comprises exclusively the spouse, any partner considered as equivalent to the spouse, the children and the parents;

"military flights" means flights directly related to the conduct of military activities and performed by military aircraft;

"official mission" means a mission in which the person concerned is acting in an official capacity;

"search and rescue flights" means flights offering search and rescue services, including the performance of distress monitoring, communication, coordination and search and rescue functions, initial medical assistance or medical evacuation, through the use of public and private resources, including cooperating aircraft, vessels and other craft and installations.

SCHEDULE 2

Article 4(1)

Meaning of installation and regulated activity

Interpretation

1.—(1) In this Schedule—

"combustion unit" means a stationary technical unit in which fuels are combusted (and includes all types of boiler, burner, turbine, heater, furnace, incinerator, calciner, kiln, oven, dryer, engine, fuel cell, chemical looping combustion unit, flare and thermal or catalytic post-combustion unit);

"hazardous waste" means—

(a) in relation to an installation in Northern Ireland or UK coastal waters adjacent to Northern Ireland, hazardous waste for the purposes of regulation 6 of the Hazardous Waste Regulations (Northern Ireland) 2005(**a**);

(b) in relation to an installation in Scotland or UK coastal waters adjacent to Scotland, special waste within the meaning of regulation 2 of the Special Waste Regulations 1996(**b**);

(c) in relation to an installation in Wales or UK coastal waters adjacent to Wales, hazardous waste for the purposes of regulation 6 of the Hazardous Waste (Wales) Regulations 2005(**c**);

(d) in any other case, hazardous waste for the purposes of regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005(**d**);

"municipal waste" has the meaning given in section 21(3) of the Waste and Emissions Trading Act 2003(**e**).

(2) For the purposes of this Schedule, a combustion unit or installation that uses only biomass as a fuel includes a combustion unit or installation that uses fossil fuels only during start-up or shut-down of operations.

Meaning of installation

2.—(1) Subject to sub-paragraph (2), in this Order, "installation" means a stationary technical unit or units where one or more regulated activities are carried out.

(2) "Installation" does not include any of the following (which are outside the scope of the UK ETS)—

(a) an installation that uses only biomass as a fuel;

(b) an installation, or part of an installation, the primary purpose of which is research and development (including the testing of new products and processes);

(c) an installation, the primary purpose of which is the incineration of hazardous or municipal waste;

(d) a relevant Northern Ireland electricity generator.

(3) In sub-paragraph (2), a reference to an installation is a reference to what would be an installation, but for that sub-paragraph.

(4) References in this Order to an installation include references to part of an installation.

(**a**) S.R. 2005/300, to which there are amendments not relevant to this Order.
(**b**) S.I. 1996/972. The definition of "special waste" was substituted by regulation 2(3) of S.S.I 2004/112 and is substituted prospectively by regulation 7(4) of S.S.I. 2019/26 with effect from IP completion day.
(**c**) S.I. 2005/1806. Regulation 6 was amended by regulation 3(5) of S.I. 2015/1417.
(**d**) S.I. 2005/894, to which there are amendments not relevant to this Order.
(**e**) 2003 c. 33. Section 21(3) was amended by regulation 6(2)(b) of S.I. 2011/2499.

Meaning of regulated activity, etc.

3.—(1) In this Order, "regulated activity" means—

(a) an activity set out in an entry in column 1 of table C that results in emissions of the gases set out in the corresponding entry in column 2; and

(b) where such an activity is carried out on a site, the combustion of fuels in any combustion unit (including a combustion unit referred to in sub-paragraph (5)(a) or (b)) operated on the site that results in emissions of such gases, except for a combustion unit to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to a combustion unit if—

(a) the primary purpose of the unit is the incineration of hazardous or municipal waste; and

(b) the unit does not exclusively serve the stationary technical unit or units where the activity referred to in sub-paragraph (1)(a) is carried out.

(3) But sub-paragraph (2) does not apply to a combustion unit that is a flare.

Table C

Column 1 *Activities*	*Column 2* *Greenhouse gases*
Combustion of fuels on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Refining of mineral oil	Carbon dioxide
Production of coke	Carbon dioxide
Metal ore (including sulphide ore) roasting or sintering, including palletisation	Carbon dioxide
Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour	Carbon dioxide
Production or processing of ferrous metals (including ferro-alloys) on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated (and "processing" includes processing in rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling)	Carbon dioxide
Production of primary aluminium	Carbon dioxide Perfluorocarbons
Production of secondary aluminium on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Production or processing of non-ferrous metals (including production of alloys, refining and foundry casting) on a site where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 megawatts are operated	Carbon dioxide
Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day	Carbon dioxide
Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Drying or calcination of gypsum or production of plaster boards and other gypsum products on a site where combustion units with a total rated	Carbon dioxide

thermal input exceeding 20 megawatts are operated	
Production of pulp from timber or other fibrous materials	Carbon dioxide
Production of paper or cardboard with a production capacity exceeding 20 tonnes per day	Carbon dioxide
Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues on a site where combustion units with a total rated thermal input exceeding 20 megawatts are operated	Carbon dioxide
Production of nitric acid	Carbon dioxide Nitrous oxide
Production of adipic acid	Carbon dioxide Nitrous oxide
Production of glyoxal and glyoxylic acid	Carbon dioxide Nitrous oxide
Production of ammonia	Carbon dioxide
Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide
Production of hydrogen (H_2) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day	Carbon dioxide
Production of soda ash (Na_2CO_3) and sodium bicarbonate ($NaHCO_3$)	Carbon dioxide
Capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site	Carbon dioxide
Transport of greenhouse gases by pipelines for geological storage in a storage site	Carbon dioxide
Geological storage of greenhouse gases in a storage site	Carbon dioxide

(4) For the purpose of calculating the production or other capacity set out in an entry in column 1 of table C, where more than one activity referred to in the entry is carried out on a site, the capacities of all such activities must be added together.

(5) For the purpose of calculating the total rated thermal input of combustion units operated on a site, the rated thermal input of all combustion units on the site must be added together, except for—

(a) combustion units with a rated thermal input below 3 megawatts;

(b) combustion units that use only biomass as a fuel.

(6) Where the carrying out of an activity referred to in paragraph (a) of sub-paragraph (1) (that is to say, an activity set out in an entry in column 1 of table C) falls within both—

(a) an entry that does not refer to a threshold expressed as total rated thermal input; and

(b) an entry that refers to such a threshold,

for the purpose of this Order, the reference to the activity in that paragraph must be treated as a reference to the activity falling within the entry referred to in paragraph (a) of this sub-paragraph.

(7) In this Order, "specified emissions" means, in relation to a regulated activity referred to in sub-paragraph (1), the emissions of the gases referred to in that sub-paragraph.

SCHEDULE 3

Article 15

Applications, notices, etc.

PART 1

Applications, notices, etc. submitted to regulators

Submission of applications, notices, etc. to regulators

1.—(1) This paragraph applies to an application, notice or report submitted to a regulator under—

(a) this Order;

(b) a permit;

(c) an emissions monitoring plan.

(2) An application, notice or report—

(a) must be in writing; and

(b) unless the regulator agrees otherwise in writing, must be made on a form provided by the regulator for that purpose.

(3) The regulator must set out in the form—

(a) the information required by the regulator to determine the application; or

(b) the matters required to be included in the notice or report.

(4) Unless the regulator agrees otherwise in writing—

(a) the form must be submitted to the regulator electronically and, if the form specifies an email address for submission, to that address;

(b) if the form is provided by the regulator for submission through a website, the form must be submitted through the website and in accordance with any instructions given for completion and submission.

(5) Unless the information has been provided in a previous application made to the regulator, an application must set out—

(a) the name, postal address (including postcode) and telephone number of the applicant;

(b) either—

(i) an email address for service; or

(ii) a postal address (including postcode) in the United Kingdom for service.

(6) In the case of an application under paragraph 7 of Schedule 6 (transfer of permits), sub-paragraph (5) applies to both the transferring operator and the new operator referred to in that paragraph.

(7) Subject to sub-paragraphs (8) and (9), an application must be accompanied by the charge for the application set out in the charging scheme published under article 36.

(8) Where an application is submitted electronically, the charge may be sent to the regulator separately from the application; and in that case, for the purposes of this Order, the application must be treated as not being received by the regulator until the charge is also received.

(9) Where an application is made to the Secretary of State (including an application submitted electronically), the charge need not be paid until the end of the period of 28 days beginning with the date on which the Secretary of State gives notice to the applicant requesting payment of the charge.

(10) An application may be withdrawn at any time before it is determined.

(11) The regulator may, by notice to a person submitting an application, require the applicant to provide such further information specified in the notice, within the period so specified, as the regulator may require to determine the application.

(12) For the purposes of this Order, the application must be treated as being withdrawn if—

(a) the applicant fails to provide that information before the end of that period (or on or before such later date as may be agreed with the regulator); and

(b) the regulator gives notice to the applicant that the application is treated as having been withdrawn.

(13) For the purposes of this paragraph, "application" includes any proposed plan required to be submitted with the application.

Determination of applications by regulators

2.—(1) Where an application under this Order is made to a regulator in accordance with the requirements of this Order, the application must be determined by the regulator within—

(a) the period of 2 months beginning with the date on which the application is received; or

(b) such longer period as may be agreed in writing with the applicant.

(2) For the purposes of sub-paragraph (1)—

(a) an application is determined when notice of the determination is given to the applicant by the regulator;

(b) in calculating the period of 2 months, no account must be taken of any period beginning with the date on which a notice under paragraph 1(11) is given to the applicant and ending with the date on which the applicant provides the information specified in the notice.

(3) Where the regulator fails to determine an application before the end of the period referred to in sub-paragraph (1)—

(a) the applicant may give to the regulator notice that the applicant treats the application as having been refused; and

(b) if such notice is given, for the purposes of this Order, the application must be treated as having been refused at the end of that period.

(4) Where the application is an application for a permit or for the transfer of a permit, any permit that is issued or transferred as a result of the application must be attached to the notice under sub-paragraph (2)(a).

(5) This paragraph does not apply to an application under—

(a) paragraph 5 of Schedule 7 (obtaining hospital or small emitter status for 2026-2030 allocation period);

(b) paragraph 3 of Schedule 8 (obtaining ultra-small emitter status for 2026-2030 allocation period).

PART 2

Notices, etc. given by regulators, national authorities or UK ETS authority

Service of notices, etc.

3.—(1) This paragraph applies to a notice or direction that must or may be given under this Order by—

(a) a regulator;

(b) a national authority;

(c) the UK ETS authority.

(2) A notice or direction must be in writing.

(3) A notice or direction may be given to a person in any of the following ways—

(a) by delivering it to the person;

(b) by sending it to a postal or email address provided by the person for the purpose of the service of notices or directions;

(c) by leaving it at the person's proper address;

(d) by sending it by post or electronic means to the person's proper address;

(e) if the person is a body corporate, by giving it to the secretary or clerk of the body in accordance with any of sub-paragraphs (a) to (d);

(f) if the person is a partnership, by giving it to a partner or a person having the control or management of the partnership business in accordance with any of sub-paragraphs (a) to (d).

(4) In this paragraph, "proper address" means—

(a) in the case of a body corporate—

(i) the registered or principal office of the body; or

(ii) the email address of the secretary or clerk of the body;

(b) in the case of a partnership—

(i) the principal office of the partnership; or

(ii) the email address of the partner or person having control or management of the partnership business;

(c) in any other case, the person's last known address (including an email address).

(5) For the purposes of sub-paragraph (4), where a body corporate registered outside the United Kingdom or a partnership established outside the United Kingdom has an office in the United Kingdom, the principal office of the body corporate or partnership is its principal office in the United Kingdom.

(6) For the purposes of sub-paragraph (4)(c), where the person is an aircraft operator, the proper address includes an address derived from information supplied by Eurocontrol.

Service on certain Crown operators

4.—(1) This paragraph applies in relation to an installation operated by a person acting on behalf of—

(a) the Royal Household;

(b) the Duchy of Lancaster; or

(c) the Duke of Cornwall or other possessor of the Duchy of Cornwall.

(2) In relation to the giving of notices or directions under this Order, the following person must be treated as the operator—

(a) in relation to sub-paragraph (1)(a), the Keeper of the Privy Purse;

(b) in relation to sub-paragraph (1)(b), the person appointed by the Chancellor of the Duchy of Lancaster for that purpose;

(c) in relation to sub-paragraph (1)(c), the person appointed by the Duke of Cornwall or other possessor of the Duchy of Cornwall for that purpose.

SCHEDULE 4

Article 24

Modifications to Commission Regulation (EU) 2018/2066

1. Commission Implementing Regulation (EU) 2018/2066 is to be read as if—

(a) for "competent authority" in each place it occurs there were substituted "regulator";

(b) Articles 10, 52, 57, 70, 74, 75, 76 and 77 were omitted; and

(c) the words "This Regulation shall be binding in its entirety and directly applicable in all Member States", immediately following Article 78, were omitted,

and subject to the following additional modifications.

2. Article 1 is to be read as if for the words from "pursuant to" to the end there were substituted "for the purposes of the 2020 Order".

3. Article 2 is to be read as if for the words from "greenhouse gas emissions" to the end of the first subparagraph there were substituted "specified emissions (as defined in the 2020 Order) from regulated activities, activity data from installations, CO_2 emissions from aviation activity and tonne-kilometre data from aviation activity".

4. Article 3 is to be read as if—

(a) in the words before point (1), for "the following definitions" there were substituted "except where the context otherwise requires, terms defined in the Greenhouse Gas Emissions Trading Scheme Order 2020 have the meanings given by that Order and the following additional definitions";

(b) before point (1), there were inserted—

"(A1) 'greenhouse gas emissions' and 'emissions' mean specified emissions (as defined in the 2020 Order) from regulated activities or CO_2 emissions from aviation activity;";

(c) for point (2), there were substituted—

"(2) 'trading period', in references to the trading period immediately preceding the first trading period of the UK ETS, means the period beginning with 1st January 2013 and ending with 31st December 2020;";

(d) after point (2), there were inserted—

"(2a) 'the 2020 Order' means the Greenhouse Gas Emissions Trading Scheme Order 2020;";

(e) after point (5), there were inserted—

"(5a) 'monitoring plan' in relation to an aircraft operator, except in Articles 11 to 13 of this Regulation, means the aircraft operator's emissions monitoring plan as defined in article 4 of the 2020 Order;";

(f) in point (12), the words from "or, for tonne-kilometre data" to the end were omitted;

(g) point (18) were omitted;

(h) in point (28), for "Annex II to Directive 2003/87/EC" substitute "column 2 of table C in Schedule 2 to the 2020 Order";

(i) in point (44) ", or equivalent applicable international rules" were omitted;

(j) in each of points (46) and (47), "listed in Annex I to Directive 2003/87/EC" were omitted;

(k) point (50) were omitted;

(l) in each of points (54) and (55), for "under Directive 2009/31/EC" there were substituted "in accordance with the CCS licensing regime";

(m) after point (55), there were inserted—

"(55a) 'the CCS licensing regime' means Chapter 3 of Part 1 of the Energy Act 2008(**a**) and other domestic legislation which immediately before IP completion day implemented Directive 2009/31/EC(**b**);".

5. Article 4 is to be read as if for "under Directive 2003/87/EC" there were substituted "for the purposes of the Greenhouse Gas Emissions Trading Scheme Order 2020".

6. Article 5 is to be read as if for the words from "activities listed" to "that Directive" there were substituted "regulated activities and aviation activity".

7. Article 9 is to be read as if for "Article 15 of Directive 2003/87/EC" there were substituted "Commission Implementing Regulation (EU) No 2018/2067".

8. Article 12 is to be read as if paragraph 3 were omitted.

9. Article 13 is to be read as if—

(a) for paragraph 1 there were substituted—

"1. Subject in each case to the approval of the regulator, operators and aircraft operators may use standardised or simplified monitoring plans that conform to templates published by the regulator.";

(b) in paragraph 2, for "Member States" there were substituted "The regulator".

10. Article 14(1) is to be read as if "in accordance with Article 7 of Directive 2003/87/EC" were omitted.

11. Article 15 is to be read as if—

(a) in paragraph 3—

(i) in point (g), for "or *de minimis*" there were substituted ", *de minimis* or marginal";

(ii) point (h) were omitted.

(b) in paragraph 4—

(i) in point (a)(ii), for "calculation methods as laid down in Annex III" there were substituted "the calculation methods referred to in Article 53(2)";

(ii) in point (a)(iv), for "Article 28a(6) of Directive 2003/87/EC" there were substituted "article 33(2) of the 2020 Order".

12. Article 16(1) is to be read as if for the words from "shall carry out" to the end there were substituted "must use, in parallel, both the modified and the original monitoring plan to carry out all monitoring and reporting, according to both plans, and must keep the results of both monitoring approaches in their records".

13. Article 18 is to be read as if—

(a) in paragraph 1, for "EUR 20" there were substituted "£20";

(b) in paragraph 3(c)—

(i) for "Member State" there were substituted "United Kingdom";

(ii) after "adopted", there were inserted "before IP completion day";

(c) in paragraph 4—

(i) for "EUR 2000" there were substituted "£2000";

(ii) for "EUR 500" there were substituted "£500".

14. Article 19(3) is to be read as if—

(a) after point (b) there were inserted—

(**a**) 2008 c. 32.
(**b**) OJ No. L 140, 5.6.2009, p. 114.

"(ba) marginal source streams, where the source streams selected by the operator jointly account for less than 10 tonnes of fossil CO_2 per year;";

(b) in the final subparagraph, for "or a *de minimis* source stream" there were substituted ", a *de minimis* source stream or a marginal source stream".

15. Article 20 is to be read as if—

(a) in paragraph 1, in the second subparagraph—

(i) after "belonging to" there were inserted "regulated";

(ii) the words from "and listed in" to the end were omitted;

(b) in paragraph 3—

(i) in the first subparagraph, for "within the meaning of Directive 2009/31/EC" there were substituted "containing a storage site permitted in accordance with the CCS licensing regime";

(ii) in the second subparagraph, for "pursuant to Article 16 of Directive 2009/31/EC have been taken", there were substituted "have been taken in accordance with the CCS licensing regime".

16. Article 26(3) is to be read as if after "source streams" there were inserted "and marginal source streams".

17. Article 31(1)(b) is to be read as if for "Member State" there were substituted "United Kingdom".

18. Article 38 is to be read as if—

(a) in paragraph 2, after "zero" there were inserted ", but the emission factor for bioliquids shall be zero only if the sustainability criteria set out in Article 17(2) to (5) of Directive 2009/28/EC have been fulfilled";

(b) in paragraph 4, after "*de minimis*" there were inserted "or marginal".

19. Article 39 is to be read as if—

(a) in paragraph 2, the third subparagraph were omitted;

(b) in paragraph 3, for "Articles 2(j) and 15 of Directive 2009/28/EC" there were substituted "the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003(**a**) or the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations (Northern Ireland) 2003(**b**)".

20. Article 42(1) is to be read as if, in the second subparagraph, ", standards published by the Commission" were omitted.

21. Article 47(1) is to be read as if for "Annex I to Directive 2003/87/EC" there were substituted "paragraph 3 of Schedule 2 to the 2020 Order".

22. Article 48(2) is to be read as if—

(a) for "activities covered by Annex I to Directive 2003/87/EC or included pursuant to Article 24 of that Directive" there were substituted "regulated activities";

(b) for "activity covered by that Directive" there were substituted "regulated activity";

(c) for "not covered by that Directive" there were substituted "not covered by the 2020 Order".

23. Article 49 is to be read as if—

(**a**) S.I. 2003/2562, amended by S.I. 2010/2715 and 2011/1043 and amended prospectively by S.I. 2018/1093 with effect from IP completion day.

(**b**) S.R. 2003 No. 470, amended by S.R. 2010 No. 374 and S.I. 2011/1043; there are other amending instruments, but none is relevant.

(a) in paragraph 1—

(i) in the words before point (a), for "activities covered by Annex I to Directive 2003/87/EC" there were substituted "regulated activities";

(ii) in point (a), for "under Directive 2009/31/EC" in each place it occurs there were substituted "in accordance with the CCS licensing regime";

(b) in paragraph 2—

(i) in the first subparagraph, the words from "the operator" in the first place it occurs to "other cases," were omitted;

(ii) for the second subparagraph there were substituted—

"In its annual emissions report, the operator of the receiving installation shall provide the name, address and contact information of a contact person for the transferring installation.".

24. Article 50 is to be read as if—

(a) in paragraph 1—

(i) in the first subparagraph, for "activities covered by Annex I to Directive 2003/87/EC for which that Annex specifies N_2O as relevant" there were substituted "regulated activities in respect of which N_2O emissions are specified emissions (as defined in the 2020 Order)";

(ii) in the third subparagraph, for "not covered by Directive 2003/87/EC" there were substituted "not covered by the 2020 Order";

(b) for paragraph 2 there were substituted—

"2. In its annual emissions report, the operator of the transferring installation shall provide the name, address and contact information of a contact person for the receiving installation.

In its annual emissions report, the operator of the receiving installation shall provide the name, address and contact information of a contact person for the transferring installation.".

25. Article 51 is to be read as if—

(a) in paragraph 1, for "activities for all flights included in Annex I to Directive 2003/87/EC that are" there were substituted "activity that is";

(b) paragraphs 2 to 4 were omitted.

26. Article 53 is to be read as if—

(a) in paragraph 2, for "section 1 of Annex III" there were substituted "Appendix 2 to Annex 16, Volume IV to the Chicago Convention"(**a**);

(b) in paragraph 3, for "section 1 of Annex III" there were substituted "Appendix 2 to Annex 16, Volume IV to the Chicago Convention".

27. Article 54 is to be read as if—

(a) the second, third and fourth subparagraphs were omitted;

(b) in the fifth subparagraph, for "Article 18 of Directive 2009/28/EC" there were substituted "Articles 12 and 13A of the Renewable Transport Fuel Obligations Order 2007(**b**)".

28. Article 55(2) is to be read as if for "Commission" there were substituted "UK ETS authority".

29. Article 58(1) is to be read as if the second subparagraph were omitted.

(**a**) 1st Edition, October 2018, available electronically at https://www.icao.int/environmental-protection/CORSIA/Pages/SARPs-Annex-16-Volume-IV.aspx or in paper form from the International Civil Aviation Organisation, 999 Robert-Bourassa Boulevard, Montreal, Quebec, Canada H3C 5H7.

(**b**) S.I. 2007/3072; relevant amending instruments are S.I. 2011/2937 and 2018/374.

30. Article 68 is to be read as if for the whole Article there were substituted—

"Article 68

Obligations for reporting

Annex X (minimum content of annual reports) has effect for the purposes of article 33 of and paragraph 4(2)(b) of Schedule 6 and paragraph 11(2)(b) of Schedule 7 to the 2020 Order.".

31. Article 71 is to be read as if—

(a) the first sentence were omitted;

(b) for "With regard to the application of the exception, as specified in Article 4(2)(d) of Directive 2003/4/EC", there were substituted "With regard to the potential application in relation to emission reports of the exemption in section 43 of the Freedom of Information Act 2000(**a**), the exception in regulation 12(5)(e) of the Environmental Information Regulations 2004(**b**) or the exception in regulation 10(5)(e) of the Environmental Information (Scotland) Regulations 2004(**c**)".

32. Article 72(3) is to be read as if "calculating the distance and payload pursuant to Article 57 and" were omitted.

33. Article 73 is to be read as if—

(a) in the words before point (a), for the words from "Each activity" to "aircraft operator" there were substituted "Each regulated activity carried out by an operator and each aviation activity carried out by an aircraft operator";

(b) points (b) and (c) were omitted;

(c) for point (d) there were substituted—

"(d) the UK Standard Industrial Classification (SIC) of Economic Activities, issued under section 9 of the Statistics and Registration Service Act 2007(**d**), and as updated from time to time.".

34. Article 78 is to be read as if the words from "However" to the end were omitted.

35. Annex 1 is to be read as if—

(a) in section 1, in point (2)(b), for "and *de minimis*" in both places it occurs there were substituted ", *de minimis* and marginal";

(b) in section 2, in point 1—

(i) in point (a), "the administering Member State," were omitted;

(ii) in point (d), for "covered by Annex I to Directive 2003/87/EC" there were substituted "an aviation activity";

(iii) in point (k), for "Article 28a(6) of Directive 2003/87/EC" there were substituted "article 33(2) of the 2020 Order";

(c) in section 2, in point 2(b)(i), the words "(Method A or Method B)" were omitted.

36. Annex 2 is to be read as if, before section 2.1, in the first subparagraph, for "all activities as listed in Annex I to Directive 2003/87/EC or included in the Union system under Article 24 of that Directive" there were substituted "all regulated activities".

37. Annex 3 is to be read as if section 1 were omitted.

38. Annex 4 is to be read as if—

(**a**) 2000 c. 36.
(**b**) S.I. 2004/3391, to which there are amendments not relevant to this Order.
(**c**) S.S.I. 2004/520, to which there are amendments not relevant to this Order.
(**d**) 2007 c. 18.

(a) in section 1, in subsection A, for "all activities as listed in Annex I to Directive 2003/87/EC or included in the Union system under Article 24 of that Directive" there were substituted "all regulated activities";

(b) in each of the headings of sections 21, 22 and 23, for "Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(c) in section 21, in subsection A, for "other activities covered by Directive 2003/87/EC" there were substituted "other regulated activities";

(d) in section 22, in subsection B, for "Directive 2003/87/EC" in both places it occurs there were substituted "the 2020 Order";

(e) in section 23—

(i) in subsection A, in the first subparagraph, for "Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(ii) in subsection A, in the second subparagraph, after "with", there were inserted "domestic legislation which immediately before IP completion day implemented";

(iii) in subsection B.3, in the definition of "T_{end}", after "with", there were inserted "domestic legislation which immediately before IP completion day implemented".

39. Section 2(7) of Annex 9 is to be read as if—

(a) in point (c)—

(i) after "storage permit", there were inserted "for the storage site";

(ii) for "Article 9 of Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(b) in each of points (d), (e) and (f), after "with", there were inserted "domestic legislation which immediately before IP completion day implemented".

40. Annex 10 is to be read as if—

(a) in the heading, for "68(3)" there were substituted "68";

(b) in section 1—

(i) in point (6), for "Information" there were substituted "Subject to the subparagraph after point (13), information";

(ii) in the subparagraph after point (13), at the end there were inserted "Emissions occurring from marginal source streams may be reported in an aggregate manner.";

(iii) in the final subparagraph, after "with", there were inserted "domestic legislation which immediately before IP completion day implemented";

(c) in section 2—

(i) in point (1), after "Directive 2003/87/EC", there were inserted "(read as if references in that Annex to "its administering Member State" and "in the administering Member State" were omitted and as if references to "aviation activities listed in Annex I" were references to "aviation activity")";

(ii) in point (6), for "aviation activities covered by Annex I to Directive 2003/87/EC" there were substituted "aviation activity";

(iii) in point (9), for "Member State" there were substituted "state";

(iv) in point (13), for "operator" in both places it occurs there were substituted "aircraft operator";

(d) in section 3—

(i) in point (1), after "Directive 2003/87/EC", there were inserted "(read as if references in that Annex to "its administering Member State" and "in the administering Member State" were omitted and as if references to "aviation activities listed in Annex I" were references to "aviation activity")";

(ii) in point (6), for “aviation activities covered by Annex I to Directive 2003/87/EC” there were substituted “aviation activity”;

(iii) in point (8), for “aviation activities listed in Annex I of Directive 2003/87/EC” there were substituted “aviation activity”.

SCHEDULE 5

Article 25

Amendments to the Verification Regulation 2018

1. The Verification Regulation 2018 is amended as follows.

2. For "competent authority" in each place it occurs substitute "regulator".

3. In Article 1, for "2012 Regulations" substitute "2020 Order".

4. In Article 2, for the words from "2019" to the end substitute "2021, reported pursuant to Implementing Regulation (EU) 2018/2066".

5. In Article 3—

(a) for the words before point (A1), substitute—

"In this Regulation, references to Implementing Regulation (EU) 2018/2066 are to that Regulation as modified by the Greenhouse Gas Emissions Trading Scheme Order 2020 and expressions used in that Regulation have the same meaning as in that Regulation; in addition:";

(b) omit point (A1);

(c) in point (2), for "a" in the first place it occurs substitute "the";

(d) in point (3), for "a national" substitute "the national";

(e) after point (3), insert—

"(3a) 'national accreditation body' means the national accreditation body of the United Kingdom appointed in accordance with Article 4(1) of Regulation (EC) 765/2008(**a**);";

(f) omit point (4a);

(g) omit point (4b);

(h) in point (7), for "regulation 35(4) and paragraph 2(1)(e)(ii) of Schedule 4 to the 2012 Regulations" substitute "a permit issued in accordance with Schedule 6 or 7 to the 2020 Order or pursuant to article 33 of the 2020 Order";

(i) omit point (7a);

(j) omit point (7b);

(k) omit point (12a);

(l) in point (13)(a), omit "greenhouse gas emissions";

(m) in points (22) and (23), for "EU" in each place it occurs substitute "UK";

(n) in point (22), for "an" in the first place it occurs substitute "a";

(o) in point (26), for "a" in the second place it occurs substitute "the".

6. Omit Article 3a.

7. In Article 5, for "bodies" substitute "body".

8. In Article 7—

(a) in paragraph 3, for "competent authorities" substitute "regulator";

(b) in paragraph 4(b), omit "greenhouse gas emissions".

9. In Article 10(1)(a), omit "greenhouse gas emissions".

(**a**) Regulation (EC) 765/2008 is amended prospectively by S.I. 2019/696 with effect from IP completion day.

10. In Article 17(4) for "and the CO_2" substitute "or transferred N_2O is not counted in accordance with Article 50 of that Regulation and the CO_2 or N_2O transferred".

11. In Article 27(3)(g), for "activity, other than aviation, listed in Annex 1 to Directive 2003/87/EC" substitute "regulated activity".

12. In Article 31—

(a) in paragraph 1, for "a" in the first place it occurs substitute "the";

(b) in paragraph 3(b), at the beginning insert "in the case of installations which are not within Article 32(5),";

(c) after paragraph 3, insert—

"3A. The verifier must carry out site visits to installations within Article 32(5) at least twice in the trading period.".

13. In Article 36—

(a) in paragraphs 2(b) and 6, for "EU" in each place it occurs substitute "UK";

(b) in paragraph 6, for "an" substitute "a".

14. In Article 37—

(a) in paragraph 2, for "an" substitute "a";

(b) in paragraphs 2 and 6, for "EU" in each place it occurs substitute "UK";

(c) in paragraph 5, in the first subparagraph, omit the second sentence.

15. In Article 38—

(a) for "EU ETS" in each place it occurs (including the heading) substitute "UK ETS";

(b) in paragraph 1, in the words before point (a), for "An" substitute "A";

(c) in paragraph 1(a)—

(i) for "Directive 2003/87/EC" substitute "the 2020 Order";

(ii) for "Secretary of State" substitute "the national authorities".

(d) in paragraph 2—

(i) for "An" substitute "A";

(ii) for "an" substitute "a".

16. In Article 39(2), for "an EU" substitute "a UK".

17. In Article 40, for "EU" in each place it occurs substitute "UK".

18. In Article 43(1), at the end insert "or under the trading scheme established by the 2020 Order".

19. In Article 45, in the words before point (a), for "each" substitute "the".

20. In Article 47(1), for "each" substitute "the".

21. In Article 59(1)(b), for "Directive 2003/87/EC" substitute "the 2020 Order".

22. In Article 60(2)(a), for "Directive 2003/87/EC" substitute "the 2020 Order".

23. In Article 69—

(a) in paragraph 1, omit "in accordance with Article 74(1) of Implementing Regulation (EU) 2018/2066";

(b) in paragraph 2, omit "in accordance with Article 74(2) of Implementing Regulation (EU) 2018/2066".

24. In Article 70—

(a) in paragraph 1—

(i) for "the Secretary of State" substitute "UK ETS authority";

(ii) for "their" substitute "the";

(b) in paragraph 2—

(i) for the words from "Where" to "competent authorities" substitute "The Environment Agency or such other regulator as may be designated by the national authorities from time to time is";

(ii) after "information" insert "for the purposes of this Chapter".

25. In Article 71—

(a) in paragraph 1, in the words before point (a), for "that" in the first place it occurs substitute "the";

(b) in paragraph 3—

(i) in the words before point (a), for "that" in the second place it occurs substitute "the";

(ii) in point (a), for "that" in the second place it occurs substitute "the".

26. In Article 76(1)—

(a) for "National accreditation bodies, or where applicable national authorities referred to in Article 55(2)," substitute "The national accreditation body";

(b) for "competent authorities" substitute "regulators".

SCHEDULE 6

Article 26(3)

Permits

PART 1

Application for greenhouse gas emissions permits

Greenhouse gas emissions permits: application

1.—(1) The operator of an installation may apply to the regulator for a greenhouse gas emissions permit for the installation(**a**).

(2) But an application may not be made if a permit for the installation is already in force.

(3) In sub-paragraph (2), "permit" includes a permit within the meaning of GGETSR 2012 to which paragraph 1 of Schedule 11 applies (permits to be converted).

Greenhouse gas emissions permits: content of application

2.—(1) An application for a greenhouse gas emissions permit must contain—

(a) an address to which correspondence relating to the application should be sent (in addition to the addresses required by paragraph 1(5) of Schedule 3);

(b) if the operator of the installation is a body corporate—

(i) its registered number and the postal address of its registered or principal office; and

(ii) where the operator is a subsidiary of a holding company, the name of the holding company (other than a holding company which is itself a subsidiary) and the postal address of the holding company's registered or principal office,

and in this paragraph "subsidiary" and "holding company" have the meanings given in section 1159 of the Companies Act 2006(**b**);

(c) in relation to the site of the installation—

(i) the postal address and national grid reference of the site (or in the case of an installation in UK coastal waters or the UK sector of the continental shelf equivalent information identifying the installation and its location);

(ii) a description of the site and the location of the installation on it; and

(iii) the name of any local authority where the site is situated;

(d) a description of the installation, the regulated activities to be carried out at the installation and the specified emissions from those activities;

(e) a description of the raw and auxiliary materials used in carrying out regulated activities at the installation, the use of which is likely to lead to specified emissions;

(f) a description of the sources of specified emissions from the regulated activities carried out at the installation;

(g) a monitoring plan in accordance with Article 12 of the Monitoring and Reporting Regulation 2018, together with—

(i) the supporting documents referred to in Article 12(1) of that Regulation;

(**a**) Paragraphs 24 and 26 of Schedule 7 and paragraph 1 of Schedule 11 provide for the conversion of permits into greenhouse gas emissions permits.

(**b**) 2006 c. 46. In section 1159 of the Companies Act 2006, "company" includes any body corporate.

(ii) except where the installation is an installation with low emissions within the meaning of Article 47(2) of that Regulation, the uncertainty assessment carried out under Article 28(1)(a) of that Regulation;

(h) a description, including the reference number, of any environmental licence issued in relation to the installation;

(i) any additional information that the operator wishes the regulator to take into account in considering the application;

(j) a non-technical summary of the information referred to in paragraphs (d) to (i); and

(k) the date on which the operator wishes the permit to come into force.

(2) In sub-paragraph (1)(h), "environmental licence" means—

(a) an authorisation under—

(i) Part 1 of the Environmental Protection Act 1990(**a**);

(ii) the Industrial Pollution Control (Northern Ireland) Order 1997(**b**);

(b) a permit under—

(i) the Pollution Prevention and Control (Scotland) Regulations 2012(**c**);

(ii) the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013(**d**);

(iii) the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**e**);

(iv) the Environmental Permitting (England and Wales) Regulations 2016(**f**);

(v) the Environmental Authorisations (Scotland) Regulations 2018(**g**).

Greenhouse gas emissions permits: issue of permit

3. A greenhouse gas emissions permit may be issued only if the regulator considers that from the date on which the permit comes into force the operator of the installation will be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of the permit.

Greenhouse gas emissions permits: content of permit

4.—(1) A greenhouse gas emissions permit must contain—

(a) the name and postal address in the United Kingdom (including postcode) of the operator and any other address for correspondence included by the operator in the application;

(b) the postal address and national grid reference of the installation (or, in the case of an installation in UK coastal waters or the UK sector of the continental shelf, equivalent information identifying the installation and its location);

(c) a description of the installation, the regulated activities to be carried out at the installation and the specified emissions from those activities;

(d) a description of the site and the location of the installation on the site;

(e) the date on which the permit comes into force;

(f) the monitoring plan—

(**a**) 1990 c. 43.
(**b**) S.I. 1997/2777 (N.I. 18).
(**c**) S.S.I. 2012/360.
(**d**) S.I. 2013/971.
(**e**) S.R. 2013/160.
(**f**) S.I. 2016/1154.
(**g**) S.S.I. 2018/219.

(i) where an application is made for the permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2018;

(ii) where an existing permit is converted into a greenhouse gas emissions permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 or Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 for the purpose of monitoring specified emissions at the installation immediately before the greenhouse gas emissions permit comes into force;

(g) the monitoring and reporting conditions (see sub-paragraph (2));

(h) the surrender condition (see sub-paragraphs (3) to (5));

(i) any conditions that the regulator considers necessary to ensure that the operator notifies the regulator of any planned or effective changes to the capacity, activity level or operation of the installation, on or before 31st December in the year in which the change is planned or occurs;

(j) any other conditions that the regulator considers appropriate to include in the permit.

(2) The monitoring and reporting conditions are—

(a) a condition requiring the operator to monitor the installation's reportable emissions in accordance with—

(i) the Monitoring and Reporting Regulation 2018; and

(ii) the monitoring plan (including the written procedures supplementing the monitoring plan);

(b) a condition requiring the operator to prepare in accordance with the Monitoring and Reporting Regulation 2018 a report of the installation's reportable emissions in each scheme year that is verified in accordance with the Verification Regulation 2018 and to submit the report to the regulator on or before 31st March in the following year;

(c) a condition requiring the operator to satisfy the regulator, if an emission factor of zero is reported in respect of the use of bioliquids, that the sustainability criteria set out in Article 17(2) to (5) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources(**a**) have been fulfilled; and

(d) any further conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.

(3) The surrender condition is a condition requiring the operator to surrender allowances equal to the installation's reportable emissions in a scheme year on or before 30th April in the following year.

(4) For the purposes of the surrender condition, where an installation's reportable emissions in a scheme year (the "non-compliance year") exceeds the allowances surrendered on or before 30th April in the following year, the installation's reportable emissions in the relevant scheme year must be treated as being increased by the difference.

(5) In sub-paragraph (4), the relevant scheme year means—

(a) the scheme year following the non-compliance year; or

(b) if the failure to comply with the surrender condition results from an error in the verified emissions report submitted by the operator, the scheme year in which the error is discovered.

Greenhouse gas emissions permits: effect of permit, etc.

5.—(1) A greenhouse gas emissions permit for an installation—

(a) comes into force on the date set out in the permit;

(**a**) O.J. No. L 140, 5.6.2009, p. 16, amended by Council Directive 2013/18/EU (O.J. No. L 158, 10.6.2013, p. 230) and Directive (EU) 2015/1513 (O.J. No. L 239, 15.9.2015, p. 1).

(b) authorises the regulated activities set out in the permit to be carried out at the installation.

(2) The operator of the installation must comply with the conditions of the permit.

PART 2

Greenhouse gas emissions permits and hospital or small emitter permits

Variation of permits

6.—(1) The operator of an installation—

(a) may apply to the regulator to vary the installation's permit;

(b) must apply to the regulator to vary the installation's permit where required by a condition of the permit.

(2) The regulator may vary an installation's permit at any time if the regulator considers that it is necessary to do so for the purposes of the UK ETS and in particular may do so in consequence of any of the following—

(a) a report of the operator referred to in Article 69 of the Monitoring and Reporting Regulation 2018;

(b) a notification under a condition included under paragraph 4(1)(i) (notification of planned changes in operation);

(c) a failure by the operator to comply with a condition of the permit to apply for a variation.

(3) The regulator may vary a permit to comply with—

(a) paragraph 9(3), (4) or (5) (transfer of permits);

(b) any of the following provisions of Schedule 7—

(i) paragraph 10 (conversion of permit to hospital or small emitter permit);

(ii) paragraph 18 (calculation of later emissions targets where initial targets based on estimates);

(iii) paragraph 20 (banking overachieved target);

(iv) paragraph 21 (emissions targets for 2026-2030 allocation period);

(v) paragraph 24 (conversion of permit on loss of hospital or small emitter status);

(vi) paragraph 26 (conversion of permit at end of 2021-2025 allocation period).

(4) The variation of an installation's permit is given effect by the regulator giving a notice to the operator of the installation setting out the variations to the permit.

(5) Where a permit is varied, the regulator may, by giving notice to the operator, replace the permit with a consolidated version that includes the variations.

Transfer of permits: application

7.—(1) Subject to sub-paragraphs (3) and (4), a permit holder (the "transferring operator") and another person (the "new operator") may jointly apply to the regulator—

(a) for the transfer of the permit to the new operator;

(b) for the partial transfer of the permit to the new operator.

(2) For the purposes of this Order, the partial transfer of a permit is the transfer in respect of part of the installation at which the permit authorises a regulated activity to be carried out.

(3) An application for the transfer or partial transfer of a permit may not be made in respect of an installation (or part of an installation) that has ceased operation.

(4) An application may not be made for the partial transfer of a hospital or small emitter permit.

(5) In this paragraph and paragraphs 8 to 10—

"existing permit" has the meaning given in paragraph 9(5);

"new operator" has the meaning given in sub-paragraph (1);

"transferred activities" has the meaning given in paragraph 8(a);

"transferred units" has the meaning given in paragraph 8(a);

"transferring operator" has the meaning given in sub-paragraph (1).

Transfer of permits: contents of application

8. An application for the transfer or partial transfer of a permit must contain—

(a) a description of the installation (or part of an installation) in respect of which the application is made (the "transferred units") and of the regulated activities authorised to be carried out there (the "transferred activities");

(b) in relation to both the transferring operator and the new operator, an address to which correspondence relating to the application should be sent (in addition to the addresses required by paragraph 1(5) of Schedule 3);

(c) if the new operator is a body corporate, the matters referred to in paragraph 2(1)(b) in relation to the new operator;

(d) either—

(i) the new operator's monitoring plan in accordance with Article 12 of the Monitoring and Reporting Regulation 2018, together with—

(aa) the supporting documents referred to in Article 12(1) of that Regulation;

(bb) except where the transferred units are an installation with low emissions within the meaning of Article 47(2) of that Regulation, the uncertainty assessment carried out under Article 28(1)(a) of that Regulation; or

(ii) the new operator's specification of the parts of the existing monitoring plan that it is proposed be varied and any necessary corresponding update of the supporting documents and any uncertainty assessment;

(e) in the case of an application for a partial transfer of a permit, the transferring operator's specification of the parts of the existing monitoring plan that it is proposed be varied and any necessary corresponding update of the supporting documents and any uncertainty assessment.

Transfer of permits: grant of application

9.—(1) An application for the transfer or partial transfer of a permit may be granted only if the regulator considers that from the transfer date, the new operator—

(a) will be the operator of the installation; and

(b) will be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of the permit (including as varied under this paragraph).

(2) Where an application for a transfer or a partial transfer is granted, the regulator must give notice of the transfer to—

(a) the transferring operator; and

(b) the new operator.

(3) Where an application for the partial transfer of a permit is granted—

(a) the regulator must issue a new greenhouse gas emissions permit (the "new permit") to the new operator that—

(i) sets out that the new permit comes into force on the transfer date;

(ii) sets out the transferred activities and the transferred units at which the transferred activities may be carried out;

(iii) includes such other provisions as the regulator considers appropriate to take account of the transfer;

(b) the regulator may make such corresponding variations under paragraph 6 to the permit (the "original permit") held by the transferring operator as the regulator considers appropriate to take account of the transfer;

(c) the new permit comes into force on the transfer date to authorise the transferred activities to be carried out at the transferred units from that date;

(d) the variations to the original permit have effect from the transfer date (which must be set out in the original permit).

(4) Where an application for the transfer of a permit (other than for a partial transfer) is granted—

(a) the regulator must vary the permit under paragraph 6 so that it includes—

(i) the name and other particulars of the new operator;

(ii) the transfer date;

(iii) such variations to the monitoring plan as the regulator considers appropriate;

(b) the new operator is the holder of the permit as varied from the transfer date.

(5) But if the new operator already holds a permit (the "existing permit") for an installation that is on the same site as the transferred units, the regulator may, instead of varying the transferring operator's permit under sub-paragraph (4)—

(a) vary the existing permit under paragraph 6 so that it includes such variations as the regulator considers necessary to take account of the transferred units and transferred activities; and the variations have effect from the transfer date, which must be set out in the existing permit; and

(b) by giving notice to the transferring operator, cancel the permit held by the transferring operator so that the permit ceases to authorise regulated activities to be carried out from the transfer date.

(6) In this paragraph, "transfer date" means the date agreed by the transferring operator, the new operator and the regulator as the date on which the transfer or partial transfer to the new operator is to take effect.

Transfer of permits: underreporting discovered after transfer

10.—(1) This paragraph applies where—

(a) after the transfer of a greenhouse gas emissions permit under paragraph 9 takes effect, the regulator becomes aware, following a determination of reportable emissions under article 45, of an error in a report submitted for a scheme year by the transferring operator under the monitoring and reporting conditions of the permit; and

(b) as a result of the error, the transferring operator failed to comply with the surrender condition of the permit in respect of the scheme year to which the error relates.

(2) The regulator must give notice to the transferring operator of the error as soon as reasonably practicable.

(3) The transferring operator must within 1 month of the notice effect a transfer to the new operator of allowances equal to the reportable emissions in respect of which, as a result of the error, the transferring operator failed to comply with the surrender condition of the permit.

(4) The new operator must surrender the allowances within 1 month after the transfer of the allowances.

(5) In sub-paragraph (1), the reference to the transfer of a greenhouse gas emissions permit under paragraph 9 includes a reference to an application for a transfer of a permit to which effect is given by a variation of the new operator's existing permit under sub-paragraph (5) of that paragraph.

Surrender of permits

11.—(1) Where a permit authorises a regulated activity to be carried out at an installation that has ceased operation, the operator must apply to the regulator to surrender the permit on or before—

(a) the last day of the period of 1 month beginning with the day on which it ceased operation; or

(b) such later date as may be agreed by the regulator.

(2) Where a permit authorises a regulated activity to be carried out at an installation where a regulated activity is no longer being carried out but it is not technically impossible to resume operation, the operator of the installation may apply to the regulator to surrender the permit.

(3) Where the regulator grants an application to surrender a permit under sub-paragraph (1) or (2), the regulator must give a notice (a "surrender notice") to the operator.

(4) The surrender notice must—

(a) set out a date (the "end date") on which the surrender of the permit takes effect;

(b) require the operator to—

(i) submit to the regulator on or before a date set out in the notice a report of the installation's reportable emissions in the period beginning on 1st January in the scheme year (the "end year") in which the end date falls and ending on the end date;

(ii) ensure that the report is prepared and verified in accordance with the monitoring and reporting conditions of the permit;

(iii) where the permit is a greenhouse gas emissions permit, on or before a date set out in the notice, surrender allowances equal to the installation's reportable emissions in the period referred to in sub-paragraph (i).

(5) The operator must comply with the requirements of the surrender notice.

(6) Where a surrender notice is given—

(a) the permit ceases to be in force on the end date (and therefore ceases to authorise a regulated activity to be carried out at the installation from that date); but

(b) the conditions of the permit continue to have effect as if the permit were in force until the regulator certifies that the conditions of the permit and the requirements of the surrender notice have been complied with.

(7) The reference in sub-paragraph (6)(b) to the conditions of the permit that continue to have effect includes a reference to conditions relating to reportable emissions before the end year that the operator is required to comply with on or before a date that may fall after the end date (for example, in the case of a greenhouse gas emissions permit, the condition referred to in paragraph 4(2)(b) and the surrender condition or, in the case of a hospital or small emitter permit, the condition referred to in paragraph 11(2)(b) of Schedule 7).

Revocation of permits

12.—(1) Where the operator of an installation fails to apply to surrender the installation's permit under paragraph 11(1) on or before the date referred to in that sub-paragraph, the regulator must revoke the permit as soon as reasonably practicable after that date.

(2) Where a permit authorises a regulated activity to be carried out at an installation that is included in the ultra-small emitter list for 2026-2030, the regulator must revoke the permit so that it ceases to be in force at the end of 31st December 2025.

(3) The regulator may revoke a permit if—

(a) the operator fails to comply with—

(i) a requirement imposed on the operator by or under—

(aa) this Order;

(bb) the Monitoring and Reporting Regulation 2018;

(cc) the Verification Regulation 2018;

(ii) a condition of the permit; or

(b) the operator of an installation fails to pay the charge for maintaining the permit in force(**a**).

(4) A permit is revoked by giving a notice (a "revocation notice") to the operator.

(5) The revocation notice must—

(a) set out a date (the "end date") on which the revocation of the permit takes effect;

(b) require the operator to—

(i) submit to the regulator on or before a date set out in the notice a report of the installation's reportable emissions in the period beginning on 1st January in the scheme year (the "end year") in which the end date falls and ending on the end date;

(ii) ensure that the report is prepared and verified in accordance with the monitoring and reporting conditions of the permit;

(iii) where the permit is a greenhouse gas emissions permit, on or before a date set out in the notice, surrender allowances equal to the installation's reportable emissions in the period referred to in sub-paragraph (i).

(6) The operator must comply with the requirements of the revocation notice.

(7) Where a revocation notice is given—

(a) the permit ceases to be in force on the end date (and therefore ceases to authorise a regulated activity to be carried out at the installation from that date); but

(b) the conditions of the permit continue to have effect as if the permit were in force until the regulator certifies that the conditions of the permit and the requirements of the revocation notice have been complied with.

(8) The reference in sub-paragraph (7)(b) to the conditions of the permit that continue to have effect includes a reference to conditions relating to reportable emissions before the end year that the operator is required to comply with on or before a date that may fall after the end date (for example, in the case of a greenhouse gas emissions permit, the condition referred to in paragraph 4(2)(b) and the surrender condition or, in the case of a hospital or small emitter permit, the condition referred to in paragraph 11(2)(b) of Schedule 7).

(9) A regulator who gives a revocation notice may, by notice to the operator, withdraw the revocation notice at any time before the end date.

(**a**) Paragraph 23(4) of Schedule 7 provides for the regulator to give a conversion notice in respect of the hospital or small emitter permit instead of revoking the permit.

SCHEDULE 7

Article 26(4)

Hospitals and small emitters

PART 1

Preliminary

Interpretation

1.—(1) In this Schedule—

"conversion notice" has the meaning given in paragraph 23;

"emissions report" has the meaning given in paragraph 11(2)(b);

"emissions target", in relation to an installation, means a target for the installation's reportable emissions (excluding emissions from biomass) set out in the installation's hospital or small emitter permit; and an emissions target for a scheme year is the emissions target for that year set out in the permit;

"hospital-qualifying installation" means—

(a) in relation to an installation included in the hospital and small emitter list for 2021-2025, an installation stated in that list to be a "hospital" by the inclusion of "Y" in the entry relating to the installation in the column headed "Hospital (YES/NO)";

(b) in relation to an installation included in the hospital and small emitter list for 2026-2030, an installation that meets condition A (whether or not the installation also meets condition B or C) (see paragraphs 5 and 6);

(c) in relation to an installation included in the ultra-small emitter list for 2021-2025 or the ultra-small emitter list for 2026-2030—

(i) in respect of which a notice under paragraph 7(2) of Schedule 8 is given; and

(ii) that is a hospital or small emitter for a scheme year by virtue of paragraph 4 of this Schedule,

an installation that primarily provided services to a hospital in the scheme year before the notice was given;

"maximum amount" means 24,999 tonnes of carbon dioxide equivalent.

(2) For the purposes of this Order, in determining whether or not an installation's reportable emissions or an estimate of reportable emissions exceed the maximum amount or an emissions target and in calculating an installation's emissions target based on reportable emissions or an estimate, emissions from biomass must be excluded.

Meaning of installation that primarily provides services to a hospital in scheme year

2.—(1) For the purposes of this Schedule, an installation is an installation that primarily provides services to a hospital in a scheme year if at least 85% of the heat produced by the installation in that year is used by or supplied to one or more hospitals.

(2) In sub-paragraph (1), "hospital" means—

(a) an institution for the reception and treatment of persons suffering from illness;

(b) a maternity home;

(c) an institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation;

(d) a clinic, dispensary or out-patient department maintained in connection with an establishment referred to in any of paragraphs (a) to (c);

(e) a research or teaching facility that is associated with an establishment referred to in any of paragraphs (a) to (c) that has as its primary purpose medical research or medical teaching;

(f) any other facility that has as its primary purpose the provision of such services as are necessary to maintain the proper functioning of an establishment referred to in any of paragraphs (a) to (d), including in particular—

(i) blood transfusion services;

(ii) catering services;

(iii) laundry services;

(iv) medical sanitisation services.

(3) In sub-paragraph (2), "illness" includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing.

PART 2

Hospital or small emitter status

Hospital or small emitter status

3.—(1) This paragraph and paragraph 4 apply to determine whether or not an installation is a hospital or small emitter for a scheme year.

(2) Subject to sub-paragraphs (3) and (4), an installation is a hospital or small emitter for the scheme years in the 2021-2025 allocation period if the installation is included in the list (the "hospital and small emitter list for 2021-2025") of installations to be excluded from the EU ETS under Article 27 of the Directive from 1st January 2021 published for the purposes of the EU ETS on the website of SEPA on 28th May 2020(**a**).

(3) Where a conversion notice is given to the operator of the installation stating that the installation is not a hospital or small emitter for a scheme year in the 2021-2025 allocation period, the installation is not a hospital or small emitter for that scheme year or subsequent scheme years in the allocation period.

(4) Where a regulated activity does not begin to be carried out before 1st November 2020 at an installation that is included in the hospital and small emitter list for 2021-2025—

(a) the installation is not a hospital or small emitter for the scheme years in the 2021-2025 allocation period; and

(b) for the purposes of this Order, the hospital and small emitter list for 2021-2025 must be treated as not including the installation.

(5) Subject to sub-paragraphs (6) and (7), an installation is a hospital or small emitter for the scheme years in the 2026-2030 allocation period if the installation is included in the hospital and small emitter list for 2026-2030.

(6) Where a conversion notice is given to the operator of the installation stating that the installation is not a hospital or small emitter for a scheme year in the 2026-2030 allocation period, the installation is not a hospital or small emitter for that scheme year or subsequent scheme years in the allocation period.

(**a**) The hospital and small emitter list for 2021-2025 can be accessed at www.sepa.org.uk/media/504726/uk-article-27-27a-installation-list.pdf. A copy of the list may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET; the Industrial Pollution and Radiochemical Inspectorate, Department for Agriculture, Environment and Rural Affairs, Klondyke Building, Cromac Avenue, Belfast BT7 2JA; the Scottish Government Directorate of Energy & Climate Change, Fourth Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU; and the offices of the Welsh Government, Cathays Park 2, Cathays Park, Cardiff CF10 2NQ.

(7) Where a regulated activity does not begin to be carried out before 1st November 2025 at an installation that is included in the hospital and small emitter list for 2026-2030—

(a) the installation is not a hospital or small emitter for the scheme years in the 2026-2030 allocation period; and

(b) for the purposes of this Order, the hospital and small emitter list for 2026-2030 must be treated as not including the installation.

Hospital or small emitter status: former ultra-small emitters

4.—(1) This paragraph applies to an installation if—

(a) the installation is included in—

(i) the ultra-small emitter list for 2021-2025; or

(ii) the ultra-small emitter list for 2026-2030;

(b) the regulator gives notice to the operator of the installation under paragraph 7(2) of Schedule 8 stating that the installation will not be an ultra-small emitter for a scheme year (the "relevant scheme year"); and

(c) the regulator gives notice to the operator under paragraph 7(5)(b) of that Schedule that the regulator considers that the installation is not an ineligible installation.

(2) Subject to paragraph 3(3), an installation to which this paragraph applies by virtue of sub-paragraph (1)(a)(i) is a hospital or small emitter for the relevant scheme year and for subsequent scheme years in the 2021-2025 allocation period.

(3) Subject to paragraph 3(6), an installation to which this paragraph applies by virtue of sub-paragraph (1)(a)(ii) is a hospital or small emitter for the relevant scheme year and for subsequent scheme years in the 2026-2030 allocation period.

(4) For the purpose of this paragraph, an installation is an ineligible installation if—

(a) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input is 35 megawatts or above—

(i) where the installation is included in the ultra-small emitter list for 2021-2025, in any of the scheme years (within the meaning of GGETSR 2012) beginning on 1st January 2016, 2017 or 2018;

(ii) where the installation is included in the ultra-small emitter list for 2026-2030, in any of the 2021, 2022 or 2023 scheme years; and

(b) the installation is not an installation that primarily provided services to a hospital in the scheme year preceding the scheme year in which the notice under paragraph 7(2) of Schedule 8 is given.

Obtaining hospital or small emitter status for 2026-2030 allocation period

5.—(1) The operator of an installation who wishes to apply for the installation to be a hospital or small emitter for the scheme years in the 2026-2030 allocation period must submit the following to the regulator—

(a) details of the installation, including details of any permit in force;

(b) evidence that the installation meets condition A, B or C (see paragraph 6);

(c) where the operator submits evidence that the installation meets condition A, the evidence and any estimate required by paragraph 6(3);

(d) where the operator submits evidence that the installation meets condition C, any estimate required by paragraph 6(6).

(2) An application—

(a) may not be made before 1st April 2024;

(b) must be made on or before 30th June 2024.

(3) After receiving an application, the regulator must on or before 30th September 2024—

(a) make a preliminary assessment of whether or not the installation meets condition A, B or C; and

(b) send the preliminary assessment and the reasons for it to the UK ETS authority.

(4) After receiving the preliminary assessment—

(a) the UK ETS authority must make a final assessment of whether or not the installation meets condition A, B or C; and

(b) if the UK ETS authority considers that the installation meets condition A, B or C, the UK ETS authority must include the installation in a list (the "hospital and small emitter list for 2026-2030").

(5) The UK ETS authority must publish the hospital and small emitter list for 2026-2030 on or before 30th April 2025.

(6) Evidence of an installation's historic reportable emissions may not be taken into account for the purposes of assessing whether or not an installation meets condition B or C unless the evidence is—

(a) verified in accordance with the Verification Regulation 2018; or

(b) where relevant, set out in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii).

(7) An application may not be made under this paragraph and paragraph 3 of Schedule 8.

Obtaining hospital or small emitter status for 2026-2030 allocation period: Conditions A, B and C

6.—(1) This paragraph applies for the purposes of paragraph 5.

Condition A

(2) Condition A is that the installation—

(a) is an installation that primarily provides services to a hospital in the 2023 scheme year; or

(b) if a regulated activity has not begun to be carried out at the installation at the date of the application—

(i) a regulated activity will begin to be carried out at the installation before 1st November 2025; and

(ii) the installation will be an installation that primarily provides services to a hospital after that date.

(3) Where the operator submits evidence that the installation meets condition A, the operator must also submit—

(a) if a regulated activity begins to be carried out at the installation on or before 1st January 2021, evidence of—

(i) the installation's reportable emissions in each of the 2021, 2022 and 2023 scheme years, verified as mentioned in paragraph 5(6);

(ii) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input in each of those years;

(b) in any other case—

(i) where a regulated activity has begun to be carried out at the installation at the date of the application, such evidence of the matters referred to in paragraph (a)(i) and (ii) as is available at the date of the application; and

(ii) where the evidence submitted under sub-paragraph (i) does not include evidence of reportable emissions for a complete scheme year, an estimate of the installation's reportable emissions in the 2026 scheme year.

Condition B

(4) Condition B is that—

(a) a regulated activity begins to be carried out at the installation on or before 1st January 2021;

(b) the installation's reportable emissions in each of the 2021, 2022 and 2023 scheme years do not exceed the maximum amount; and

(c) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input is below 35 megawatts in each of those years.

Condition C

(5) Condition C is that—

(a) if a regulated activity is carried out at the installation at the date of the application, the regulated activity began to be carried out at the installation after 1st January 2021;

(b) if a regulated activity has not begun to be carried out at the installation at the date of the application, a regulated activity will begin to be carried out at the installation before 1st November 2025;

(c) the installation's reportable emissions—

(i) are not likely to exceed the maximum amount in each of the scheme years in the 2026-2030 allocation period; and

(ii) if a regulated activity has begun to be carried out at the installation at the date of the application, do not exceed the maximum amount in each of the scheme years for which, at the date of the application, evidence of reportable emissions is available; and

(d) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input—

(i) is likely to be below 35 megawatts in each of the scheme years in the 2026-2030 allocation period; and

(ii) if a regulated activity has begun to be carried out at the installation at the date of the application, is below 35 megawatts in each of the scheme years for which, at the date of the application, evidence of rated thermal input is available.

(6) Where the evidence submitted under sub-paragraph (5) does not include evidence of reportable emissions for a complete scheme year, the operator must also submit an estimate of the installation's reportable emissions in the 2026 scheme year.

PART 3

Hospital or small emitter permits

Hospital or small emitter permits: application

7.—(1) The operator of an installation that is a hospital or small emitter for a scheme year may apply to the regulator for a hospital or small emitter permit to come into force in that year**(a)**.

(2) But an application may not be made if a permit for the installation is already in force.

(**a**) Paragraph 10 of Schedule 7 and paragraph 1 of Schedule 11 provide for the conversion of permits into hospital or small emitter permits.

(3) In sub-paragraph (2), "permit" includes a permit within the meaning of GGETSR 2012 to which paragraph 1 of Schedule 11 applies (permits to be converted).

Hospital or small emitter permits: content of application

8. An application for a hospital or small emitter permit must contain the matters set out in paragraph 2 of Schedule 6, except for the uncertainty assessment referred to in sub-paragraph (1)(g)(ii) of that paragraph.

Hospital or small emitter permits: issue of permit

9. A hospital or small emitter permit may be issued only if the regulator considers that—

(a) the application is made for a permit to come into force in a scheme year for which the installation is a hospital or small emitter; and

(b) from the date on which the permit comes into force the operator of the installation will be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of the permit.

Hospital or small emitter permits: conversion of existing greenhouse gas emissions permit for 2026-2030 allocation period

10.—(1) This paragraph applies where a greenhouse gas emissions permit is in force for an installation that is included in the hospital and small emitter list for 2026-2030.

(2) The regulator must convert the greenhouse gas emissions permit into a hospital or small emitter permit with effect from 1st January 2026 by varying it under paragraph 6 of Schedule 6, so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 11.

(3) When varying a permit under sub-paragraph (2), the regulator may make only such variations as the regulator considers necessary in consequence of the installation's inclusion in the hospital and small emitter list for 2026-2030.

(4) The conversion of the permit does not affect the obligations of the operator under the greenhouse gas emissions permit in respect of specified emissions before 1st January 2026.

Hospital or small emitter permits: content of permit

11.—(1) A hospital or small emitter permit must contain—

(a) the name and postal address in the United Kingdom (including postcode) of the operator and any other address for correspondence included by the operator in the application;

(b) the postal address and national grid reference of the installation (or, in the case of an installation in UK coastal waters or the UK sector of the continental shelf, equivalent information identifying the installation and its location);

(c) a description of the installation, the regulated activities to be carried out at the installation and the specified emissions from those activities;

(d) a description of the site and the location of the installation on the site;

(e) the date on which the permit comes into force;

(f) an emissions target for the installation, calculated by the regulator in accordance with paragraphs 15 to 17—

(i) subject to paragraph 18, where the installation is included in the hospital and small emitter list for 2021-2025, for each scheme year in the 2021-2025 allocation period;

(ii) subject to paragraph 18, where the installation is included in the hospital and small emitter list for 2026-2030, for each scheme year in the 2026-2030 allocation period;

(iii) where the installation is included in the ultra-small emitter list for 2021-2025, for each scheme year in the 2021-2025 allocation period for which the installation is a hospital or small emitter (see paragraph 4(2));

(iv) where the installation is included in the ultra-small emitter list for 2026-2030, for each scheme year in the 2026-2030 allocation period for which the installation is a hospital or small emitter (see paragraph 4(3));

(g) the monitoring plan—

(i) where an application is made for the permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2018;

(ii) where an existing permit is converted into a hospital or small emitter permit, approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 or Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 for the purpose of monitoring reportable emissions at the installation immediately before the hospital or small emitter permit comes into force;

(h) the monitoring and reporting conditions (see sub-paragraph (2));

(i) any other conditions that the regulator considers appropriate to include in the permit.

(2) The monitoring and reporting conditions are—

(a) a condition requiring the operator to monitor the installation's reportable emissions in each scheme year for which the installation is a hospital or small emitter in accordance with—

(i) the Monitoring and Reporting Regulation 2018; and

(ii) the monitoring plan (including the written procedures supplementing the monitoring plan);

(b) a condition requiring the operator to prepare in accordance with the Monitoring and Reporting Regulation 2018 a report (the "emissions report") of the installation's reportable emissions in each scheme year for which the installation is a hospital or small emitter that is—

(i) verified in accordance with the Verification Regulation 2018; or

(ii) accompanied by a declaration stating that—

(aa) in preparing the emissions report the operator has complied with the Monitoring and Reporting Regulation 2018;

(bb) the operator has complied with the monitoring plan; and

(cc) the emissions report is free from material misstatements,

and to submit the emissions report (and any declaration) to the regulator on or before 31st March in the following year; and

(c) any further conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation 2018 or the Verification Regulation 2018.

(3) A hospital or small emitter permit for a hospital-qualifying installation must contain conditions requiring the operator—

(a) if the installation ceases to be an installation that primarily provides services to a hospital in a scheme year for which the installation is a hospital or small emitter, to give notice to the regulator on or before 31st March in the following year;

(b) except where the operator gives notice under paragraph (a)—

(i) to maintain records demonstrating that the installation continues to be an installation that primarily provides services to a hospital; and

(ii) to comply with requests from the regulator to inspect the records for the purpose of verifying the accuracy of the records and of the emissions report.

(4) A hospital or small emitter permit for an installation that is not a hospital-qualifying installation must contain a condition requiring the operator, if the installation's reportable

emissions in a scheme year for which the installation is a hospital or small emitter exceed the maximum amount, to give notice to the regulator on or before 31st March in the following year.

(5) This paragraph is subject to paragraph 14.

Hospital or small emitter permits: effect of permit, etc.

12.—(1) A hospital or small emitter permit for an installation—

(a) comes into force on the date set out in the permit;

(b) authorises the regulated activities set out in the permit to be carried out at the installation.

(2) The operator of the installation must comply with the conditions of the permit.

Hospitals and small emitters: modifications to Monitoring and Reporting Regulation 2018

13.—(1) Where an installation is a hospital or small emitter for a scheme year, the Monitoring and Reporting Regulation 2018 has effect with the following modifications (in addition to the modifications in Schedule 4).

(2) References in the Monitoring and Reporting Regulation 2018 to a greenhouse gas emissions permit are to be read as references to a hospital or small emitter permit.

(3) Article 19 is to be read as if—

(a) in paragraph 2 for the words from "in one of the following categories" to the end there were substituted "as a category A installation";

(b) paragraph 5 were omitted.

(4) Article 38(2) is to be read as if—

(a) in the first subparagraph ", but the emission factor for bioliquids shall be zero only if the sustainability criteria set out in Article 17(2) to (5) of Directive 2009/28/EC have been fulfilled" were omitted;

(b) in the second subparagraph for "each fuel" there were substituted "a mixed fuel".

(5) Article 47 is to be read as if—

(a) every installation that is a hospital or small emitter for a scheme year were an installation to which Article 47 applies (that is to say, an installation that operates with low emissions, disregarding the second subparagraph of paragraph 1 of that Article);

(b) paragraph 8 were omitted.

(6) Where an emissions report submitted to the regulator under paragraph 11(2)(b) is accompanied by a declaration referred to in paragraph 11(2)(b)(ii) (and is not verified in accordance with the Verification Regulation 2018), in the Monitoring and Reporting Regulation 2018—

(a) Annex 10 must be read as if section 1(2) were omitted;

(b) a reference to a verified annual emission report is to be read as a reference to the emissions report;

(c) a reference to verified annual emissions or verified emissions is to be read as a reference to the reportable emissions reported in the emissions report;

(d) a reference to a verifier is to be read as a reference to the regulator;

(e) a reference to verifying or verification is to be read as a reference to auditing the reportable emissions reported in the emissions report by the regulator in accordance with the regulator's procedures for auditing reportable emissions of installations, the operators of which submit emissions reports under paragraph 11(2)(b)(ii);

(f) a reference to a verification report is to be read as a reference to the record of such an audit given to the operator by the regulator.

Former ultra-small emitters: hospital or small emitter permits coming into force after beginning of scheme year

14.—(1) This paragraph applies where a hospital or small emitter permit for an installation referred to in paragraph 4(2) or (3) comes into force on a day after 1st January in the relevant scheme year.

(2) References in paragraph 11(2) to a scheme year for which the installation is a hospital or small emitter must be treated as not including a reference to the part of the relevant scheme year before the date on which the permit comes into force.

(3) The installation's emissions target for the relevant scheme year is the emissions target calculated under paragraph 16 or, as the case may be, 17 multiplied by the factor set out in sub-paragraph (4).

(4) The factor is (Y – D)/Y, where—

Y is the number of days in the relevant scheme year;

D is the number of days in the relevant scheme year before the date on which the permit comes into force.

(5) Paragraph 19 has effect as if the reference to the installation's reportable emissions in the relevant scheme year were a reference to the installation's reportable emissions in the relevant scheme year on and after the date on which the permit comes into force.

(6) In this paragraph, "relevant scheme year" has the meaning given in paragraph 4(1)(b).

PART 4

Emissions targets

Emissions targets other than for hospital-qualifying installations may not exceed maximum amount

15.—(1) Except in the case of a hospital-qualifying installation, an emissions target for a scheme year may not exceed the maximum amount.

(2) This paragraph overrides paragraphs 16 and 17.

Emissions targets for 2021-2025 allocation period

16.—(1) This paragraph applies for the purpose of calculating an installation's emissions targets for the scheme years in the 2021-2025 allocation period under paragraph 11(1)(f)(i) and (iii).

(2) Where a regulated activity began to be carried out at the installation before 2019, the installation's emissions target for a scheme year is the installation's relevant emissions multiplied by the reduction factor for the scheme year.

(3) For the purpose of sub-paragraph (2), the relevant emissions of an installation are—

(a) where a regulated activity began to be carried out at the installation before 2016, the sum of the installation's reportable emissions in 2016, 2017 and 2018 divided by 3;

(b) where a regulated activity began to be carried out at the installation in 2016, the sum of the installation's reportable emissions in 2017 and 2018 divided by 2;

(c) where a regulated activity began to be carried out at the installation in 2017, the installation's reportable emissions in 2018;

(d) where a regulated activity began to be carried out at the installation in 2018, the installation's reportable emissions in 2019.

(4) Where a regulated activity began to be carried out at the installation in 2019, the installation's emissions target—

(a) for the 2021 scheme year is the 2021 estimate multiplied by the reduction factor for the 2021 scheme year;

(b) for every other scheme year (the "relevant scheme year") in the 2021-2025 allocation period is the installation's reportable emissions in 2020 multiplied by the reduction factor for the relevant scheme year.

(5) Where a regulated activity began to be carried out at the installation in the period beginning on 1st January 2020 and ending on 31st October 2020, the installation's emissions target—

(a) for the 2021 scheme year is the 2021 estimate multiplied by the reduction factor for the 2021 scheme year;

(b) for the 2022 scheme year is the 2021 estimate multiplied by the reduction factor for the 2022 scheme year;

(c) for every other scheme year (the "relevant scheme year") in the 2021-2025 allocation period is the installation's reportable emissions in the 2021 scheme year multiplied by the reduction factor for the relevant scheme year.

(6) In sub-paragraphs (4) and (5), "2021 estimate" means the conservative estimate of annual average emissions referred to in Article 19(4) of the Monitoring and Reporting Regulation 2012 used for the purposes of a monitoring plan submitted under that Regulation and contained in the application for a permit under GGETSR 2012 (see paragraph 1(1)(f) of Schedule 4 to GGETSR 2012).

(7) For the purpose of this paragraph, the reduction factor for a scheme year set out in column 1 of table D is the value set out in the corresponding entry in column 2.

Table D

Column 1 *Scheme year*	*Column 2* *Reduction factor*
2021	0.8697
2022	0.8461
2023	0.8224
2024	0.7988
2025	0.7751

(8) In this paragraph, a reference to reportable emissions is a reference to reportable emissions (within the meaning of GGETSR 2012 or this Order)—

(a) verified in accordance with the Verification Regulation 2012 or the Verification Regulation 2018;

(b) where relevant, set out in an emissions report accompanied by the notice or declaration referred to in paragraph 3(8)(b)(ii) of Schedule 5 to GGETSR 2012 or paragraph 11(2)(b)(ii) of this Schedule.

(9) This paragraph is subject to paragraph 14.

Emissions targets for 2026-2030 allocation period

17.—(1) This paragraph applies for the purpose of calculating an installation's emissions targets for the scheme years in the 2026-2030 allocation period under—

(a) paragraph 11(1)(f)(ii) and (iv);

(b) paragraph 21.

(2) Where a regulated activity begins to be carried out at the installation before 2024, the installation's emissions target for a scheme year is the installation's relevant emissions multiplied by the reduction factor for the scheme year.

(3) For the purpose of sub-paragraph (2), the relevant emissions of an installation are—

(a) where a regulated activity begins to be carried out at the installation before 2021, the sum of the installation's reportable emissions in 2021, 2022 and 2023 divided by 3;

(b) where a regulated activity begins to be carried out at the installation in 2021, the sum of the installation's reportable emissions in 2022 and 2023 divided by 2;

(c) where a regulated activity begins to be carried out at the installation in 2022, the installation's reportable emissions in 2023;

(d) where a regulated activity begins to be carried out at the installation in 2023, the installation's reportable emissions in 2024.

(4) Where a regulated activity begins to be carried out at the installation in 2024, the installation's emissions target—

(a) for the 2026 scheme year is the 2026 estimate multiplied by the reduction factor for the 2026 scheme year;

(b) for every other scheme year (the "relevant scheme year") in the 2026-2030 allocation period is the installation's reportable emissions in the 2025 scheme year multiplied by the reduction factor for the relevant scheme year.

(5) Where a regulated activity begins to be carried out at the installation in the period beginning on 1st January 2025 and ending on 31st October 2025, the installation's emissions target—

(a) for the 2026 scheme year is the 2026 estimate multiplied by the reduction factor for the 2026 scheme year;

(b) for the 2027 scheme year is the 2026 estimate multiplied by the reduction factor for the 2027 scheme year;

(c) for every other scheme year (the "relevant scheme year") in the 2026-2030 allocation period is the installation's reportable emissions in the 2026 scheme year multiplied by the reduction factor for the relevant scheme year.

(6) In sub-paragraphs (4) and (5), "2026 estimate" means the estimate of the installation's reportable emissions in the 2026 scheme year provided under—

(a) in the case of a hospital-qualifying installation, paragraph 6(3)(b);

(b) in any other case, paragraph 6(6).

(7) For the purpose of this paragraph, the reduction factor for a scheme year set out in column 1 of table E is the value set out in the corresponding entry in column 2.

Table E

Column 1 *Scheme year*	*Column 2* *Reduction factor*
2026	0.8882
2027	0.8602
2028	0.8322
2029	0.8043
2030	0.7763

(8) In this paragraph, a reference to reportable emissions is a reference to reportable emissions—

(a) verified in accordance with the Verification Regulation 2018; or

(b) where relevant, set out in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii).

(9) This paragraph is subject to paragraph 14.

Emissions targets: calculation of later targets where initial targets based on estimates

18.—(1) This paragraph applies where an installation's emission targets for the scheme years in an allocation period are required to be calculated under—

(a) paragraph 16(4) or (5);

(b) paragraph 17(4) or (5).

(2) Paragraph 11(1)(f)(i) and (ii) do not require the installation's hospital or small emitter permit to contain emissions targets for scheme years (the "relevant scheme years") for which, at the date of issue of the permit, the information required to calculate the emission targets is not available.

(3) As soon as reasonably practicable after the information to calculate the installation's emissions targets for the relevant scheme years becomes available, the regulator must vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 by adding the emissions targets.

(4) But sub-paragraph (3) does not apply if the regulator has given a conversion notice to the operator of the installation, the effect of which is that the installation will not be a hospital or small emitter for the relevant scheme years.

Emissions targets: hospital or small emitters must not exceed targets

19.—(1) The operator of an installation must ensure that the installation's reportable emissions in a scheme year for which the installation is a hospital or small emitter do not exceed the emissions target for that year.

(2) This paragraph is subject to paragraph 14.

Emissions targets: banking overachieved target

20.—(1) In this paragraph, an installation's "bankable amount", in relation to a scheme year, means ET – RE, where—

ET is the installation's emissions target for that year;

RE is the reportable emissions stated in the installation's emissions report for that year.

(2) But if the installation's emissions target for a scheme year is calculated in accordance with any of the following provisions (emissions targets based on estimates), for the purposes of this paragraph the installation's bankable amount for that scheme year must be treated as zero—

(a) paragraph 16(4)(a);

(b) paragraph 16(5)(a) or (b);

(c) paragraph 17(4)(a);

(d) paragraph 17(5)(a) or (b).

(3) Subject to sub-paragraphs (5) and (6), where an installation's bankable amount for a scheme year (the "scheme year in question") is greater than zero—

(a) the regulator may increase the installation's emissions target for the following scheme year (the "next scheme year") by the bankable amount; and

(b) if the regulator does so, the regulator must vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 by substituting the increased emissions target for the existing target.

(4) Subject to sub-paragraph (6), where the amount of reportable emissions stated in the installation's emissions report for the scheme year in question is amended following a determination of emissions under article 45, the regulator must—

(a) calculate the bankable amount for the scheme year in question as if RE in sub-paragraph (1) were the amount of reportable emissions for that year as amended following the determination; and

(b) where an increased emissions target for the next scheme year has been substituted under sub-paragraph (3)(b), further vary the permit under paragraph 6 of Schedule 6 by substituting a revised emissions target for that year, based on the revised calculation of the bankable amount under paragraph (a).

(5) Sub-paragraph (3) does not apply if the scheme year in question is—

(a) the 2025 scheme year;

(b) the 2030 scheme year.

(6) Except where the installation is a hospital-qualifying installation, if increasing the emissions target for the next scheme year would result in an emissions target that exceeds the maximum amount, the emissions target must be increased by such amount as results in an emissions target of the maximum amount.

Emissions targets: targets for 2026-2030 allocation period for hospital or small emitters in 2021-2025 allocation period

21.—(1) This paragraph applies where—

(a) a hospital or small emitter permit is in force for an installation that contains emissions targets for a scheme year in the 2021-2025 allocation period; and

(b) the installation is included in the hospital and small emitter list for 2026-2030.

(2) The regulator must, on or before 31st December 2025—

(a) calculate an emissions target for the installation for each scheme year in the 2026-2030 allocation period; and

(b) vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 to include those emissions targets.

(3) But sub-paragraph (2) does not apply if the regulator has given a conversion notice to the operator of the installation (the effect of which is that the installation will not be a hospital or small emitter for the scheme years in the 2026-2030 allocation period).

Emissions targets: errors

22.—(1) This paragraph applies where the amount of an installation's reportable emissions used to calculate the installation's emission targets (including revised emissions targets under paragraph 20) for scheme years in an allocation period is amended following a determination of emissions under article 45.

(2) The regulator may calculate revised emissions targets for the current and future scheme years in the allocation period and, if the regulator does so, the regulator must vary the installation's hospital or small emitter permit under paragraph 6 of Schedule 6 to include those emissions targets.

(3) In calculating revised emissions targets under sub-paragraph (2), the regulator may take account of what revised emissions targets for past scheme years in the allocation period calculated under this paragraph might have been if the determination had been made earlier (but may not calculate revised emissions targets for past years).

(4) In this paragraph—

(a) a reference to reportable emissions used to calculate emissions targets for the 2021-2025 allocation period includes a reference to reportable emissions within the meaning of GGETSR 2012; and

(b) a reference to a determination of emissions under article 45 includes, in the case of reportable emissions referred to in paragraph (a), a reference to a determination of emissions under regulation 44(3) of GGETSR 2012 or Article 70(1) of the Monitoring and Reporting Regulation 2012.

PART 5

End of hospital or small emitter status

End of hospital or small emitter status: ceasing to meet criteria

23.—(1) Where—

(a) an installation (other than a hospital-qualifying installation) is a hospital or small emitter for any of the 2021, 2022, 2023, 2026, 2027 and 2028 scheme years; and

(b) the regulator considers that the installation's reportable emissions in any of those years exceed the maximum amount,

the regulator must, as soon as reasonably practicable, give a notice (a "conversion notice") to the operator of the installation.

(2) Where the regulator considers that a hospital-qualifying installation ceases to be an installation that primarily provides services to a hospital in a scheme year (the "relevant scheme year") for which the installation is a hospital or small emitter, the regulator must, as soon as reasonably practicable, give a notice (a "conversion notice") to the operator of the installation.

(3) But sub-paragraph (2) does not apply—

(a) where the relevant scheme year is in the 2021-2025 allocation period and the installation was in operation in any of the 2016, 2017 and 2018 scheme years (within the meaning of GGETSR 2012), if—

(i) the installation's reportable emissions in each of those years did not exceed the maximum amount; and

(ii) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) was carried out at the installation, the installation's rated thermal input was below 35 megawatts in each of those years.

(b) where the relevant scheme year is in the 2026-2030 allocation period and the installation was in operation in any of the 2021, 2022 and 2023 scheme years, if—

(i) the installation's reportable emissions in each of those years do not exceed the maximum amount; and

(ii) where the activity referred to in column 1 of the first entry in table C in Schedule 2 (combustion of fuels) is carried out at the installation, the installation's rated thermal input is below 35 megawatts in each of those years.

(4) Where a hospital or small emitter permit may be revoked under paragraph 12 of Schedule 6, the regulator may instead of revoking the permit give a notice (a "conversion notice") to the operator of the installation.

Conversion notices

24.—(1) A conversion notice must—

(a) set out the grounds for the notice;

(b) state that the installation is not a hospital or small emitter for the scheme year following the year in which the notice is given;

(c) state that the operator must comply with the conditions of a greenhouse gas emissions permit from 1st January (the "date of conversion") in the scheme year following the year in which the notice is given;

(d) state that the operator must apply to vary the monitoring plan to comply with the requirements of a greenhouse gas emissions permit.

(2) Where a conversion notice is given, the regulator must convert, with effect from the date of conversion, the installation's hospital or small emitter permit (if any) into a greenhouse gas emissions permit by varying it under paragraph 6 of Schedule 6 so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 4 of Schedule 6.

(3) But if the regulator considers that the operator will not be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of a greenhouse gas emissions permit, the regulator must revoke the permit under paragraph 12 of Schedule 6 instead of converting it.

(4) When varying a permit, the regulator may make only such variations as the regulator considers necessary in consequence of the installation ceasing to be a hospital or small emitter.

(5) The conversion of the permit does not affect the obligations of the operator under the permit in respect of specified emissions before the date of conversion.

End of hospital or small emitter status: ceasing to meet criteria: publication

25.—(1) The regulator must, as soon as reasonably practicable, inform the UK ETS authority about each installation in respect of which a conversion notice is given.

(2) The UK ETS authority must, from time to time, publish the information referred to in sub-paragraph (1).

End of hospital or small emitter status: end of allocation period

26.—(1) The regulator must, on or before 31st May 2025 give notice to the operator of an installation to which sub-paragraph (2) applies—

(a) stating that the operator must comply with the conditions of a greenhouse gas emissions permit from 1st January 2026; and

(b) requesting the operator to submit any proposed changes to the monitoring plan approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 or Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 to the regulator on or before 30th September 2025.

(2) This sub-paragraph applies to an installation that is a hospital or small emitter for the 2025 scheme year other than an installation that is included in—

(a) the hospital and small emitter list for 2026-2030; or

(b) the ultra-small emitter list for 2026-2030.

(3) Where a notice under sub-paragraph (1) is given, the regulator must convert, with effect from 1st January 2026, the installation's hospital or small emitter permit (if any) into a greenhouse gas emissions permit by varying it under paragraph 6 of Schedule 6 so that the provisions of the permit are replaced by provisions that satisfy the requirements of paragraph 4 of Schedule 6.

(4) But if, after the date referred to in paragraph (1)(b), the regulator considers that the operator will not be capable of monitoring and reporting the installation's reportable emissions in accordance with the monitoring and reporting conditions of a greenhouse gas emissions permit, the regulator must revoke the permit under paragraph 12 of Schedule 6 instead of converting it.

(5) When varying a permit, the regulator may make only such variations as the regulator considers necessary in consequence of the installation ceasing to be a hospital or small emitter.

(6) The conversion of the permit does not affect the obligations of the operator under the permit in respect of specified emissions before 1st January 2026.

SCHEDULE 8

Article 26(5)

Ultra-small emitters

Interpretation

1.—(1) In this Schedule, "maximum amount" means 2,499 tonnes of carbon dioxide equivalent.

(2) For the purposes of this Order, in determining whether or not an installation's reportable emissions exceed the maximum amount, emissions from biomass must be excluded.

Ultra-small emitter status

2.—(1) This paragraph applies to determine whether or not an installation is an ultra-small emitter for a scheme year.

(2) An installation is an ultra-small emitter for the scheme years in the 2021-2025 allocation period if the installation is included in the list (the "ultra-small emitter list for 2021-2025") of installations to be excluded from the EU ETS under Article 27a of the Directive from 1st January 2021 published for the purposes of the EU ETS on the website of SEPA on 28th May 2020(**a**).

(3) But if a notice under paragraph 7(2) is given to the operator of the installation stating that the installation is not an ultra-small emitter for a scheme year in the 2021-2025 allocation period, the installation is not an ultra-small emitter for that scheme year or subsequent scheme years in the allocation period.

(4) An installation is an ultra-small emitter for the scheme years in the 2026-2030 allocation period if the installation is included in the ultra-small emitter list for 2026-2030.

(5) But if a notice under paragraph 7(2) is given to the operator of the installation stating that the installation is not an ultra-small emitter for a scheme year in the 2026-2030 allocation period, the installation is not an ultra-small emitter for that scheme year or subsequent scheme years in the allocation period.

Obtaining ultra-small emitter status for 2026-2030 allocation period

3.—(1) The operator of an installation who wishes to apply for the installation to be an ultra-small emitter for the scheme years in the 2026-2030 allocation period must submit the following to the regulator—

(a) details of the installation, including details of any permit in force;

(b) evidence that the installation meets the relevant condition.

(2) An application—

(a) may not be made before 1st April 2024;

(b) must be made on or before 30th June 2024.

(3) After receiving an application, the regulator must on or before 30th September 2024—

(a) make a preliminary assessment of whether or not the installation meets the relevant condition; and

(b) send the preliminary assessment and the reasons for it to the UK ETS authority.

(4) The relevant condition is that—

(**a**) The ultra-small emitter list for 2021-2025 can be accessed at www.sepa.org.uk/media/504726/uk-article-27-27a-installation-list.pdf. A copy of the list may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET; the Industrial Pollution and Radiochemical Inspectorate, Department for Agriculture, Environment and Rural Affairs, Klondyke Building, Cromac Avenue, Belfast BT7 2JA; the Scottish Government Directorate of Energy & Climate Change, Fourth Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU; and the offices of the Welsh Government, Cathays Park 2, Cathays Park, Cardiff CF10 2NQ.

(a) a regulated activity begins to be carried out at the installation on or before 1st January 2021; and

(b) the installation's reportable emissions in each of the 2021, 2022 and 2023 scheme years do not exceed the maximum amount.

(5) After receiving the preliminary assessment—

(a) the UK ETS authority must make a final assessment of whether or not the installation meets the relevant condition; and

(b) if the UK ETS authority considers that the installation meets the relevant condition, the UK ETS authority must include the installation in a list (the "ultra-small emitter list for 2026-2030").

(6) The UK ETS authority must publish the ultra-small emitter list for 2026-2030 on or before 30th April 2025.

(7) Evidence of an installation's reportable emissions may not be taken into account for the purposes of assessing whether or not an installation meets the relevant condition unless the evidence is—

(a) verified in accordance with the Verification Regulation 2018; or

(b) where relevant, in an emissions report accompanied by the declaration referred to in paragraph 11(2)(b)(ii) of Schedule 7.

(8) An application may not be made under this paragraph and paragraph 5 of Schedule 7.

Obtaining ultra-small emitter status for 2026-2030 allocation period: modifications to Verification Regulation 2018 for ultra-small emitters in 2021-2025 allocation period

4.—(1) For the purposes of paragraph 3(7)(a), where an installation is included in the ultra-small emitter list for the 2021-2025 allocation period, the Verification Regulation 2018 has effect with the following modifications.

(2) References in the Verification Regulation 2018—

(a) to the operator's report or emission report are to be read as references to the evidence of the installation's reportable emissions provided to the verifier by the operator for verification and intended to be submitted under paragraph 3(1)(b);

(b) to the monitoring plan or the monitoring plan approved by the regulator are to be read as references to the appropriate monitoring plan referred to in paragraph 5, including any modifications to the plan made under Article 14 of the Monitoring and Reporting Regulation 2018, as applied by paragraph 5(4) of this Schedule (even though such modifications do not require the approval of the regulator: see paragraph 5(5)).

(3) Article 2 is to be read as if "reported pursuant to Implementing Regulation (EU) 2018/2066" were omitted.

(4) Article 3(13)(a) is to be read as if "the permit and" were omitted.

(5) Article 7 is to be read as if—

(a) in paragraph 4—

(i) in point (a) "and meets the requirements laid down in Annex X to Implementing Regulation (EU) 2018/2066" were omitted;

(ii) in point (b) "the permit and" were omitted;

(b) in paragraph 5 the reference to non-compliance with the Monitoring and Reporting Regulation 2018 were a reference to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;

(c) paragraph 6 were omitted.

(6) Article 10(1) is to be read as if—

(a) point (a) were omitted;

(b) in point (b) "as well as any other relevant versions of the monitoring plan approved by the regulator, including evidence of the approval" were omitted;

(c) points (l) to (n) were omitted.

(7) Article 11 is to be read as if paragraph 4(c) were omitted.

(8) Article 17 is to be read as if paragraph 4 were omitted.

(9) Article 18(1) is to be read as if—

(a) the second subparagraph were omitted;

(b) in the third subparagraph for "is not able to obtain such approval in time" there were substituted "uses methods other than those referred to in the first subparagraph".

(10) Article 19(1) is to be read as if for "Implementing Regulation (EU) 2018/2066" there were substituted "the monitoring plan".

(11) Article 21(1) is to be read as if after "verification process" there were inserted "but at least once during the 2021-2025 allocation period (as defined in the Greenhouse Gas Emissions Trading Scheme Order 2020)".

(12) Article 22 is to be read as if—

(a) references to non-compliance with the Monitoring and Reporting Regulation 2018 were references to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;

(b) in paragraph 1 in the third subparagraph "notify the regulator and" were omitted.

(13) Article 27 is to be read as if—

(a) references to non-compliance with the Monitoring and Reporting Regulation 2018 were references to non-compliance with the provisions of that Regulation referred to in paragraph 5(4) to (6) of this Schedule;

(b) in paragraph 3—

(i) point (n) were omitted;

(ii) for point (p) there were substituted—

"(p) a confirmation whether the method used to complete the data gap pursuant to the last subparagraph of Article 18(1) is conservative and whether it does or does not lead to material misstatements;".

(14) Article 29(1) is to be read as if—

(a) the reference to the verification report related to the previous monitoring period were a reference to—

(i) the verification report under the Verification Regulation 2018 in respect of the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020; or

(ii) where the operator has previously provided evidence of the installation's reportable emissions in the 2021-2026 allocation period to the verifier for verification for the purposes of submission under paragraph 3(1)(b) of this Schedule, the verifier's last report under the Verification Regulation 2018 (as modified by this paragraph) on that evidence;

(b) "according to the requirements on the operator referred to in Article 69(4) of Implementing Regulation (EU) 2018/2066, where relevant" were omitted;

(c) "pursuant to Article 69(4) of Implementing Regulation (EU) 2018/2066" were omitted.

(15) The Verification Regulation 2018 is to be read as if Articles 30 to 32 were omitted.

Duty to monitor reportable emissions, etc.

5.—(1) Where an installation is an ultra-small emitter for a scheme year, the operator of the installation must monitor the installation's reportable emissions in the scheme year in accordance with the appropriate monitoring plan.

(2) The appropriate monitoring plan is—

(a) the monitoring plan approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2018 for the 2025 scheme year, including—

(i) any modifications approved by the regulator in that scheme year; and

(ii) any modifications that are not significant (within the meaning of Article 15(3) of that Regulation) notified to the regulator on or before 31st December 2025; or

(b) if there is no such monitoring plan, the monitoring plan approved in relation to the installation under Articles 11 to 13 of the Monitoring and Reporting Regulation 2012 for the purposes of the EU ETS for the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020, including—

(i) any modifications approved by the regulator in that scheme year; and

(ii) any modifications that are not significant (within the meaning of Article 15(3) of that Regulation) notified to the regulator on or before 31st December 2020.

(3) Subject to sub-paragraphs (4) to (6), where an installation is an ultra-small emitter for a scheme year, the Monitoring and Reporting Regulation 2018 does not apply to the monitoring or reporting of emissions of greenhouse gases from the installation in the scheme year.

(4) Article 14 of the Monitoring and Reporting Regulation 2018 applies to the operator of an installation that is an ultra-small emitter for a scheme year, but is to be read as if—

(a) references to the monitoring plan were references to the appropriate monitoring plan;

(b) in paragraph 1 ", and whether the monitoring methodology can be improved" were omitted;

(c) in paragraph 2—

(i) after "the following situations" there were inserted "and those referred to in Article 15(3)(c), (f) and (i)";

(ii) points (b) and (d) to (f) were omitted.

(5) Any modifications to the appropriate monitoring plan under Article 14 of the Monitoring and Reporting Regulation 2018 must be made in accordance with the provisions of that Regulation; but this sub-paragraph does not require—

(a) the operator to give notice of the modifications to the regulator;

(b) the regulator to approve the modifications;

(c) the regulator to assess whether a monitoring methodology is technically feasible or would incur unreasonable costs.

(6) Where the appropriate monitoring plan is modified under Article 14 of the Monitoring and Reporting Regulation 2018, Article 16 of that Regulation applies in relation to the modifications, but is to be read as if—

(a) paragraphs 1 and 2 were omitted;

(b) in paragraph 3—

(i) references to the monitoring plan were references to the appropriate monitoring plan;

(ii) points (c) and (d) were omitted;

(iii) in point (e) "in accordance with paragraph 2 of this Article" were omitted.

(7) Where the appropriate monitoring plan is modified under Article 14 of the Monitoring and Reporting Regulation 2018, sub-paragraph (1) of this paragraph has effect as if the reference to the appropriate monitoring plan included a reference to the plan as modified.

Reportable emissions must not exceed maximum amount

6. If an installation's reportable emissions in a scheme year for which the installation is an ultra-small emitter exceed the maximum amount, the operator of the installation must give notice to the regulator on or before 31st March in the following year.

End of ultra-small emitter status: ceasing to meet criteria

7.—(1) This paragraph applies where—

(a) an installation is an ultra-small emitter for any of the 2021, 2022, 2023, 2026, 2027 and 2028 scheme years; and

(b) the regulator considers that the installation's reportable emissions in any of those years (the "excess year") exceed the maximum amount.

(2) Subject to sub-paragraph (7), the regulator must, as soon as reasonably practicable, give a notice to the operator of the installation.

(3) The notice must—

(a) set out the grounds for the notice;

(b) state that the installation is not an ultra-small emitter—

(i) where the notice is given in the scheme year following the excess year, for the scheme year following the scheme year in which the notice is given;

(ii) where the notice is given after the scheme year following the excess year, for the scheme year in which the notice is given;

(c) state that the operator must—

(i) apply for a greenhouse gas emissions permit; and

(ii) comply with the conditions of the permit—

(aa) where paragraph (b)(i) applies, from 1st January in the scheme year following the year in which the notice is given; or

(bb) where paragraph (b)(ii) applies, from no later than the date (the "relevant date") set out in the notice.

(4) But the notice must also state that, where sub-paragraph (5) applies, the operator must apply for a hospital or small emitter permit and comply with the requirements of that permit, instead of a greenhouse gas emissions permit.

(5) This sub-paragraph applies where—

(a) the operator within 14 days of the date of the notice—

(i) gives notice to the regulator that the operator prefers to comply with the conditions of a hospital or small emitter permit instead of a greenhouse gas emissions permit; and

(ii) submits evidence to the regulator that the installation is not an ineligible installation for the purposes of paragraph 4 of Schedule 7; and

(b) the regulator gives notice to the operator that the regulator considers that the installation is not an ineligible installation.

(6) Where sub-paragraph (3)(b)(ii) applies, although the installation is not an ultra-small emitter for the scheme year in which the notice is given (see paragraph 2), the operator—

(a) must comply with paragraph 5 in respect of the period beginning on 1st January in the scheme year in which the notice is given and ending on the earlier of—

(i) the day before a permit for the installation comes into force; and

(ii) the relevant date;

(b) is not liable to a civil penalty under article 50 in respect of that period (but is liable to a civil penalty under article 60).

(7) Sub-paragraph (2) does not apply where—

(a) it is not possible for the notice to be given in the same allocation period as the excess year; or

(b) although it is possible for the notice to be given in the same allocation period as the excess year, the regulator considers that it would not be reasonable to expect the operator to apply for a permit before the end of the allocation period.

End of ultra-small emitter status: publication

8.—(1) The regulator must, as soon as reasonably practicable, inform the UK ETS authority about—

(a) each installation in respect of which a notice under paragraph 7(2) is given; and

(b) where relevant, whether the operator of the installation applied for a greenhouse gas emissions permit or a hospital or small emitter permit.

(2) The UK ETS authority must, from time to time, publish the information referred to in sub-paragraph (1).

SCHEDULE 9

Article 74(1)

Appeals to Scottish Land Court

1.—(1) A person who wishes to appeal to the Scottish Land Court under article 70 against a decision of the regulator must—

(a) send the appropriate form to the Scottish Land Court together with the documents referred to in sub-paragraph (2);

(b) at the same time, send a copy of that form to the regulator together with copies of the documents referred to in sub-paragraph (2)(a) and (f).

(2) The documents are—

(a) a statement of the grounds of appeal;

(b) a copy of any relevant application;

(c) a copy of any relevant plan;

(d) a copy of any relevant correspondence between the appellant and the regulator;

(e) a copy of any notice (or particulars of any deemed refusal) which is the subject matter of the appeal;

(f) a statement indicating whether the appellant wishes the appeal to be—

(i) in the form of a hearing; or

(ii) to be disposed of on the basis of written representations.

(3) An appeal to the Scottish Land Court may be made on one or more of the following grounds—

(a) the decision or notice was based on an error of fact;

(b) the decision or notice was wrong in law;

(c) the decision or notice was unreasonable for any other reason (including that the amount of a penalty was unreasonable);

(d) any other reason.

(4) In this Schedule—

"appropriate form" has the meaning given in rule 3 of the Rules of the Scottish Land Court Order 2014(**a**);

"decision" includes a deemed refusal under this Order.

2.—(1) Subject to sub-paragraph (2), the appropriate form must be sent to the Scottish Land Court before the expiry of the period of 28 days beginning with the date of the decision.

(2) The Scottish Land Court may accept the appropriate form after the expiry of that period where satisfied that there was a good reason for the failure to bring the appeal in time.

3.—(1) The Scottish Land Court may determine an appeal, or any part of an appeal, on the basis of written representations and without a hearing where—

(a) the parties agree; or

(b) the Scottish Land Court considers it can determine the matter justly without a hearing.

(2) The Scottish Land Court must not determine the appeal without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing.

(**a**) S.S.I. 2014/229.

4.—(1) The regulator must, within 16 days of receipt of the copy of the appropriate form, give notice of it to any person who appears to the regulator to have a particular interest in the appeal ("interested party").

(2) A notice under sub-paragraph (1) must—

(a) state that an appeal has been initiated;

(b) state the name of the appellant;

(c) describe the decision or notice to which the appeal relates;

(d) state that, if a hearing is to be held wholly or partly in public, an interested party will be notified of the date, time and location of the hearing;

(e) state that an interested party may request to be heard at a hearing.

(3) An interested party may request the regulator to provide the interested party with a copy of the documents set out in paragraph 1(2) only for the purposes of the appeal.

(4) Where a request is made under sub-paragraph (3), the regulator must provide the documents to the interested party as soon as reasonably practicable.

(5) An interested party may—

(a) make representations to the Scottish Land Court in relation to the appeal;

(b) be heard at a hearing in relation to the appeal.

(6) The representations by an interested party must be made within 16 days of the date of the notice under sub-paragraph (1).

(7) The Scottish Land Court must provide a copy of any representations to the parties.

(8) The regulator must, within 8 days of sending a notice under sub-paragraph (1), give notice to the Scottish Land Court of the persons to whom and the date on which the notice was sent.

(9) If an appeal is withdrawn, the regulator must give notice to all interested parties about the withdrawal.

SCHEDULE 10

Article 74(2)

Appeals to Planning Appeals Commission (Northern Ireland)

1.—(1) A person who wishes to appeal to the Planning Appeals Commission under article 70 against a decision of the regulator must give to the Planning Appeals Commission—

(a) written notice of the appeal; and

(b) a statement of the grounds of appeal.

(2) The notice of appeal must be accompanied by any fee for the appeal prescribed in regulations made under section 223(7)(b) of the Planning Act (Northern Ireland) 2011; and for that purpose section 223(7)(b) has effect as if the reference to an appeal under that Act included a reference to an appeal under this Order.

(3) The Planning Appeals Commission must as soon as reasonably practicable send a copy of the notice of appeal and the statement of grounds to the regulator.

2. A notice of appeal under paragraph 1 must be given before the expiry of the period of 47 days beginning with the date on which the decision of the regulator takes effect.

3.—(1) An appellant may withdraw an appeal by giving notice to the Planning Appeals Commission.

(2) If an appellant withdraws an appeal, the Planning Appeals Commission must give notice to the regulator of the withdrawal as soon as reasonably practicable.

4.—(1) The Planning Appeals Commission must determine the appeal; and section 204(1), (3) and (4) of the Planning Act (Northern Ireland) 2011 apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal in accordance with that Act.

(2) The Planning Appeals Commission must—

(a) determine the process for determining the appeal; and

(b) when doing so, take into account any requests by either party to the appeal.

SCHEDULE 11

Article 77

Transitional provisions: installations

Permits under GGETSR 2012

1.—(1) This paragraph applies to a permit within the meaning of GGETSR 2012 that immediately before this Schedule comes into force authorises a regulated activity to be carried out at an installation.

(2) But this paragraph does not apply to a permit—

(a) in respect of which an application under regulation 13 of GGETSR 2012 for the surrender of the permit has been made but has yet to be determined;

(b) that is due, in accordance with provision made under GGETSR 2012, to be surrendered or revoked; or

(c) that authorises a regulated activity to be carried out at an installation included in the ultra-small emitter list for 2021-2025.

(3) Where the installation is included in the hospital and small emitter list for 2021-2025, the regulator must—

(a) convert the permit into a hospital or small emitter permit the provisions of which satisfy the requirements of paragraph 11 of Schedule 7 and that authorises the regulated activity to be carried out at the installation from 1st January 2021; and

(b) give notice of the conversion to the operator of the installation.

(4) In any other case, the regulator must—

(a) convert the permit into a greenhouse gas emissions permit the provisions of which satisfy the requirements of paragraph 4 of Schedule 6 and that authorises the regulated activity to be carried out at the installation from 1st January 2021; and

(b) give notice of the conversion to the operator of the installation.

(5) When converting a permit under sub-paragraph (3) or (4), the regulator may make only such changes to the operator's obligations under the permit as the regulator considers necessary to convert the permit into a greenhouse gas emissions permit or, as the case may be, a hospital or small emitter permit.

(6) But sub-paragraph (5) does not prevent the regulator correcting errors.

(7) When converting a permit under sub-paragraph (4), the regulator may include under paragraph 4(2)(d) of Schedule 6 a condition to give proper effect to Article 69(4) of the Monitoring and Reporting Regulation 2018 that requires the operator to submit a report to the regulator relating to non-conformities or recommendations for improvements stated in a verification report under the Verification Regulation 2018 in respect of the scheme year (within the meaning of GGETSR 2012) beginning on 1st January 2020.

(8) The conversion of a permit under sub-paragraph (3) or (4) does not affect the operator's obligations under the permit in respect of specified emissions before 1st January 2021 (and GGETSR 2012 continue to apply in relation to such obligations).

(9) A permit that is converted under this paragraph continues in force as if issued under this Order until cancelled, surrendered or revoked under this Order.

Applications for permits, etc. under GGETSR 2012

2.—(1) An application under regulation 10 of GGETSR 2012 for a permit for an installation that is made to the regulator before 1st January 2021, but not determined before that date—

(a) where the installation is included in the hospital and small emitter list for 2021-2025, must be treated as an application for a hospital or small emitter permit under paragraph 7 of Schedule 7 to this Order;

(b) in any other case (except where the installation is included in the ultra-small emitter list for 2021-2025), must be treated as an application for a greenhouse gas emissions permit under paragraph 1 of Schedule 6 to this Order.

(2) An application under regulation 11 of GGETSR 2012 to vary a permit that is made to the regulator before 1st January 2021, but not determined before that date, must be treated as an application to vary the permit under paragraph 6 of Schedule 6 to this Order.

(3) An application under regulation 12 of GGETSR 2012 for the transfer of a permit that is made to the regulator before 1st January 2021, but not determined before that date, must be treated as an application to transfer the permit under paragraph 7 of Schedule 6 to this Order.

Schedule does not apply to permits for relevant Northern Ireland electricity generators, etc.

3.—(1) This Schedule does not apply to—

(a) relevant Northern Ireland permits; or

(b) applications for, or in relation to, relevant Northern Ireland permits.

(2) In this paragraph, "relevant Northern Ireland permit" means a permit within the meaning of GGETSR 2012 that authorises a regulated activity to be carried out at a relevant Northern Ireland electricity generator.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes a new emissions trading scheme covering greenhouse gas emissions from power and heat generation, energy intensive industries and aviation. The scheme will be called the UK Emissions Trading Scheme or UK ETS (see article 16). It is the successor, in the UK, to the EU Emissions Trading System (established by Directive 2003/87/EC).

Part 1 contains definitions that are used throughout the Order, including key concepts such as the "trading period" (1 January 2021 to 31 December 2030 – see article 4) the activities covered by the scheme ("regulated activity", defined in article 4 and Schedule 2, and "aviation activity", defined in article 4 and Schedule 1), the different greenhouse gases covered by the scheme (see article 4 and Schedule 2 for installations and the definition of "aviation emissions" for aircraft), the participants in the scheme ("operators" of installations, defined in article 5, and "aircraft operators", defined in articles 6 to 8) and who the scheme's "regulator" is for different purposes (articles 9 to 13). Article 15 introduces Schedule 3 which contains provision about applications, notices, etc.

Part 2, after introducing the scheme and establishing a review requirement (articles 16 and 17), sets out other elements of the scheme relevant to both operators of installations and aircraft operators. The basic proposition of the scheme is that, for each year, participants have to surrender "allowances" equivalent to their greenhouse gas emissions within the scope of the scheme. So article 18 sets out what an allowance is and articles 19 to 22 set out rules limiting the number of allowances that can be issued. Article 23 permits allowances to be traded except where this is prohibited by other legislation. The rules on how allowances are to be issued do not, however, appear in this Order and will be the subject of separate legislation on free allocation of allowances and auctioning. Articles 24 and 25 introduce Schedules 4 and 5 which adapt existing EU legislation on monitoring and reporting of greenhouse gas emissions, and how reports of emissions are verified, for the purposes of the UK ETS.

Parts 3 and 4 contain provisions specific (respectively) to operators of installations and aircraft operators. The scheme has slightly different rules for these different types of participants. For

operators of installations there is a general rule that they need a permit (article 26(1)) and need to surrender allowances to account for emissions (article 27). From the general rule, there are different levels of derogation for hospitals and small emitters and for ultra-small emitters. Detailed provision in respect of each category of operator is set out in Schedules 6 to 8, although for operators subject to the general rule, and for hospitals and small emitters, many of the rules take the form of specified contents of permits. For aircraft operators, there is no need for a permit as such. However, aircraft operators must apply for emissions monitoring plans which fulfil some of the same functions (article 28). For aircraft operators, provisions about reporting emissions and surrendering allowances are in articles 33 and 34.

Part 5 contains provision allowing the regulators to charge for the performance of their regulatory functions under the Order.

Part 6 contains provision allowing the regulators to monitor compliance with the Order, including through inspections of premises and exercising powers of entry.

Part 7 contains provision about enforcement, including a range of civil penalties (articles 50 to 68) that may be imposed in respect of specified breaches of the Order or of permit conditions. General provision about civil penalties is in articles 47 and 48. In addition, article 44 makes provision about enforcement notices and article 45 about circumstances where a regulator can determine the greenhouse gas emissions of a participant in the UK ETS.

Part 8, which is supplemented by Schedules 9 and 10, contains provision about appeals from decisions made by the regulator about applications and appeals in respect of a number of notices (specified in article 70(2)) that may be given under the Order.

Part 9 brings together provisions without a natural home elsewhere in the Order, covering information notices (article 75), Crown application (article 76) and transitional provisions (article 77 with Schedule 11).

A regulatory impact assessment of the effect that the UK ETS will have on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the instrument on www.legislation.gov.uk.

Explanatory Memorandum to The Greenhouse Gas Emissions Trading Scheme Order 2020

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

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Greenhouse Gas Emissions Trading Scheme Order 2020. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
15 July 2020

PART 1

1. Description

This Order establishes a UK-wide greenhouse gas emissions trading scheme (ETS), to encourage cost-effective emissions reductions from the power, industrial and aviation sectors. The UK ETS will commence on 1 January 2021 to ensure there is a carbon pricing policy in place when the UK ceases its participation in the EU Emissions Trading System (EU ETS).

The Order provides details about the scope of participants, the environmental ambition as indicated by the cap and trajectory of allowances, requirements for monitoring, reporting and verification, charging, compliance and enforcement, penalties and appeals, and scheme reviews.

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

Part 3 of Schedule 3 to the Climate Change Act 2008 (CCA) states that an emissions trading scheme that applies to England, Scotland, Wales and Northern Ireland – such as in this case – must be established by Order in Council. The appropriate procedure for an Order in Council is prescribed by section 48 to the CCA. As the Order sets up a trading scheme, the affirmative procedure will be used.

As the Order in Council will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

Additional legislation is required, as the CCA[1] does not allow for the allocation of emissions allowances in a trading scheme in return for payment (i.e. auctioning). The UK Government has laid a Finance Bill, clause 93 of which gives it the power to establish rules for the auctioning of emissions allowances and mechanisms to support market stability. On 24 June 2020, the Welsh Government secured the consent of the Senedd for the UK Government to legislate in the form of clause 93.

Additional and minor elements of UK ETS will be introduced through a second instrument due to be laid in the Senedd in November 2020. This will amend the affirmative procedure instrument, once made, to include provisions for free allocation and the UK ETS registry. As this instrument is not envisaged to contain any provisions which would be caught by section 48(3) of the CCA, the negative procedure will be used.

[1] Paragraph 5(4) in Schedule 2.

3. Legislative background

Section 44 of the CCA provides the power to make an instrument to put in place a trading scheme relating to greenhouse gas emissions. That power is exercisable by "the relevant national authority" (the Scottish Ministers, Welsh Ministers, Northern Ireland Ministers or the Secretary of State). Section 47 of the CCA defines the Welsh Ministers as the relevant national authority for matters within the Senedd's legislative competence; or matters that relate to limiting or encouraging the limitation of activities in Wales that consist of the emission of greenhouse gases, other than activities in connection with offshore oil and gas exploration and exploitation.

The statutory procedure for putting in place a trading scheme is set out in Part 3 of Schedule 3 to the CCA. A UK-wide trading scheme must be established by Order in Council (paragraph 9 of Part 3 to Schedule 3). Pursuant to paragraph 11, before a recommendation may be made to Her Majesty in Council to make the Order in Council, a draft of the instrument containing the Order in Council must be laid before, and approved by, a resolution of each House of Parliament and the devolved legislatures. If it is approved by each of these, the Order will go to the Privy Council in November 2020, and will come into force the day after it is made.

4. Purpose and intended effect of the legislation

The purpose of this Order is to establish a UK-wide greenhouse gas emissions trading scheme (ETS), to encourage cost-effective emissions reductions which will contribute to the UK's emissions reduction targets and net zero goal. Policy positions for a UK ETS, which is operational from 1st January 2021, have been agreed by the four Governments of the UK nations, and are set out in the Government Response to the Future of Carbon Pricing consultation, which was published on 1 June 2020.

The territorial extent of this Order is England, Wales, Scotland and Northern Ireland. The Order impacts on industry, the power sector and aviation. Schedule 1 of the Order sets out the flights covered by the UK ETS and all excluded flights. Schedule 2 sets out the scope of activities within stationary installations covered by the UK ETS.

This is a policy replacement for the UK's participation in the EU Emissions Trading System, which will cease at the end of the Transition Period on 31 December 2020 (subject to the UK's obligations in the Withdrawal Agreement pursuant to Article 96(2) in respect of 2020 compliance and the Protocol on Ireland/Northern Ireland). This would also allow for the possibility and consideration of a link between a UK ETS and the EU ETS, subject to the UK Government's negotiations on a future relationship with the EU.

5. Consultation

Details of consultation have been included in the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Background

The ETS is a key policy for reducing emissions in the power sector, energy intensive industries, and the aviation sector (the 'traded sectors'). Government intervention is necessary to ensure emissions from sectors currently covered by the EU ETS continue to be covered by a carbon pricing policy following UK withdrawal from the EU.

The objective of the policy is to incentivise cost-effective emissions reductions for sectors currently in scope of the EU ETS, while balancing this ambition with the competitiveness of UK industry.

Placing a price on carbon creates the incentive for emissions to be reduced in a cost effective and technology-neutral way, whilst mobilising the private sector to invest in emissions reduction technologies and measures. The establishment of a UK wide scheme will ensure continuity of a carbon pricing policy to stimulate decarbonisation of the power, industrial and aviation sectors. The traded sector accounted for approximately 46% of Wales' emissions in 2018; therefore, this is a key policy among a suite of interventions to reduce greenhouse gas emissions from Wales while managing business competitiveness issues.

Many of the design features mirror the EU ETS, providing continuity for businesses and facilitating linking with the EU system. However, in recognition of the commitment across the UK to move towards net zero greenhouse gas emissions by 2050, the cap has been set at 5% below the notional UK share of the EU ETS cap. This decision was informed by an understanding of current emissions compared to the notional cap, which identified there would be significant over-supply of allowances if we did not reduce the cap.

It may be necessary to adjust the cap further to ensure it is in line with our net zero ambitions. The Committee on Climate Change (CCC) will be providing advice on a pathway to net zero in December and we have committed to consult on any changes to the cap within 9 months and implement required changes by 1 January 2023 if possible and at the latest by 1 January 2024.

Given this Order is intended to operate alongside other pieces of legislation to establish the UK Emissions Trading Scheme, it was not appropriate to carry out several segmented Regulatory Impact Assessments but one holistic impact assessment of the policy as a whole.

A detailed UK-wide impact assessment of the scheme was published alongside the joint government response to the consultation and is available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889038/The_future_of_UK_carbon_pricing_impact_assessment.pdf

7. Options

The following options were assessed.

Standalone UK ETS
We assessed the design of the UK ETS set out in the government response document, in its initial years of operation (from 2021 to 2024). This system is intended to fulfil the policy objectives outlined above as a standalone system, while also providing a platform to negotiate a linked system with the EU ETS, if it is in the best interests of both parties.

Status Quo
The policy option is compared against a counterfactual of continued UK participation in the EU ETS in Phase IV of the system. This represents the main policy that would have covered greenhouse gas emissions in the traded sectors if the UK were to have remained part of the EU.

There were significant constraints on further options. The governments of the four UK nations are committed to continued statutory carbon pricing policy following the UK's departure from the EU. The establishment of a successor scheme to the EU ETS is one of the jointly agreed common framework areas.

Long-term ETS policy, including a linking agreement, is subject to ongoing negotiations between the UK Government and the EU and so quantitative analysis of this is not within scope of this IA.

7. Costs and benefits

The UK ETS system wide costs and benefits

The assessment considers the initial years of the UK ETS (2021-2024), based on the design set out in the government response:

- a cap on emissions set based on a 5% reduction on the UK's notional share of the EU ETS,
- free allocation based on the UK's notional share of the EU ETS, and
- a transitional auction reserve price starting at £15 per allowance.

For the analysis below, the Price Base Year is 2019, the PV Base Year is 2019 and the time period is 6 years.

Relative to the counterfactual the key monetised costs of the entire UK wide UK ETS are:

- the cost incurred by firms reducing their emissions to meet the cap i.e. 'resource' cost (£25 to 59 million);
- the administrative costs to firms in complying with the new policy (£4m); and

- the administrative cost to government (including regulators) in establishing and administering the policy (£7m).

Overall, the estimated range of monetised costs relative to the counterfactual is £36 to 70m (present value).

Relative to the counterfactual key non-monetised costs of the entire UK wide UK ETS include:

- potential loss of UK business competitiveness relative to international competitors, if higher carbon costs lead to increased production costs and significantly impact profitability and market share;
- potential carbon leakage as a result of higher carbon values;
- potential increase in cost to consumers if higher carbon costs to businesses are passed on in the form of higher prices.

However we do not expect these costs to materialise to a significant degree, as we do not expect a significant differential in carbon values in the UK ETS relative to counterfactual scenario.

Relative to the counterfactual the main monetised benefit of the policy scenario is the carbon benefit, which represents the benefit to society of reduced emissions in the sectors covered by the UK ETS. Based on the UK ETS design modelled, we expect greater emissions reductions under the policy compared to the counterfactual. The estimated range of the monetised benefit relative to the counterfactual is £102 to 162m (present value) for the entire UK wide scheme.

Relative to the counterfactual the key non-monetised benefits are:

- potential improvements in air quality if the policy leads to reduction in activities that generate pollutants as well as greenhouse gas emissions;
- potential long-term positive impacts on UK business competitiveness relative to international competitors, if higher carbon values increase investment and innovation in new low carbon technologies and processes;
- more efficient and cost-effective decarbonisation if the policy leads to reductions in emissions through the least-costly methods; and
- spill-over benefits through the growth of the green and circular economies.

Overall, the best estimate of the Net Benefit (Present Value (PV)) is £66 million to £92 million.

Impacts in Wales

The scope of the UK ETS in its first phase will be the same as the EU ETS in Phase IV for stationary sectors. Therefore, the following assessment is based on data relating to current EU ETS participants.

In 2019 there were 72 stationary installations participating in the EU ETS in Wales out of around 1,000 UK stationary installations. Having removed installations likely to opt out of the main policy under the small and ultra-small emitters opt-out schemes there are 62 installations remaining out of the estimated 655 UK wide (approximately 9% of the total number in the full scheme). The scope of activities covered by Welsh scheme participants will include the combustion of fossil fuels and a range of industrial activities including the production of pig iron or steel, production or processing of ferrous metals, refining of mineral oil, production of paper or cardboard, production of cement clinker, production of bulk organic chemicals and manufacture of mineral wool.

The emissions from the ETS participants accounted for 46% of total emissions from Wales in 2018 which is significantly higher than the around 30% at the UK level. This is reflective of the fact Wales is a net exporter of electricity and has a higher proportion of industrial activity (and consequently emissions), for instance our large steel works, oil refinery and cement works, compared to other nations of the UK. Therefore, notionally the impact of the policy will be greater on the overall emissions reduction pathway in Wales. However, given the purpose of the scheme is to deliver cost-effective decarbonisation across the whole population of scheme participants, and the decarbonisation potential and investment appetite of individual operators is not known, a specific amount of emissions reduction within Wales cannot be estimated confidently.

It should be noted there are considerable uncertainties around future industrial activity and associated emissions in Wales as a result of global competition added to the impacts of the coronavirus pandemic. Additionally, detail of abatement opportunities and investment appetite at the installation level are not publicly available. Therefore, the following assessment is illustrative of the potential scale of impact but should not be viewed as a projected estimate.

Costs to businesses (scheme participants)

The administrative costs to businesses in Wales will be broadly similar to that of remaining in the EU ETS. Government is paying the cost of establishing the IT system, and the reporting requirements do not add administrative costs. The permitting system will also be streamlined as far as possible.

Mechanisms have been introduced into the scheme to manage extremes of carbon prices, ensuring the incentive to decarbonise remains while protecting businesses against extremely high costs. This includes an auction reserve price (ARP) of £15 per allowance. Additionally, free allowances are allocated to

some industrial installations to ensure they remain globally competitive. The free allocation methodology will mirror that in phase 4 of the EU ETS.

By applying a proportion of the UK wide costs to Welsh participants (based on 9% of the installations based in Wales) the indicative scale of additional costs compared to the counterfactual is £2.25 million to £5.31 million across the same 6 year time period. Attributing costs as a proportion of the total emissions (approximately 15%) the indicative scale of additional costs compared to the counterfactual is £3.75 million to £8.85 million across the same 6 year time period. However, these are indicative only due to the number of variables impacting on costs.

The degree to which these costs are significant to individual businesses will depend on a wide range of factors and will vary depending on the characteristics of the business affected and the amount of free allocation that they receive. However, higher carbon costs in the short term could also increase the sustainability of our industrial base through an increased incentive for more innovation and investment in low-carbon technologies, which will improve their long-term competitiveness.

Therefore, the following are indicative total compliance costs of two illustrative scenarios based on £15 per tonne CO_2e (the Auction Reserve Price) and £32 per tonne CO_2e. Based on the 8.06 million allowances which were required to be purchased by Welsh participants in the EU ETS in 2019, the annual cost to businesses would be between £120.9 million and £257.93 million. It should be noted that the 2018 and 2019 ETS emissions were broadly similar, having seen a reduction of 3.5 million tonnes between 2017 and 2018 due to a number of factors including significantly reduced output from Aberthaw power station.

The number of allowances which Welsh businesses will need to purchase will vary year on year, and can be influenced by production changes in some of our major sites and whether the sites receive free allowances, the weather (cold, still winters will require more output from our fossil fuelled power stations) and implementation of energy efficiency and other decarbonisation measures. Given the number of variables, and the large impact commercial decisions by a few discrete businesses will have on the total emissions, accurate projections are not possible.

The balance of mitigating measures within the scheme design and the setting of the auction reserve price at a relatively conservative level are designed to ensure a smooth transition for businesses and limited additional costs.

Costs to the Welsh Government

The main costs to government in establishing the UK ETS are the costs of IT systems - a registry to hold emissions allowances and a system for permitting, monitoring, reporting and verification (PMRV). Both systems will replace the corresponding EU systems which the UK currently accesses.

The majority of the cost for both systems has to date been funded through the UK Government's EU exit funding pot. However, from 2021/22 it is anticipated all governments will contribute to the PMRV development costs, and future enhancements of both systems. An estimate of costs to the Welsh Government in 2021/22, based on use of the Barnett formula, is £80,000 - £120,000. Thereafter, costs are projected to be significantly lower.

Other costs include staff costs within the Welsh Government and within Natural Resources Wales. It is not anticipated the scheme will result in any additional staff costs compared to the counterfactual (remaining in the EU ETS).

Benefits – transfers to public funds

The public sector will benefit from any auction revenues from the scheme; therefore, using the two illustrative scenarios based on £15 per tonne CO_2e (the Auction Reserve Price) and £32 per tonne CO_2e, the 8.06 million allowances which were required to be purchased by Welsh participants in the EU ETS in 2019, and an assumption all allowances would be purchased at auction, the annual transfer to public sector would be between £120.9 million and £257.93 million. Under current practices, these funds are not hypothecated but contribute to general Treasury coffers. However, an alternative approach the Welsh Government supports for is the establishment of an industrial decarbonisation fund to recycle auction receipts into funding packages for deep decarbonisation of our industries.

The non-monetised costs and benefits will apply in Wales, subject to decisions by businesses to invest in decarbonisation measures for compliance purposes.

8. Consultation

Between 2 May 2019 and 12 July 2019, the UK Government and Devolved Administrations ran a 10 week public consultation seeking views on the UK's future carbon pricing policy. Additionally, two stakeholder events were held in Wales to gather views of interested parties including potential scheme participants.

This consultation stated a UK ETS linked to the EU ETS is the UK Government and Devolved Administrations' preferred carbon pricing policy, and if this could not be secured alternative options included a standalone UK emissions trading scheme, a carbon emissions tax, or remaining in Phase IV of the EU ETS. The consultation set out policy proposals for a UK ETS and sought views on these proposals from stakeholders.

Alongside the consultation, the governments jointly commissioned the Committee on Climate Change (CCC) for advice on both a standalone and linked UK ETS.

The public consultation received over 130 responses, from a range of stakeholders including current EU ETS participants and non-governmental organisations, with the majority supporting most of the proposals on the design of a UK ETS. A large proportion of stakeholders expressed a preference to link a UK ETS to the EU ETS.

However, there were concerns raised by industry, particularly around the need to take a fair, proportionate and considered approach to potential improvements to free allocation. While there will be no changes to free allocation at the outset of the scheme, given the lack of credible and robust data to support a different approach at this time, we will begin a full review of possible future changes in the coming months.

The government response to the consultation, including a summary of responses, was published on 1 June 2020.
Full details of the consultation can be found at:
https://gov.wales/future-uk-carbon-pricing

9. Competition Assessment

Given the UK ETS establishes a carbon market, the interpretation of “market” and “market share” here relates to emissions or allowances held. It is dominance of a few participants in the scheme which has the potential for competition impacts rather than the dominance of businesses within their own industrial sectors.

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

The policy design, in particular the issue of free allowances, is designed to protect businesses at highest risk of competitive disadvantage. Therefore, some scheme participants will be impacted by greater costs than others. However, given free allocation is to be based on activities and benchmarks, there should be no market distortion.

10. Post implementation review

The Order contains provision for the four governments of the UK nations, who will constitute the UK ETS authority, to carry out two reviews of the operation of the UK ETS within the 10 year phase. The UK ETS authority must publish its report setting out the conclusions of the review. The reviews must be concluded by 31 December 2023, in the case of the early phase review and 31 December 2028 for the later review.

The reports must review the operation of the UK ETS (including assessing the extent to which the purpose of the UK ETS is being achieved) and make any recommendations that the UK ETS authority considers appropriate as to the future operation and purpose of the UK ETS.

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

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

18 September 2020

Dear Mick,

Further to my attendance at Committee on 14 September, I agreed to provide a definitive list of the installations in Wales captured by the Greenhouse Gas Emissions Trading Scheme Order 2020. I also agreed to request information from Natural Resources Wales (NRW) on how it may use authorised persons to monitor compliance on its behalf and on NRW's position regarding what would be considered reasonable prior notice, with detail of the average time used previously.

A definitive list of the installations which will be captured by the Order is attached, based on the current database of Welsh installations participating in the EU Emissions Trading System. The list details whether it is a participant in the main scheme (indicated by GHG) or one of the opt-outs and the activity or activities undertaken at the installation which requires a permit under this scheme.

With regards to the use of authorised persons, NRW have responded as follows:

"This power provides regulators with flexibility in terms of access to and use of specialist resources. The regulator has a statutory duty to determine emissions where an operator has failed to do so and these powers enable a regulator to appoint an agent (e.g. a verifier), perhaps with specialist process knowledge, to visit premises to gather information to calculate emissions. We envisage use of this power would occur rarely and most likely in circumstances where an operator refuses to submit emissions information".

NRW's response on their position regarding reasonably prior notice is:

"We agree with the Minister's response. What is 'reasonable' will depend on the operator, the nature of the installation including activities on site and availability of key operator personnel. In general, two weeks is considered as an average period of time to give an operator as prior notice for an inspection.

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If entry is refused but required then the regulator can apply for a warrant. Where non-compliance is suspected and prior announcement may frustrate the purpose of the visit then the regulator can enter a site without notice by using a warrant after first having justified the need to a magistrate".

I hope the Committee is in a position to support the Order, notwithstanding any recommendations you may have for future improvements. Agreement by each of the four UK legislatures would be a major milestone towards implementing the UK Emissions Trading Scheme on 1 January 2021.

Regards

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

EU ETS Installations Wales - September 2020

Permit ID	Operator Name	Installation Name	Emitter Type (GHG = main scheme participant)	Annex 1 Activity
UK-W-IN-11378	Knauf Insulation Ltd	Pont-y-Felin Insulation	GHG	Manufacture of mineral wool
UK-W-IN-11388	Kimberly - Clark Limited	Flint Site	GHG	Production of paper or cardboard
UK-W-IN-11397	Castle Cement Limited	Padeswood Works	GHG	Production of cement clinker
UK-W-IN-11421	AB InBev UK Limited	Magor Brewery	GHG	Combustion
UK-W-IN-11512	KELLOGG COMPANY of GREAT BRITAIN Ltd	KELLOGG COMPANY - WREXHAM	GHG	Combustion
UK-W-IN-11516	RWE Generation UK plc	Aberthaw Power Station	GHG	Combustion
UK-W-IN-11580	Tata Steel UK Limited	Tata Steel Packaging Plus UK	GHG	Production or processing of ferrous metals
UK-W-IN-11583	Kronospan Ltd	Kronospan Ltd	GHG	Combustion
UK-W-IN-11615	BAE Systems Global Combat Systems Munitions Ltd	BAE Systems - Glascoed	GHG	Combustion
UK-W-IN-11665	Tata Steel UK Limited	Port Talbot Steelworks	GHG	Production of coke Production or processing of ferrous metals Metal ore roasting or sintering Production of pig iron or steel
UK-W-IN-11666	Tata Steel UK Limited	Llanwern Steelworks	GHG	Production or processing of ferrous metals
UK-W-IN-11700	Baglan Operations Ltd	Baglan Bay Power Station	GHG	Combustion

EU ETS Installations Wales - September 2020

UK-W-IN-11706	UPM-Kymmene (UK) Limited	UPM-Kymmene (UK) Ltd	GHG	Production of paper or cardboard
UK-W-IN-11714	Airbus Operations Limited	Airbus UK Limited - Broughton	GHG	Combustion
UK-W-IN-11738	Tarmac Cement and Lime Limited	Aberthaw Cement Plant	GHG	Production of cement clinker
UK-W-IN-11752	Tata Steel UK Limited	Tata Steel Colors	GHG	Production or processing of ferrous metals
UK-W-IN-11753	Solutia UK Limited	Solutia UK Limited - Newport	GHG	Combustion
UK-W-IN-11767	Essity UK Limited	SCA Hygiene Products UK Ltd - Oakenholt Paper Mill	GHG	Production of paper or cardboard
UK-W-IN-11768	Cardiff and Vale University Health Board	University Hospital of Wales	Hospital Opt Out	Combustion
UK-W-IN-11802	Warwick International Limited	Warwick International Limited	GHG	Combustion
UK-W-IN-11806	Newport Wafer Fab Ltd	Newport Wafer Fab Ltd	GHG	Combustion
UK-W-IN-11813	SIMEC Uskmouth Power Limited	Uskmouth Power Plant	GHG	Combustion
UK-W-IN-11832	British Telecommunications PLC	Cardiff IDC	GHG	Combustion
UK-W-IN-11838	CELSA Manufacturing (UK) Limited	CELSA Manufacturing (UK) Ltd – New Melt Shop	GHG	Production of pig iron or steel
UK-W-IN-11884	Knauf Insulation Ltd	Knauf Insulation Queensferry	GHG	Manufacture of mineral wool

EU ETS Installations Wales - September 2020

UK-W-IN-11887	Rockwool Ltd	Rockwool Bridgend	GHG	Manufacture of mineral wool
UK-W-IN-11892	Volac International Ltd	Volac International Ltd	GHG	Combustion
UK-W-IN-11897	The First Milk Cheese Company Limited	First Milk - Haverfordwest Creamery	Small Emitter Opt Out	Combustion
UK-W-IN-11899	Tata Steel UK Limited	Orb Electrical Steels	GHG	Production or processing of ferrous metals
UK-W-IN-11928	Severn Power Limited	Severn Power Limited	GHG	Combustion
UK-W-IN-11929	South Hook LNG Terminal Company LTD.	South Hook LNG Terminal Company LTD.	GHG	Combustion
UK-W-IN-11932	RWE Generation UK plc	Pembroke Power Station	GHG	Combustion
UK-W-IN-11939	Dragon LNG Ltd	Dragon LNG Terminal	GHG	Combustion
UK-W-IN-11948	National Grid Gas Plc	Felindre Compressor Station	GHG	Combustion
UK-W-IN-12575	Rhymney Power Limited	Rhymney Power – Embedded Reserve Plant	GHG	Combustion
UK-W-IN-12598	Liberty Steel Newport Limited	Liberty Steel Newport Limited	GHG	Production or processing of ferrous metals
UK-W-IN-12605	Dow Silicones UK Limited	Dow Silicone Manufacturing Installation	GHG	Production of bulk organic chemicals
UK-W-IN-12611	CELSA Manufacturing (UK) Limited	CELSA Manufacturing (UK) Ltd – Rod & Bar Mill	GHG	Production or processing of ferrous metals

EU ETS Installations Wales - September 2020

UK-W-IN-12612	CELSA Manufacturing (UK) Limited	CELSA Manufacturing (UK) Ltd – Sections Mill	GHG	Production or processing of ferrous metals
UK-W-IN-12621	CEMEX UK Operations Limited	Forrest Wood Coating Plant	Small Emitter Opt Out	Combustion
UK-W-IN-12634	Tarmac Trading Limited	Dolyhir Asphalt	GHG	Combustion
UK-W-IN-12641	Tarmac Trading Limited	Pant Asphalt	Small Emitter Opt Out	Combustion
UK-W-IN-12647	Tarmac Trading Limited	Torcoed Asphalt	GHG	Combustion
UK-W-IN-12661	Hanson Quarry Products Europe Ltd	Hanson Quarry Products Europe - Criggion	Small Emitter Opt Out	Combustion
UK-W-IN-12664	Hanson Quarry Products Europe Ltd	Penderyn Asphalt Plant	Small Emitter Opt Out	Combustion
UK-W-IN-12727	Synthite Limited	Mold Chemicals (Alyn Works)	GHG	Production of bulk organic chemicals
UK-W-IN-12772	UK Power Reserve Limited	South Cornelly	Small Emitter Opt Out	Combustion
UK-W-IN-12920	WEPA UK Limited	Bridgend Operation	GHG	Production of paper or cardboard
UK-W-IN-13017	Valero Energy Ltd	Valero, Pembroke	GHG	Refining of mineral oil
UK-W-IN-13117	Solway Foods Limited	RF Brookes Rogerstone Park	Small Emitter Opt Out	Combustion

EU ETS Installations Wales - September 2020

UK-W-IN-13220	Peak Gen Power 5 Limited	Peak Gen Llandarcy	GHG	Combustion
UK-W-IN-13248	Dafen Reserve Power Limited	Dafen Power station	GHG	Combustion
UK-W-IN-13274	Peakgen Power 6 Ltd	Peak Gen Barry	GHG	Combustion
UK-W-IN-13308	Uniper UK Limited	Connahs Quay Power Station	GHG	Combustion
UK-W-IN-13327	Cadoxton Reserve Power Limited	Cadoxton Power Station	GHG	Combustion
UK-W-IN-13328	Cynon Power Limited	Cynon Power Station	GHG	Combustion
UK-W-IN-13391	Larigan Power Limited	Larigan Power Station	GHG	Combustion
UK-W-IN-13396	UK Power Reserve Limited	Tonypandy Power Station	GHG	Combustion
UK-W-IN-13400	UK Power Reserve Limited	Traston Road Power Station	GHG	Combustion
UK-W-IN-13430	Ogmore Power Limited	Ogmore Power Station	GHG	Combustion
UK-W-IN-13431	Clyne Power Limited	Clyne Power Station	GHG	Combustion
UK-W-IN-13436	Eni UK Ltd.	Point of Ayr Gas Terminal	GHG	Combustion
UK-W-IN-13485	UK Power Reserve Limited	Docks Way Power Station	GHG	Combustion
UK-W-IN-13492	Culvery Power Limited	Culvery Power Station	GHG	Combustion
UK-W-IN-13493	Nevern Power Limited	Nevern Power Station	GHG	Combustion
UK-W-IN-13568	St Asaph Power Limited	St Asaph Power Station	GHG	Combustion
UK-W-IN-13637	Bartley Power Limited	Bartley Power	GHG	Combustion

EU ETS Installations Wales - September 2020

UK-W-IN-13647	UK Power Reserve Limited	Afan Way Power Station	GHG	Combustion
UK-W-IN-13714	Sofidel UK Limited	Sofidel UK Baglan	GHG	Production of paper or cardboard
UK-W-IN-13770	UK Power Reserve Limited	Aberdare Generating Plant	Small Emitter Opt Out	Combustion
UK-W-IN-13772	UK Power Reserve Limited	Solutia Generating Plant	Small Emitter Opt Out	Combustion

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

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

10 September 2020

Dear Mick

Ahead of my attendance at your committee meeting on Monday 14 September to assist in your scrutiny of The Greenhouse Gas Emissions Trading Scheme Order 2020, I attach the UK Emissions Trading Scheme (UK ETS) Common Framework Summary document. This document was developed by the four Governments collectively and has been made available to scrutiny committees in each of the legislatures.

The Summary document should answer your questions on the content of the negative Order in Council, as well as the other pieces of legislation associated with the operation of the scheme. It also addressed the development and timescales for the full Framework Outline Agreement and Concordat. The JMC(EN) is likely to endorse the documents via correspondence, therefore, we intend to make the documents available for provisional endorsement as soon as possible so we can then receive input from our legislatures before returning for final endorsement from the JMC(EN).

I look forward to discussing the UK ETS with you on Monday.

Regards

Lesley Griffiths

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

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UK ETS Common Framework

Summary document

Policy Background

The UK currently participates in the EU Emissions Trading System (EU ETS), which is the world's largest trading system for greenhouse gas (GHG) emissions. Emissions trading schemes work on the 'cap and trade' principle, where a cap is set on the total amount of certain GHGs that can be emitted by participating installations and aircraft. Within the limits of this cap, participants receive or buy allowances equivalent to their own emissions, which they can trade with one another as needed. The overall cap is reduced over time, so that total emissions fall.

At the end of the Transition Period (on 31st December 2020), the UK will cease to participate in the EU ETS.[1] A replacement carbon pricing policy is required to stimulate emissions reduction from large UK emitters within the industrial, power and aviation sectors currently participating in the EU ETS.

In 2019, the UK Government and devolved administrations (DAs) undertook a public consultation seeking views on the UK's future carbon pricing policy. This consultation set out policy positions for a UK-wide Emissions Trading System (UK ETS), whilst noting that fall-back options included a carbon emissions tax, or remaining in Phase IV of the EU ETS.

The four Governments are open to considering a link between a future UK ETS and the EU ETS, if such a linking agreement is in both sides' interests and recognises both parties as sovereign equals with our own domestic laws. A link between the UK and EU trading schemes could help to establish a much larger carbon market, which could increase opportunities for emissions reduction and cost-efficiency of emissions trading.

Rationale for seeking Common Framework

The UK Government and the DAs are committed to carbon pricing as an effective emissions reduction tool. Placing a price on carbon creates the incentive for emissions to be reduced in a cost effective and technology-neutral way, while mobilising the private sector to invest in emissions reduction technologies and measures.

Climate policy, including the establishment of emissions trading systems, falls within devolved competence. However, the UK Government and DAs have agreed to jointly introduce secondary legislation to establish a single, UK-wide ETS with a common set of rules for participants. There are several benefits of such an approach (as opposed to separate systems in the four UK nations):

- A UK-wide system will create a larger carbon market, with greater liquidity, and a consistent carbon price across the UK.

[1] By virtue of Article 9, Annex 4 of the Ireland / Northern Ireland Protocol, NI electricity generators will continue to participate in Phase IV of the EU ETS to ensure a common carbon price on the island of Ireland to maintain the SEM (Single Electricity Market)

- Access to a larger carbon market increases opportunity for emissions reduction and the cost effectiveness of emissions trading.

- A common, UK-wide approach to carbon pricing avoids 'carbon leakage'[2], which could have a negative effect on the contribution of the policy to reduce emissions in line with international obligations, and the UK's pathway towards our net zero target.

The UK ETS is designed to operate on a UK-wide basis, and therefore the rules for operators need to apply consistently across the UK to ensure the integrity of the system.

Nonetheless, any proposals for policy divergence between administrations will be considered by the four administrations jointly, using the agreed governance process that will be established in the UK ETS concordat. Any areas in which divergence is proposed will be considered by all parties to the concordat considering any potential impact on the functioning of the UK Internal Market, in line with the Common frameworks principles agreed at JMC(EN).[3]

Stakeholder engagement

Between May and July 2019, the UK Government and DAs jointly consulted on the future of carbon pricing in the UK after EU Exit, setting out policy proposals for a UK-wide ETS which would be operational from 1st January 2021. The consultation received over 130 responses, from a range of stakeholders across the UK including current EU ETS participants and NGOs, with the majority of respondents to each question supporting the proposal being put forward.

As part of this consultation, UKG and the DAs ran stakeholder events across England, Wales, Scotland and Northern Ireland. Views from all stakeholders on proposals for a UK-wide ETS were taken into account when considering the final policy design.

The joint Government Response to the consultation was published on 1st June 2020 and can be accessed here: https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing

Approach to framework

The UK ETS will be established using secondary legislation made using existing primary powers under the Climate Change Act 2008 (the CCA), and through the Finance Act 2020. A non-legislative agreement (concordat) will set out the principles underpinning the ongoing oversight and governance of the system by Officials and Ministers from the four administrations, including decision-making and dispute resolution processes. These elements are explained in more detail below.

[2] Carbon leakage occurs when businesses transfer production to other countries with less stringent emissions constraints

[3] The JMC(EN) principles can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

Legislation

UK ETS legislation comprises:

- *The Greenhouse Gas Emissions Trading Scheme Order 2020:* an affirmative procedure Order in Council under the **CCA** to set up a UK-wide ETS which will be operational from 2021. Key provisions included in this instrument cover the scope of the system, monitoring and reporting requirements, the cap and trajectory and the roles of the regulators in monitoring and enforcing the rules of the system. This Order was laid in the UK and Devolved Parliaments in July and is expected to be in force by the end of the Transition Period in all four nations.

- *The Greenhouse Gas Emissions Trading Scheme Order (Amendment) 2020*: a negative procedure Order in Council under the Climate Change Act which will amend the affirmative procedure instrument once made to include provisions for free allocation and the UK ETS registry. This Order is due to be laid in the UK and devolved Parliaments in November.

- A charging clause to be taken in the *Finance Act 2020,* to provide for the UK Government to charge participants for emissions allowances at auction.

- An affirmative procedure statutory instrument to be introduced under the Finance Act 2020 to establish rules for the auctioning of emissions allowances and mechanisms to support market stability. This instrument is expected to be laid in the UK Parliament in November.

- Additionally, the *Recognised Auction Platforms (Amendment) Regulations 2020* will be laid in draft before both the Commons and the Lords. This SI will set out the regulations for the trading of emissions allowances in the UK Emissions Trading System (ETS), including establishing the rules for access to the auction platform and rules for the relevant disclosures. It will enshrine an oversight role for the Financial Conduct Authority (FCA) such that the FCA can monitor the auctioning process and secondary market trading to prevent market abuse and ensure the effectiveness of the system. This SI will ensure that UK emissions allowances are subject to the relevant regulatory oversight and treatment as Financial Instruments.

UKG/DA governance concordat

The UK Government and DAs have together developed UK ETS governance principles and arrangements over the past two years, including processes for decision-making and dispute resolution. A non-legislative agreement in the form of a concordat will set out governance arrangements for the UK ETS, including processes for making decisions and resolving disputes under the system.

Governance processes shall be set out in more detail in the UK ETS Framework Outline Agreement (FOA), and in the resulting concordat. Key governance principles, which UK Government (BEIS, HMT and DfT) and the DAs have agreed to adhere to, are set out below:

- Proposals relating to all areas of UK ETS policy should be considered using the joint governance process.

- The four administrations are committed to, wherever possible, taking decisions jointly. Where the four administrations agree that an individual administration holds exclusive competence over a particular matter, that administration will not exercise that competence to take a decision unilaterally without first having discussed it with all other administrations.

- All four administrations will endeavour to ensure market and legislative stability throughout the agreed ETS phases. The UKG and DAs should adhere to planned review points and ensure that significant legislative and policy changes are aligned with these planned review points.

- The four administrations are committed to seeking advice from their statutory advisors, the Committee on Climate Change prior to laying legislation.

- Working groups for discussion of policy decisions and system interventions under the UK ETS should include representation from BEIS, the DAs, HMT, DfT (where appropriate) and the environmental regulators (where appropriate).

- At ministerial level, BEIS and DA Ministers (and DfT Ministers, where appropriate) will be sighted and engaged in discussions where a policy decision relating to elements of the policy set out under the Finance Act is being considered. A ministerial level discussion should constitute a two-way exchange, with BEIS and DA Ministers allowed sufficient time to consider the decision and raise challenges. Responsibility for final sign-off of decisions relating to the elements of a UK-wide emissions trading system set out in Finance Act provisions will lie with the Chancellor (HMT). Before final sign-off, HMT Ministers should respond to challenges raised and provide justification for decisions reached. Should a UKG or DA Minister dispute a decision in a reserved policy area, this can be escalated to the JMC Secretariat.

- As the UK Government department responsible for aviation policy, DfT should have the option to attend all Official and Senior level groups given the potential impact of decisions made under a UK ETS on aviation. Agreement from DfT ministers must be gained before agreeing a UK Government policy position focused on aviation under a UK ETS.

- For the most effective use of the governance structure, and ultimately the operation of the system, proposals should be discussed and, where possible, a recommendation agreed at Official Level working groups.

- For all proposals, the UK Government and DAs should seek to obtain appropriate and relevant evidence to support recommendations reached. Any relevant evidence obtained must be taken into account in reaching a recommendation.

- In all decision-making, the parties to the framework will adhere to the common framework principles agreed at JMC (EN) in October 2017.

Process for completion

Legislation

UK ETS Legislation		
Instrument	**Laying date**	**In force date**
The Greenhouse Gas Emissions Trading Scheme Order 2020	13th July (UK Parliament, Scottish Parliament), w/c 15th July, (Welsh Parliament) 15th July (NI Assembly)	Mid-November
The Greenhouse Gas Emissions Trading Scheme Order (Amendment) 2020	Mid-November	Mid-November
Finance Act 2020 (charging clause)	17th March 2020	22nd July 2020 (Royal Assent)
Auctioning and market stability mechanisms SI	October/November 2020 (TBC)	December 2020 – January 2021
Recognised Auction Platforms (Amendment) Regulations 2020	TBC	TBC

Framework Outline Agreement (FOA)

The UK ETS FOA will set out, in more detail, our approach to the common framework and proposed decision-making and dispute resolution processes. It has been used as a policy development tool.

The UK ETS FOA shall be cleared by UK Government and DA Ministers and will be presented to the UK and Devolved Parliaments alongside the concordat.

Governance concordat

Following JMC(EN) clearance of the provisional framework, the FOA and concordat will become available for parliamentary scrutiny. We expect that the FOA and concordat will be available for scrutiny in late October/early November.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-LG-2248-20

Mike Hedges MS
Chair
Climate Change, Energy and Rural Affairs Committee

15 July 2020

Dear Mike

In my Written Statement of 1 June, I committed to update Senedd committees on the progress made on the future of carbon pricing in the UK after EU Exit and the joint policy position negotiated between the Governments of the four UK nations. I will explain the process of policy development, provide an overview of the policy design including the underpinning legislation and governance structures and finally suggest how my officials and I might assist Senedd committees in their scrutiny of this policy.

Environmental protection, including emissions reduction and climate change, are devolved matters. As a result of the UK's withdrawal from the European Union, it was necessary to ensure we continue to incentivise industrial decarbonisation. I have been working with my counterparts across the UK to develop a Common Framework to replace the EU Emissions Trading System (EU ETS). The European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020 do not provide sufficient powers to establish a new legislative regime. Therefore, the four Governments decided to jointly establish a UK Emissions Trading Scheme (UK ETS) using existing powers under Part 3 of the Climate Change Act 2008.

A joint public consultation exercise in 2019 sought views on proposals for a UK ETS to apply after the transition period, with the first ten year phase commencing on 1 January 2021. It would closely mirror the design of the EU ETS, to provide a smooth transition for businesses and facilitate a link to the EU ETS as soon as agreement was reached in the UK-EU negotiations. The stakeholder response to the consultation was supportive of a UK ETS, in particular one linked to the EU ETS. The UK Committee on Climate Change was also supportive of establishing a linked trading scheme.

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Since the consultation, the four Governments have continued to develop the technical aspects of the UK ETS policy design, which is described in the joint Government Response issued on 1 June. The policy design balances the challenges of ensuring environmental integrity while managing business competitiveness issues. This is critically important in Wales, as the traded sector accounts for around 46% of our emissions and includes some of our largest employers. The document can be accessed here: https://gov.wales/future-uk-carbon-pricing.

The UK ETS will be closely aligned to the EU ETS in the first instance. It applies to the same traded sectors and has the same obligations on participants to monitor and report emissions and surrender an equivalent number of allowances. The scheme provides for free allocation which follows EU method and eligibility criteria, and a continuation of a regulatory compliance and enforcement role for Natural Resources Wales.

There are, however, some differences between the UK ETS and the EU system. The initial UK ETS cap will be set at 5% less than the UK's notional share of the EU ETS cap, and will be reviewed following receipt of further advice on the pathway to 2050, to ensure alignment with our shared goal of net zero emissions across the UK by 2050. There will also be mechanisms to manage extremely high and low prices, including an auction reserve price (ARP) set at £15 per allowance.

The Greenhouse Gas Emissions Trading Scheme Order 2020, which establishes the UK ETS and contains provisions for key elements of the policy, is being laid before the Senedd today and will be scrutinised by each of the four legislatures within the same timescale. The Order must be approved by the Senedd, and a debate will be scheduled for the first week of November. A further Order using the negative procedure, which addresses some of the technical detail of the scheme, will be brought forward towards the end of 2020.

The Senedd recently gave its consent to powers enabling the auctioning of emissions allowances contained in the UK Government's Finance Bill[1]. The UK Government will be bringing secondary legislation forward in due course, to establish the detailed arrangements for auctioning.

The UK ETS is part of the Common Framework Programme overseen by the Joint Ministerial Committee on EU Negotiations (JMC(EN)) and has been developed using principles it set out in October 2017. A Framework Outline Agreement will set out the rationale for establishing the framework, the decision-making and governance arrangements. This will be accompanied by a concordat between the Ministers from all four governments. I will share these documents with the Committee for scrutiny as they are finalised and before they are presented to the JMC(EN).

I am keen to support the scrutiny of the legislation and wider framework, and I will be happy to give evidence. My officials are also available to provide a technical overview of the framework and details of the legislation if that would be helpful.

I am aware a number of other committees will have an interest in this framework. Consequently, I suggest my officials liaise with you to make arrangements for an efficient scrutiny process.

[1] When the Bill was introduced into the House of Commons on 18 March 2020, the relevant provision was clause 93 (Charge for allocating allowances under emissions reduction trading scheme). The Bill was amended by the Public Bill Committee, and clause 93 became clause 94. The Bill was introduced into the House of Lords on 2 July 2020, and clause 94 became clause 96. Although the numbering of the clause has changed, no amendments have been made to its substance since introduction. A record of the Bill can be found here: https://services.parliament.uk/Bills/2019-21/finance/documents.html.

The UK ETS is a technically complex policy, but it has important ramifications to our climate policy and our industrial base. I look forward to engaging with you during the scrutiny of the UK ETS.

I am copying this letter to the Chairs of the Economy, Infrastructure and Skills Committee, External Affairs and Additional Legislation Committee, Legislation, Justice and Constitution Committee and Business Committee.

Regards

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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Legislating for a UK Emissions Trading Scheme**
DATE	**15 July 2020**
BY	**Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs**

Today, I laid the legislation to establish a UK Emissions Trading Scheme from 1 January 2021. The UK ETS will support cost-effective emissions reduction from our highest emitting sites and its establishment ensures policy continuity when we leave the EU Emissions Trading System at the end of the implementation period.

The Greenhouse Gas Emissions Trading Scheme Order 2020 legislates for the substantive policy features described in the joint Government response to the consultation on the future of UK carbon pricing, which was published on 1 June. A debate on the draft Order will take place in early November.

I have written to the Senedd committees regarding this legislation and the wider framework, and look forward to working with them over the coming months as they scrutinise the framework.

The draft Order can be viewed here:
https://senedd.wales/laid%20documents/sub-ld13345/sub-ld13345-e.pdf

SL(5)615 – The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 ("the Principal Regulations"). The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984 ("the 1984 Act").

The Regulations amend the Principal Regulations to designate Rhondda Cynon Taf as a local health protection area that is subject to specific restrictions and requirements, namely that:

- no household in Rhondda Cynon Taf borough can form or continue with an extended household;
- no person living in the Rhondda Cynon Taf borough can leave the area without reasonable excuse (as listed in paragraph 3(2) of Schedule 4A to the Principal Regulations);
- no person may enter Rhondda Cynon Taf borough or remain there without reasonable excuse (as listed in paragraph 4(2) of Schedule 4A to the Principal Regulations);
- no person may leave the place where they are living to attend work or provide charitable or voluntary services, unless it is not reasonably practicable for them to work or provide charitable or voluntary services from the place at which they are living; and
- all premises licensed to sell alcohol must not open before 6am each day and must close at or before 11pm each day[1].

The Regulations also make minor amendments to the provisions relating to reasonable excuse to gather indoors and to enter or leave a designated protection area. These amendments are intended to clarify that donating blood and similar procedures fall within the reasonable excuse that exists to obtain or provide medical assistance, which itself includes accessing health services.

[1] The First Minister announced on 22 September 2020 that this is changed to 10:00pm with effect from 23 September 2020.

Procedure

Made Affirmative.

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

Technical Scrutiny

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

Merits Scrutiny

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

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

The Committee notes that these Regulations introduce a tightening of Covid-19 related restrictions to the area of Rhondda Cynon Taf County Borough Council. As such, these Regulations engage various human rights under the Human Rights Act 1998/European Convention on Human Rights. The Committee notes the summary in the Explanatory Memorandum as to which rights are engaged and why such engagement is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread Covid-19 in the Rhondda Cynon Taf Borough. In particular, the Committee notes the following from the Explanatory Memorandum:

> "*These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of information); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus in Rhondda Cynon Taf County Borough and is proportionate to that aim. The requirements not to leave or enter the area are subject to a person having a reasonable excuse to do so, which includes being able to access essential services and public services and to provide care to vulnerable persons.*"

The Committee notes that the Principal Regulations provide for a review of the restrictions and requirements imposed upon Rhondda Cynon Taf Borough by the Regulations by 24 September 2020 and every seven days thereafter.

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

No public consultation or regulatory impact assessment has been carried out in relation to these Regulations. The Explanatory Memorandum states that this is because:

- the Welsh Government has been updating individuals and business throughout the changes to the Principal Regulations;
- the Minister for Health and Social Services informed Members of the Senedd, in a statement on 16 September 2020, of the intention to impose restrictions and requirements upon Rhondda Cynon Taf Borough; and
- the changes to the Principal Regulations have been widely reported in the media.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
23 September 2020

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

WELSH STATUTORY INSTRUMENTS

2020 No. 1007 (W. 224)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (the "principal Regulations"). The amendments—

(a) designate Rhondda Cynon Taf County Borough as a local health protection area that is subject to specific restrictions and requirements;

(b) make minor amendments, including amendments to the provisions on the reasonable excuse to gather indoors and to enter or leave a local health protection area, intended to clarify that donating blood and

similar procedures fall within the reasonable excuse that exists to obtain or provide medical assistance, which itself includes accessing health services.

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

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

WELSH STATUTORY INSTRUMENTS

2020 No. 1007 (W. 224)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020

Made *at 1.04 p.m. on 17 September 2020*

Laid before Senedd Cymru *at 4.45 p.m. on 17 September 2020*

Coming into force *at 6.00 p.m. on 17 September 2020*

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

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

The Welsh Ministers consider that the amendments made by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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

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

Title and coming into force

1. The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020 and they come into force at 6.00 p.m. on 17 September 2020.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020(**1**) are amended as follows.

(2) In regulation 14(2)—

(a) in sub-paragraph (a), after "obtain" insert "or provide";

(b) omit sub-paragraph (d).

(3) In regulation 14C—

(a) in the heading, for "area" substitute "areas";

(b) in the regulation—

(i) for "a local health protection area" substitute "local health protection areas";

(ii) for "that area" substitute "those areas".

(4) In regulation 17—

(a) in paragraph (1)—

(i) in sub-paragraph (c), for "paragraphs (2) and (3)" substitute "paragraph (2)";

(**1**) S.I. 2020/725 (W. 162), as amended by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020 (S.I. 2020/752 (W. 169)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/803 (W. 176)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/820 (W. 180)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/843 (W. 186)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/867 (W. 189)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/884 (W. 195)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/912 (W. 204)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (S.I. 2020/961 (W. 215)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/985 (W. 222)) .

(ii) in sub-paragraph (d), for "paragraphs (2) and (3)" substitute "paragraph (2)";

(b) in paragraph (2), after "12(2)" insert ", or paragraph 7 of Schedule 4A,".

(5) In regulation 18(6A), in the Welsh language text, omit "neu" in the first place it occurs.

(6) In regulation 20(1)(a), for "paragraph 5(1) of Schedule 4A" substitute "paragraphs 5(1) or 7(1) of Schedule 4A".

(7) In Schedule 4A—

(a) for paragraph 1 substitute—

"PART 1

Local health protection areas

Local health protection areas

1. For the purposes of these Regulations, the following areas are local health protection areas—

(a) Caerphilly County Borough;

(b) Rhondda Cynon Taf County Borough.

PART 2

Restrictions applying in respect of each local health protection area"

(b) at the end of the Schedule insert—

"PART 3

Restrictions applying only in respect of Rhondda Cynon Taf County Borough

7.—(1) A person responsible for licensed premises in Rhondda Cynon Taf County Borough authorised to sell or supply alcohol for consumption on the premises—

(a) must close the premises at or before 11.00 p.m. each day, and

(b) may not open the premises before 6.00 a.m. each day.

(2) Sub-paragraph (1) does not allow the licensed premises to be open in contravention of an authorisation granted or given in respect of the premises.

(3) In this paragraph—

(a) "licensed premises" are premises in respect of which an authorisation has

been granted or given for the sale or supply of alcohol;

(b) "authorisation" has the meaning given by section 136(5) of the Licensing Act 2003(**1**)."

Mark Drakeford
First Minister, one of the Welsh Ministers
At 1.04 p.m. on 17 September 2020

(**1**) 2003 c. 17.

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020.

Mark Drakeford
First Minister

17 September 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 ("the principal Regulations").

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

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) ("the 1984 Act"). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions now being imposed in relation to the area of Rhondda Cynon Taf County Borough are necessary and proportionate as a public health response to the current threat posed by coronavirus.

The Welsh Ministers must review the restrictions and requirements imposed by the Regulations by 24 September and at least once every seven days thereafter.

<u>European Convention on Human Rights</u>

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations impose restrictions and requirements in relation to a local health protection areas, which for the purposes of the principal Regulations will also include Rhondda Cynon Taf County Borough, in particular prohibiting leaving or remaining away from or entering the area without reasonable excuse; providing that no household within the area being treated as forming part of an extended household and prohibiting the formation of an extended household by such a household and requiring licensed premises to close by 11pm each day. These restrictions and requirements will, or may, engage rights under Article 8 (right to respect for family

and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of information); Article 14 (prohibition of discrimination) and Article 1 of the First Protocol (Protection of Property). The Welsh Ministers consider that to the extent that the restrictions and requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus in Rhondda Cynon Taf County Borough and is proportionate to that aim. The requirements not to leave or enter the area are subject to a person having a reasonable excuse to do so, which includes being able to access essential services and public services and to provide care to vulnerable persons. Additionally the Welsh Ministers must, by 24 September, review the need for restrictions and requirements imposed by the Regulations and their proportionality to what they seek to achieve, and do so at least once every seven days thereafter.

3. Legislative background

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

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

4. Purpose and intended effect of the legislation

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

The principal Regulations were amended[1] with effect from 8 September 2020 to introduce restrictions in respect of a 'local health protection area', and apply those restrictions to the area of Caerphilly County Borough Council. These Regulations now make provision for local health protection areas, which are now also to include Rhondda Cynon Taf County Borough. The effect of this in respect of Rhondda Cynon Taf is to:

- provide that no household within the area may be treated as forming part of an extended household and prohibiting the formation of an extended household by such a household;

- prohibiting persons living in the area from leaving or remaining away from the area without reasonable excuse;

- require residents of the area to work from home, unless it is not reasonably practicable for them to do so;

[1] See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 SI 2020/961 (W. 215)

- prohibit people outside of the area entering the area without reasonable excuse. It is not a reasonable excuse to enter the area to work, if it is reasonably practicable for that work to be done outside the area.

These restrictions and requirements are the same as those in place for the area of Caerphilly County Borough Council, but in addition for the area of Rhondda Cynon Taff all licensed premises must close by 11pm each evening and not open prior to 6am any morning.

The Regulations come into force at 6.00 p.m. on 17 September 2020. The restrictions and requirements introduced by these amendments in relation to Rhondda Cynon Taf must be reviewed on or before 24 September, and at least once every seven days thereafter.

These Regulations also make minor technical and consequential amendments to the principal Regulations.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

The Welsh Ministers consider that introducing the requirements and restrictions in relation to the area of Rhondda Cynon Taf by means of the amendments made to the principal Regulations are proportionate to what the principal Regulations seek to achieve, which is to respond to a serious and imminent threat to public health.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales and myself. In making the Regulations this week there has been ongoing discussions with Public Health Wales, and local authority and NHS bodies for the Rhondda Cynon Taf area.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. The Minister for Health and Social Services informed Members of the Senedd, in a statement to the Senedd on 16 September, of the intention to impose the restrictions and requirements achieved through these Regulations made today. The proposed changes have also been widely reported by the media.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health.

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

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

17 September 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (No.2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020 under sections 45C(1), (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at 6.00pm today. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 13 October 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in the Plenary on 29 September 2020.

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

Yours sincerely

Mark Drakeford

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **COVID-19 update**

DATE **16 September 2020**

BY **Vaughan Gething - Minister for Health and Social Services**

I want to update you about the very latest situation in the four local authority areas where we have been closely monitoring rising rates of coronavirus:

- In Caerphilly
- Rhondda Cynon Taf
- Merthyr Tydfil
- Newport

The latest information we have suggests the situation in **Merthyr Tydfil** is stable and we are continuing to closely monitor the situation in **Newport**, analysing the latest testing results, information from the contact tracing teams and working with the local authority and public health experts.

I want to focus now on the developing situation in **Rhondda Cynon Taf**, where, unfortunately, we have continued to see a rapid increase in the number of cases. We are also now seeing evidence of community transmission.

- This is despite the measures the local authority asked residents to voluntarily take to control the spread of the virus.

The very latest figures we have, which are published this afternoon, show the rolling seven-day new case rate is 82.1 per 100,000 people in Rhondda Cynon Taf. Yesterday's testing positivity rate was 4.3% – this was the highest positivity rate in Wales.

Our contact tracing teams have been able to trace about half of these cases back to a series of clusters in the borough. The rest are evidence of community transmission.

There are a number of clusters in Rhondda Cynon Taf – two of which are significant. One is associated with a rugby club and pub in the lower Rhondda and the other with a club outing to the Doncaster races, which stopped off at a series of pubs on the way.

Just as in Caerphilly borough, we have seen a rapid increase in cases over a short period, which are mainly linked to people socialising without social distancing and meeting in each other's homes. We have also seen some cases linked to people returning from summer holidays overseas.

The local authority has been proactive in visiting premises throughout the borough over the last week to check compliance with the law and the measures we all need to be taking to protect each other from coronavirus.

These checks have resulted in improvement notices being served on seven supermarkets, which have been complied with.

- A bar has been closed in Pontypridd after a series of breaches were captured on CCTV; a licensed premise was closed in Tonypandy and improvement notices for another bar in Pontypridd and a barbers in Tonypandy have also been issued.

A further 50 licensed premises were visited by council officers over the weekend and more enforcement action – either improvement notices or closure orders – are likely to follow.

Taken together, this rapid rise in cases with evidence of community transmission throughout Rhondda Cynon Taf and the evidence of non-compliance in many licensed premises across the borough, mean we need to introduce local restrictions in the area to control and, ultimately, reduce the spread of the virus and protect people's health.

As the cause of transmission is similar to what we have seen in Caerphilly borough, the restrictions will be similar.

Action will be taken to end the late night opening of all licensed premises in Rhondda Cynon Taf.

From 6pm tomorrow the following local restrictions will therefore come into effect for people living in Rhondda Cynon Taf:

- People will not be allowed to enter or leave the Rhondda Cynon Taf Council area without a reasonable excuse, such as travel for work or education.
- People will only be able to meet outdoors for the time being. People will not be able to meet members of their extended household indoors or form an extended household for the time being.
- All licensed premises will have to close at 11pm in Rhondda Cynon Taf.
- Everyone over 11 must wear face coverings in indoor public places – as is the case throughout Wales.

We will keep these measures under constant review and they will be formally reviewed in two weeks' time.

SL(5)616 – The Health Protection (Coronavirus, Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

Background and Purpose

These Regulations provide local authorities across Wales with powers, by issuing directions to relevant people, to:

- close individual premises, or impose restrictions or requirements in respect of the use of, access to, or number of people on, the premises;
- prohibit certain events (or types of event) from taking place or impose restrictions or requirements in respect of the holding of, access to, or number of people attending, the event; and
- restrict access to, or close, public outdoor places (or types of outdoor public places).

These Regulations also continue a duty already imposed on local authorities, a National Park authority, Natural Resources Wales and the National Trust to close public footpaths and land accessible by the public in Wales where congregation of people may lead to a high risk of exposure to coronavirus.

The Regulations revoke and replace the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020 (the Original Regulations) due to a failure to properly record (in the instrument itself) the Welsh Ministers' declaration that the Original Regulations were urgent, in accordance with section 45R(2) of the Public Health (Control of Disease) Act 1984 (the 1983 Act).

Procedure

Made affirmative.

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

Technical Scrutiny

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

Merits Scrutiny

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

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

These Regulations came into force before they were laid before the Senedd. We note the notification provided by Mark Drakeford MS, First Minister, in a letter to the Llywydd dated 17 September 2020, which states:

"I have today made the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020, which come into force on at the beginning of 18 September 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered."

The letter does not contain an explanation of why these Regulations need to come into force before they are laid, although we acknowledge that this is likely to be in order to urgently correct the position under the Original Regulations and ensure the functions contained in these Regulations are quickly available to local authorities.

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

The Explanatory Memorandum helpfully explains that:

"The Welsh Government maintains close contact with local authorities on the operation and enforcement of the coronavirus restrictions, and having checked with them are not aware of any directions being given under the original Regulations since they came into force. In addition the Welsh Ministers have not received any notifications of directions, as required under those Regulations."

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

Regulation 9 requires a local authority to have regard to any guidance issued by the Welsh Ministers about directions under Part 2. There are a number of provisions which would appear to benefit from further explanation that would be set out in such guidance, for example indication of what constitutes "critical infrastructure" for the purposes of regulation 5(3), "essential goods and public services" for the purposes of regulation 5(5) or a "reasonable excuse" for acting in contravention of a direction.

At the time of writing, the "Enforcement and fines" section of the Coronavirus regulations: frequently asked questions page of the Welsh Government's website refer to the enforcement and fines regime under the Health Protection (Coronavirus Restrictions) (No. 2) (Wales)

Regulations 2020, but not these Regulations. The page states that it was last updated on 14 September 2020.

The guidance in relation to these Regulations does not appear to be published on the Welsh Government website, or at least it is not easily identifiable.

We think that making the guidance available, or more easily accessible, would be a helpful aid for local authorities and members of the public wishing to understand the impact of these Regulations.

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

These Regulations require a local authority to take reasonable steps to give prior notice of a premises direction, event direction or public place direction. That prior notice must be given:

- in relation to a premises direction, to a person carrying on a business from the premises and, if different, any person who owns or occupies the premises;
- in relation to an event direction, to a person involved in the organisation of the event and, if different, any person who owns or occupies the premises at which the event will take place; and
- in relation to a public place direction, to persons carrying on a business from premises within the public place and ensure it is brought to the attention of any person who owns, occupies or is responsible for any premises in the public place.

Regulation 11 requires a local authority to give a direction to:

- in the case of a premises direction, a person carrying on a business from the premises and, if different, a person who owns, occupies or is otherwise responsible for the premises;
- in the case of an event direction, a person involved in organising the event and, if different, a person who owns, occupies or is otherwise responsible for the premises at which the event takes, or is proposed to take, place; and
- in the case of a public place direction, a person carrying on a business from premises within the public place and each person who owns, occupies or is otherwise responsible for any premises in the public place.

Regulation 12 provides for an interested person to make an appeal to the Magistrates' Court against a direction or make representations about the direction to the Welsh Ministers. The definition of "interested person" is:

- in the case of a premises direction, a person carrying on a business from the premises and, if different, a person who owns or occupies the premises;

- in the case of an event direction, a person involved in organising the event and, if different, a person who owns or occupies the premises at which the event takes, or is proposed to take, place; and
- in the case of a public place direction, a person carrying on a business from premises within the public place and a person who owns, occupies or is responsible for any premises in the public place.

The phrase "is otherwise responsible for the premises" is used in some, but not all, regulations concerning the making of directions. Using that phrase in some regulations appears to suggest that there is a distinction made between persons that own and occupy premises, and those that are responsible for premises. If that is the case, a person responsible for premises, but who is not the owner or occupier of those premises may:

- receive prior notice only in relation to a public place direction;
- be given a premises direction, an event direction or a public place direction; and
- only appeal or make representations in relation to a public place direction.

This appears to suggest a difference in treatment between the types of notice in relation to each of these matters, but it is not clear why this distinction is necessary.

Implications arising from exiting the European Union

None.

Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.

Legal Advisers
Legislation, Justice and Constitution Committee
24 September 2020

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

This Statutory Instrument has been made in consequence of a defect in S.I. 2020/984 (W. 221) and is being issued free of charge to all known recipients of that Statutory Instrument.

WELSH STATUTORY INSTRUMENTS

2020 No. 1011 (W. 225)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

The Regulations have 5 Parts.

Part 1 contains interpretation provisions. It also provides that the Regulations expire on 8 January 2021 unless they are revoked before then.

Part 2 provides local authorities in Wales with powers to control premises, events and public places in their areas to help control coronavirus within their

areas. This includes closing premises and public places and stopping events where necessary.

Part 3 continues a duty already imposed on local authorities, National Park authorities, Natural Resources Wales and the National Trust to close public footpaths and land accessible by the public in Wales where congregation of people may lead to a high risk of exposure to coronavirus.

Part 4 provides for the enforcement of the restrictions or requirements imposed by the Regulations.

Part 5 revokes the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020 (S.I. 2020/984 (W. 221)) and makes a consequential amendment to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (S.I. 2020/725 (W. 162)). The Regulations replace the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020 due to a failure to properly record the Welsh Ministers' declaration that the Regulations were urgent, in accordance with section 45R(2) of the Public Health (Control of Disease) Act 1984.

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

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

This Statutory Instrument has been made in consequence of a defect in S.I. 2020/984 (W. 221) and is being issued free of charge to all known recipients of that Statutory Instrument.

WELSH STATUTORY INSTRUMENTS

2020 No. 1011 (W. 225)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

Made *17 September 2020*

Coming into force at 12.01 a.m. on 18 September 2020

Laid before Senedd Cymru at 11.00 a.m. on 18 September 2020

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

These Regulations are made in response to the serious and imminent threat to public health which is posed by

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

the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

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

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

PART 1

Introduction

Title, application and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force at 12.01 a.m. on 18 September 2020.

Interpretation

2. In these Regulations—

(a) "coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

(b) "enforcement officer" has the meaning given by regulation 15;

(c) "event direction" has the meaning given by regulation 6;

(d) "local authority" means the council of a county or county borough in Wales;

(e) "premises" includes any building or structure and any land;

(f) "premises direction" has the meaning given by regulation 5;

(g) "public place" has the meaning given by regulation 7(2);

(h) "public place direction" has the meaning given by regulation 7.

Expiry

3.—(1) These Regulations expire at the end of the day on 8 January 2021.

(2) This regulation does not affect the validity of anything done pursuant to these Regulations before they expire.

PART 2

Local authority directions in relation to premises, events and public places

CHAPTER 1

Giving and revoking directions

Public health conditions for giving directions

4.—(1) If it considers that the public health conditions are met, a local authority may give—

(a) a premises direction under regulation 5;

(b) an event direction under regulation 6;

(c) a public place direction under regulation 7.

(2) For the purposes of these Regulations, the "public health conditions" are that—

(a) the direction is a response to a serious and imminent threat to public health,

(b) the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area, and

(c) the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.

Premises directions

5.—(1) A local authority may give a premises direction in respect of any premises in its area.

(2) A premises direction may—

(a) require the premises to be closed;

(b) impose restrictions or requirements in relation to entering or leaving the premises;

(c) impose restrictions or requirements in relation to the use of the premises;

(d) impose restrictions in relation to the number or description of persons permitted on the premises.

(3) But a premises direction may not be given in relation to premises which form part of critical infrastructure.

(4) Before giving a premises direction, a local authority must have regard to the need to ensure that members of the public have access to essential goods and public services.

(5) Where a local authority gives a premises direction, it must take reasonable steps to give prior notice of the direction to—

(a) a person carrying on a business from the premises to which the direction relates, and

(b) (if different) any person who owns or occupies the premises.

(6) A person responsible for premises to which a premises direction relates must take the steps necessary to comply with the direction as soon as is reasonably practicable after the direction takes effect.

(7) No person may, without reasonable excuse, act in contravention of a premises direction.

Event directions

6.—(1) A local authority may give an event direction in respect of any event held, or proposed to be held, in its area.

(2) In considering whether the public health conditions are met, a local authority must, in particular, have regard to whether people are gathering, or are likely to gather, at the event in contravention of regulation 14 or 14A of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020(**1**).

(3) An event direction may—

(a) require the event to stop or not to be held;

(b) impose restrictions or requirements in relation to entering or leaving the event;

(c) impose restrictions or requirements in relation to the number of persons who may attend the event;

(d) impose any other restrictions or requirements in relation to the holding of the event

(**1**) S.I. 2020/725 (W. 162), as amended by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020 (S.I. 2020/752 (W. 169)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/803 (W. 176)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/820 (W. 180)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/843 (W. 186)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/867 (W. 189)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/884 (W. 195)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/912 (W. 204)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 (S.I. 2020/961 (W. 215)), the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/985 (W. 222)) and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 10) (Rhondda Cynon Taf) Regulations 2020 (S.I. 2020/1007 (W. 224)).

(including, for example, requirements relating to the attendance of medical or emergency services at the event).

(4) Where a local authority gives an event direction it must take reasonable steps to give prior notice of the direction to—

(a) a person involved in the organisation of the event, and

(b) (if different) any person who owns or occupies the premises at which the event takes place or is proposed to take place.

(5) A person involved in organising an event to which an event direction relates must take the steps necessary to comply with the direction as soon as is reasonably practicable after the direction takes effect.

(6) No person may, without reasonable excuse, act in contravention of an event direction.

(7) For the purposes of this Part, a person is not involved in organising an event if the person's only involvement is, or would be, attending it.

Public place directions

7.—(1) A local authority may give a public place direction in respect of any public place in the authority's area.

(2) For the purposes of these Regulations, "public place" means an outdoor place to which the public have or are permitted access, whether on payment or otherwise, including—

(a) land laid out as a public garden or used for the purpose of recreation by members of the public;

(b) land which is "open country" as defined in section 59(2) of the National Parks and Access to the Countryside Act 1949(**1**), as read with section 16 of the Countryside Act 1968(**2**);

(c) any highway to which the public has access.

(3) But a public place does not include—

(a) "access land" within the meaning given in regulation 14(7)(c);

(b) a "public path" within the meaning given in regulation 14(7)(b).

(4) A public place direction may impose prohibitions, requirements or restrictions in relation to

(**1**) 1949 c. 97.

(**2**) 1968 c. 41. Section 16 has been amended by section 111 of the Transport Act 1968 (c. 73), Schedule 27 to the Water Act 1989 (c. 15) and S.I. 2012/1659. There are other amendments to section 16 which are not relevant to these Regulations.

access to the public place (including, in particular, prohibiting access at specified times).

(5) A public place direction must describe the public place in sufficient detail to enable its boundaries to be determined.

(6) Where a local authority gives a public place direction it must take such steps as are reasonably practicable to—

(a) prevent or restrict public access to the public place to which the direction relates in accordance with the direction (including erecting and maintaining notices in prominent places informing the public of the direction);

(b) give prior notice of the direction to persons carrying on a business from premises within the public place;

(c) ensure that the direction is brought to the attention of any person who owns, occupies or is responsible for any premises in the public place.

(7) Any person, other than a local authority, who owns, occupies or is responsible for premises in a public place to which a public place direction relates must take such steps as are reasonably practicable to prevent or restrict public access to the premises in accordance with the direction.

(8) No person may, without reasonable excuse, enter or remain in a public place to which a public place direction relates in contravention of a prohibition, requirement or restriction imposed by the direction.

(9) A local authority may not give a public place direction in respect of a public place which includes property to which section 73 of the Public Health (Control of Disease) Act 1984(**1**) (Crown property) applies.

(10) But a local authority may give a public place direction in respect of such a place if the authority has entered into an agreement under subsection (2) of section 73 with the appropriate authority (within the meaning given by that section) that—

(a) section 45C of that Act, and

(b) these Regulations,

apply to the property (subject to such terms as may be included in the agreement).

Review and revocation

8.—(1) Where a local authority gives a direction under this Part, the authority must review whether the

(**1**) Section 73 has been amended by Schedule 11 to the Health and Social Care Act 2008 (c. 14).

public health conditions continue to be met in relation to the direction—

(a) at least once in the period of 7 days beginning on the day after the day direction is given, and

(b) at least once in every subsequent period of 7 days.

(2) If, on a review under paragraph (1), the local authority considers that the public health conditions are no longer met, the local authority must revoke the direction.

(3) Paragraph (2) does not prevent a local authority from revoking a direction at any time if the authority considers that the public health conditions are no longer met in relation to the direction.

(4) A direction is revoked by giving notice in writing to each person to whom the direction was given.

(5) Paragraphs (2) and (3) of regulation 11 apply to a revocation as they apply to a direction.

(6) A direction ceases to have effect at the time notice of revocation is given.

Requirement to have regard to advice or guidance and to consult

9. In determining whether to give or revoke a direction under this Part a local authority must—

(a) have regard to—

(i) any advice given to it by the authority's Director of Public Protection;

(ii) any guidance issued by the Welsh Ministers about directions under this Part, and

(b) consult the Welsh Ministers if it is reasonably practicable to do so.

CHAPTER 2

Form and procedure

Form and content of directions

10. A direction given under this Part must—

(a) be in writing;

(b) contain a description of the premises, event or public place to which the direction relates (and in the case of a public place direction see regulation 7(5));

(c) state the date and time from which each prohibition, requirement or restriction imposed by the direction takes effect (which must not be earlier than when the direction is given);

(d) state the date and time at which each such prohibition, requirement or restriction ceases to have effect (which must be no later than 21 days after it takes effect);

(e) set out the reasons why the local authority considers the public health conditions to be met in relation to the direction;

(f) give details of the right of appeal, and the right to make representations, conferred by regulation 12.

Giving a direction

11.—(1) A local authority gives a direction under this Part by giving the direction in writing—

(a) in the case of a premises direction, to—

(i) a person carrying on a business from the premises to which the direction relates, and

(ii) (if different) a person who owns, occupies or is otherwise responsible for the premises;

(b) in the case of an event direction, to—

(i) a person involved in organising the event to which the direction relates, and

(ii) (if different) a person who owns, occupies or is otherwise responsible for the premises at which the event takes place or is proposed to take place;

(c) in the case of a public place direction, to—

(i) a person carrying on a business from premises within the public place to which the direction relates, and

(ii) each person who owns, occupies or is otherwise responsible for any premises in the public place.

(2) If it is not reasonably practicable for a local authority to give a direction in accordance with paragraph (1), the direction is to be treated as given in accordance with that paragraph when it is published in such manner as the local authority considers appropriate to bring it to the attention of persons who may be affected by it.

(3) As soon as reasonably practicable after a local authority gives a direction under this Part the local authority must—

(a) give a copy of the direction to any other person named in the direction,

(b) send a copy of the direction to—

(i) the Welsh Ministers,

(ii) every other local authority whose area is adjacent to the authority's area,

(iii) where the local authority's area is adjacent to the area of a county or district council in England, that council, and

(c) publish the direction in such manner as the local authority considers appropriate to bring it to the attention of persons who may be affected by it.

Appeals and representations

12.—(1) In this regulation, "interested person" means—

(a) in the case of a premises direction—

(i) a person carrying on a business from the premises to which the direction relates;

(ii) (if different) a person who owns or occupies the premises;

(b) in the case of an event direction—

(i) a person involved in organising the event to which the direction relates;

(ii) (if different) a person who owns or occupies the premises at which the event takes place or is proposed to take place;

(c) in the case of a public place direction—

(i) a person carrying on a business from premises within the public place to which the direction relates;

(ii) a person who owns, occupies or is responsible for any premises in the public place.

(2) An interested person may—

(a) appeal against the direction to a magistrates' court by way of complaint for an order, and the Magistrates' Courts Act 1980(**1**) applies to the proceedings;

(b) make representations to the Welsh Ministers about the direction.

(3) Where an interested person makes representations to the Welsh Ministers under this regulation the Welsh Ministers must—

(a) consider the representations as soon as is reasonably practicable, and

(b) decide whether it would be appropriate to exercise the power in regulation 13(1).

(4) The Welsh Ministers must provide written reasons for the decision in paragraph (3)(b) to—

(a) the interested person, and

(b) the local authority which gave the direction.

(**1**) 1980 c. 43.

(5) Making representations under paragraph (2)(b) does not affect an interested person's right of appeal under paragraph (2)(a).

CHAPTER 3

Welsh Ministers' power to require revocation

Power of Welsh Ministers to require a local authority to revoke a direction

13.—(1) If the Welsh Ministers consider that the public health conditions are no longer met in relation to a direction given by a local authority under this Part, the Welsh Ministers must require the authority to revoke the direction.

(2) Where the Welsh Ministers require a local authority to revoke a direction under this regulation—

(a) the local authority is not required to consider whether the public health conditions continue to be met in relation to the direction, and

(b) regulation 9 does not apply.

(3) Before requiring a local authority to revoke a direction under this regulation, the Welsh Ministers must consult the Chief Medical Officer for Wales.

PART 3

Duty to close certain public paths and access land

Closure of public paths and access land

14.—(1) Where paragraph (2) applies to a public path or access land in the area of a relevant authority, the relevant authority must—

(a) close the public path or access land, and

(b) keep it closed until the time when the authority considers that closure is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection with coronavirus in its area.

(2) This paragraph applies to the public paths and access land in its area a relevant authority considers—

(a) to be liable to large numbers of people congregating or being in close proximity to each other, or

(b) the use of which otherwise poses a high risk of exposure to coronavirus.

(3) Where a public path or access land has been closed under—

(a) regulation 4 of the Health Protection (Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land) (Wales) Regulations 2020(**1**),

(b) regulation 9 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020(**2**),

(c) regulation 11 of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020(**3**),

the path or land is to be treated as if it were closed under paragraph (1) of this regulation.

(4) No person may use a public path or access land closed by virtue of paragraph (1) unless authorised by the relevant authority.

(5) The relevant authority must—

(a) publish a list of public paths or access land closed in its area on a website;

(b) erect and maintain notices in prominent places informing the public of the closure of a public path or access land.

(6) For the purposes of this regulation references to a public path or access land include parts of a public path or access land.

(7) In this regulation—

(a) the "relevant authority" means—

(i) a local authority,

(ii) a National Park authority in Wales,

(iii) Natural Resources Wales, or

(iv) the National Trust;

(b) "public path" means a footpath, bridleway, byway, restricted byway or cycle track and—

(i) "footpath", "bridleway" and "cycle track" have the same meaning as in section 329(1) of the Highways Act 1980(**4**);

(ii) "byway" means a "byway open to all traffic" within the meaning given by section 66(1) of the Wildlife and Countryside Act 1981(**5**);

(iii) "restricted byway" has the meaning given by section 48(4) of the Countryside and Rights of Way Act 2000(**6**);

(**1**) S.I. 2020/334 (W. 76), revoked by S.I. 2020/353 (W. 80).
(**2**) S.I. 2020/353 (W. 80), revoked by S.I. 2020/725 (W. 162).
(**3**) Regulation 11 was revoked by S.I. 2020/985 (W. 222).
(**4**) Section 329 was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21 of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).
(**5**) 1981 c. 69.
(**6**) 2000 c. 37.

(c) "access land" includes land to which the public has access by virtue of its ownership by the National Trust, but otherwise has the same meaning as in section 1(1) of the Countryside and Rights of Way Act 2000(**1**).

PART 4

Enforcement

Enforcement officers

15.—(1) For the purposes of regulations 16, 17 and 19, an "enforcement officer" means—

(a) a constable,

(b) a police community support officer, or

(c) a person designated by—

(i) the Welsh Ministers,

(ii) a local authority,

(iii) a National Park authority in Wales, or

(iv) Natural Resources Wales,

for the purposes of regulations 16 to 19 (but see paragraph (2)).

(2) A person designated by a National Park authority or Natural Resources Wales may exercise an enforcement officer's functions only in relation to a contravention (or alleged contravention) of the requirement in regulation 14(4).

Enforcement actions

16.—(1) An enforcement officer may give a compliance notice to a person if the officer has reasonable grounds for suspecting that the person—

(a) is acting in contravention of a premises direction, event direction or public place direction, or

(b) is failing, or has failed, to take the steps required under regulation 5(6), 6(5) or 7(7).

(2) A compliance notice may specify measures that the person to whom it is given must take as soon as is reasonably practicable so as to—

(a) prevent that person from continuing to act in contravention of the direction, or

(b) rectify the failure to take the steps.

(3) Where a constable has reasonable grounds for suspecting that a person is on premises in

(**1**) Section 1(1) was amended by section 303(2)(a) of the Marine and Coastal Access Act 2009 (c. 23).

contravention of a premises direction, the constable may—

(a) direct the person to leave the premises;

(b) remove the person from the premises.

(4) Where a constable has reasonable grounds for suspecting that an event is being held in contravention of an event direction, the constable may—

(a) direct the event to stop;

(b) direct a person to leave the event;

(c) remove a person from the event.

(5) Where a constable has reasonable grounds for suspecting that a person is in a public place in contravention of a public place direction, the constable may—

(a) direct the person to leave the place;

(b) remove the person from the place.

(6) A constable may—

(a) when exercising the power in paragraph (3), (4) or (5) direct a person to follow such instructions as the constable considers necessary;

(b) use reasonable force in the exercise of the power in paragraph (3)(b), (4)(c) or (5)(b).

(7) Where a constable has reasonable grounds to suspect that the person referred to in paragraph (3), (4) or (5) is a child ("C") accompanied by an individual ("I") who has responsibility for C—

(a) the constable may direct I to ensure that C leaves the premises, event or public place, as the case may be, and

(b) I must, so far as reasonably practicable, ensure that C complies with any direction or instruction given by the constable to C.

(8) If an enforcement officer has reasonable grounds to suspect that a person is contravening (or is about to contravene) regulation 14(4), the officer may remove the person from a public path or access land (within the meaning given by regulation 14(7)) which is closed (or is being closed) by virtue of regulation 14(1), and may use reasonable force to do so.

(9) Where an enforcement officer has reasonable grounds to suspect that the person referred to in paragraph (8) is a child ("C") accompanied by an individual ("I") who has responsibility for C—

(a) the officer may direct I to ensure that C leaves the public place or access land, and

(b) I must, so far as reasonably practicable, ensure that C complies with any direction or instruction given by the officer to C.

(10) For the purposes of paragraphs (7) and (9), I has responsibility for a child if I—

(a) has custody or charge of the child for the time being, or

(b) has parental responsibility for the child.

(11) An enforcement officer may take other enforcement action to facilitate the exercise of a power conferred on the officer by this regulation or regulation 17.

(12) An enforcement officer may only exercise a power under this regulation or regulation 17 if the officer considers that it is necessary and proportionate to do so.

(13) References in this regulation to a "constable" are to be read as including a police community support officer.

Power of entry

17.—(1) An enforcement officer may enter premises to take, or facilitate the taking of, enforcement action under regulation 16.

(2) An enforcement officer entering premises in accordance with paragraph (1) may—

(a) use reasonable force to enter the premises;

(b) take such other persons, equipment and materials onto the premises as appears to the officer to be appropriate.

(3) An enforcement officer entering premises in accordance with paragraph (1)—

(a) if asked by a person on the premises, must show evidence of the officer's identity and outline the purpose for which the power is exercised;

(b) if the premises are unoccupied or the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as when the officer found them.

Offences and penalties

18.—(1) A person who—

(a) contravenes regulation 5(7), 6(6) or 7(8),

(b) without reasonable excuse, fails to take the steps required under regulation 5(6), 6(5), or 7(7), or

(c) without reasonable excuse, contravenes regulation 14(4),

commits an offence.

(2) A person who obstructs, without reasonable excuse, any person carrying out a function under these Regulations commits an offence.

(3) A person who, without reasonable excuse—

(a) fails to comply with a compliance notice given by an enforcement officer under regulation 16(1), or

(b) contravenes a direction given by an enforcement officer under regulation 16(3)(a), (4)(a) or (b), (5)(a) or (6)(a),

commits an offence.

(4) An offence under these Regulations is punishable on summary conviction by a fine.

(5) Section 24 of the Police and Criminal Evidence Act 1984(**1**) applies in relation to an offence under this regulation as if the reasons in subsection (5) included—

(a) to maintain public health;

(b) to maintain public order.

(6) If an offence under these Regulations committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer of the body, or

(b) to be attributable to any neglect on the part of such an officer,

the officer (as well as the body corporate) is guilty of the offence and liable to be prosecuted and proceeded against and punished accordingly.

(7) In paragraph (6), "officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate.

(8) Proceedings for an offence under these Regulations alleged to have been committed by a partnership may be brought in the name of the partnership instead of in the name of any of the partners.

(9) Proceedings for an offence under these Regulations alleged to have been committed by an unincorporated body other than a partnership may be brought in the name of the body instead of in the name of any of its members and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a body corporate.

(10) Section 33 of the Criminal Justice Act 1925(**2**) and Schedule 3 to the Magistrates' Courts Act 1980 apply in proceedings for an offence brought against a partnership or an unincorporated association other than a partnership as they apply in relation to a body corporate.

(**1**) 1984 c. 60. Section 24 was substituted by section 110(1) of the Serious Organised Crime and Police Act 2005 (c. 15).
(**2**) 1925 c. 86.

(11) A fine imposed on a partnership on its conviction for an offence under these Regulations is to be paid out of the partnership assets.

(12) A fine imposed on an unincorporated association other than a partnership on its conviction for an offence under these Regulations is to be paid out of the funds of the association.

Fixed penalty notices

19.—(1) An enforcement officer may issue a fixed penalty notice to anyone that the officer reasonably believes—

(a) has committed an offence under these Regulations, and

(b) is aged 18 or over.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to—

(a) a local authority, or

(b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation,

as the notice may specify.

(3) The Welsh Ministers may designate themselves under paragraph (2)(b).

(4) Where a local authority is specified in the notice it must be the authority (or as the case may be, any of the authorities) in whose area the offence is alleged to have been committed.

(5) Where a person is issued with a notice under this regulation in respect of an offence—

(a) no proceedings may be taken for the offence before the end of the period of 28 days following the date the notice is issued;

(b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(6) A fixed penalty notice must—

(a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;

(b) state the period during which (because of paragraph (5)(a)) proceedings will not be taken for the offence;

(c) specify the amount of the fixed penalty;

(d) state the name and address of the person to whom the fixed penalty may be paid;

(e) specify permissible methods of payment.

(7) The amount specified under paragraph (6)(c) must be £60 (subject to paragraphs (8) and (9)).

(8) A fixed penalty notice may specify that if £30 is paid before the end of the period of 14 days following the date of the notice, that is the amount of the fixed penalty.

(9) If the person to whom a fixed penalty notice is given has already received a fixed penalty notice under these Regulations or Regulations mentioned in paragraph (10)—

(a) paragraph (8) does not apply, and

(b) the amount specified as the fixed penalty is to be—

(i) in the case of the second fixed penalty notice received, £120;

(ii) in the case of the third fixed penalty notice received, £240;

(iii) in the case of the fourth fixed penalty notice received, £480;

(iv) in the case of the fifth fixed penalty notice received, £960;

(v) in the case of the sixth and any subsequent fixed penalty notice received, £1920.

(10) In calculating how many fixed penalty notices a person has received, fixed penalty notices issued to that person under the following Regulations are to be taken into account—

(a) the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020;

(b) the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020.

(11) Whatever other method may be specified under paragraph (6)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under paragraph (6)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(12) Where a letter is sent as mentioned in paragraph (11), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(13) In any proceedings, a certificate—

(a) that purports to be signed by or on behalf of the person with responsibility for the financial affairs of—

(i) the local authority, or

(ii) the person designated under paragraph (2)(b),

specified in the fixed penalty notice to which the proceedings relate, and

(b) which states that the payment of a fixed penalty was, or was not, received by the date specified in the certificate,

is evidence of the facts stated.

(14) Where a fixed penalty is issued in respect of the alleged offence of contravening the requirement in regulation 14(4), references in this regulation to a "local authority" are to be read as including references to a National Park authority in Wales.

Prosecutions

20. No proceedings for an offence under these Regulations may be brought other than by the Director of Public Prosecutions or any person designated by the Welsh Ministers.

PART 5

Revocation and consequential amendment

Revocation

21. The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020(**1**) are revoked.

Consequential amendment

22. In regulation 21(11) of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020, for "the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020" substitute "the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020".

Mark Drakeford
First Minister, one of the Welsh Ministers
17 September 2020

(**1**) S.I. 2020/984 (W. 221).

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020.

Mark Drakeford
First Minister

18 September 2020

1. Description

These Regulations provide local authorities across Wales with powers to:

- close, individual premises, or impose restrictions or requirements in respect of the use of, access to, or number of people on the premises;
- prohibit certain events (or types of event) from taking place or impose restrictions or requirements in respect of the holding of, access to, or number of people attending the event;
- restrict access to, or close, public outdoor places (or types of outdoor public places)

by issuing directions to relevant people.

These Regulations revoke and replace the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020 (referred to below as the "original Regulations") made by the Welsh Ministers on 11 September 2020.

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

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

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

The Regulations revoke and replace the original Regulations due to a failure to properly record (in the instrument itself) the Welsh Ministers' declaration that those Regulations were urgent, in accordance with section 45R(2) of the 1984 Act. I am grateful to the Committee for raising this matter in their draft Report on the original Regulations of 17 September 2020.

<u>European Convention on Human Rights</u>
The provisions allow local authorities to issue directions which could regulate the use of, or access to, premises or to close them, as well as to stop events from happening, directions may also be issued in order to prevent, or restrict, access to places to which the public have access. These powers would be exercisable, even where those responsible for the premises or events were otherwise complying with the requirements under the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 to take reasonable measures to minimise the risk of exposure to, or spread of, coronavirus, but where other factors meant that the

ongoing opening of premises or places or holding of an event could lead to an increased risk of transmission of the virus.

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations will, or may, engage rights under Article 6 (right to a fair trial); Article 8 (right to respect for family and private life); Article 9 (freedom of religion, conscience and religion); Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (peaceful enjoyment of possessions). The Welsh Ministers consider that to the extent that the requirements imposed by the Regulations engage or interfere with those rights, the interference is justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus across Wales and is proportionate to that aim.

Local authorities may only issue directions where necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area and proportionate to that aim. Any direction must be reviewed by the local authority who issued it at least once every seven days whilst it remains in force, and if no longer necessary or proportionate must be revoked. In addition, any such directions may be appealed to a magistrates' court by an interested party.

3. Legislative background

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

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

Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination. It

includes powers to impose restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. Section 45F enables the making of supplementary provision including provision for the enforcement of restrictions and requirements imposed under the Regulations and the creation of offences.

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

4. Purpose and intended effect of the legislation

These Regulations provide local authorities with powers to control premises, events and public places in their area in order to help control coronavirus. This includes closing premises and public places and stopping events where necessary.

Part 3 continues a duty that was previously imposed on local authorities, a National Park authority, Natural Resources Wales and the National Trust to close public footpaths and land accessible by the public in Wales where congregation of people may lead to a high risk of exposure to coronavirus.

Part 4 provides for the enforcement of the restrictions or requirements imposed by the Regulations. Where it is reasonably believed that a person aged 18 or over has committed an offence under these regulations, an authorised person – a local authority designated officer, or a police officer or PCSO (in respect of obstruction of an officer, or failure to comply with a direction or reasonable instruction given by a police officer or with a prohibition notice) – may issue a Fixed Penalty Notice (FPN). In addition, persons designated by a National Park authority or Natural Resources Wales may exercise enforcement functions in relation to the closure by the authority or Natural Resources Wales of a footpath or access land.

When a local authority issues a direction, they are required to notify the Welsh Ministers as soon as possible. This must include a copy of the direction, the reason for issuing the direction, the location or area the direction relates to, the organisations and groups of people expected to be directly and indirectly affected by the direction, the stakeholders consulted on the decision on the direction, the date and time on which the restriction comes into effect, and the date and time on which it will end.

The Welsh Government maintains close contact with local authorities on the operation and enforcement of the coronavirus restrictions, and having checked with them are not aware of any directions being given under the original Regulations since they came into force. In addition the Welsh Ministers have not received any notifications of directions, as required under those Regulations.

These Regulations come into force at the beginning of 18 September 2020.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being

taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations. As outlined when the original Regulations were made, throughout the pandemic, the Welsh Government has been in close contact with local authority enforcement officers who have reported these powers are needed where a serious and imminent threat to health exists and existing powers are insufficient. This could, for example, be where a local authority is aware of a planned event at which the numbers of people expected to seek to use a space, or the nature of a particular event, would make it unsafe due to coronavirus transmission.

Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the regulatory framework in place to respond to the ongoing threat arising from coronavirus. The powers provided by the original Regulations were outlined in a press conference I held on 11 September.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health.

An integrated impact assessment is being developed and will be published shortly.

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Elin Jones, MS
Llywydd
Senedd Cymru
Cardiff Bay
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17 September 2020

Dear Elin

The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

I have today made the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020, which come into force on at the beginning of 18 September 2020. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 14 October 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in the Plenary on 29 September 2020. Please note these Regulations will revoke the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities) (Wales) Regulations 2020 made on 11 September and due to be debated on 22 September 2020. The motion for that debate will be withdrawn tomorrow.

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

Yours sincerely

Mark Drakeford

MARK DRAKEFORD

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SL(5)588 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations").

The International Travel Regulations impose requirements on persons entering Wales after being abroad. They include a requirement for persons arriving in Wales to isolate for a period of 14 days. The requirements are subject to exceptions, and persons entering Wales after being in one or more exempt countries and territories are not required to isolate. These Regulations amend the International Travel Regulations to remove Spain from the list of exempt countries and territories.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

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

These Regulations came into force on the day before they were laid before the Senedd. This also means that there is a breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force). We note the explanation provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 27 July 2020 that:

> *It has been necessary to urgently remove Spain from the list of exempted countries and territories that are set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 following advice which indicates the risk to public health of inbound travel from Spain has risen.*
>
> *Not adhering to the 21 day convention, and bringing them into force before they were laid, allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.*

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

On 8 June 2020, Vaughan Gething MS, Minister for Health and Social Care, gave evidence to us on the Wales restrictions. He said: "We actually want to have something that helps the public to understand how they can follow the rules, and that's why the guidance is really important as well".

At the time of writing, users of the Welsh Government website who click on the link for guidance on "*Foreign travel and returning home*", are directed to the UK Government website. The UK Government website gives advice on returning to the UK, and then directs the reader back to the Welsh Government website for guidance on self-isolating in Wales.

One of the links on the UK Government page is to the Welsh Government Guidance "*How to self-isolate when you travel to Wales: coronavirus (COVID-19)"*. This can be also be accessed directly through the Welsh Government website as part of its suite of information on "Travel: coronavirus". It states that *"if you arrive in the UK and have been outside the Common Travel Area within the last 14 days, then you will need to self-isolate for the remainder of the 14 day period"*. This guidance was last updated on 7 June 2020, however travellers from exempt countries outside the Common Travel Area have not had to isolate since 10 July 2020.

The Welsh Government guidance "*Travellers exempt from self-isolation: coronavirus (COVID-19)"* has however been updated and includes a list of exempt countries, which does not include Spain.

Whilst some people using the guidance may eventually be able to work out the law on returning to Wales from a foreign country, the guidance is not clear or easy to navigate, and is likely to cause confusion to some readers.

Implications arising from exiting the European Union

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

Government Response

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

Committee Consideration

The Committee considered the instrument at its meeting on 3 August 2020 and reports to the Senedd in line with the reporting points above.

GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL) (WALES) (AMENDMENT) (NO.2) REGULATIONS 2020

1. This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated 29 July 2020.

Technical scrutiny points:

2. No matters arising.

Merits scrutiny points:

Access to guidance

3. The Government notes the comments in the draft report on accessing guidance, but correct guidance on exemptions for certain countries and territories has been live on the Welsh Government website since 16 July. An amendment to the guidance for the removal of Spain following its change in status was completed on 27 July.

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref:

To: Committee Chairs

21 September 2020

Dear All,

Following extensive consultation on the draft National Development Framework (NDF) last year, I have today laid the draft NDF before the Senedd for a 60-day consideration period.

The NDF is accompanied by a consultation report setting out the issues raised during the consultation, a schedule of changes I intend to make following consideration of the consultation responses, and an updated integrated sustainability appraisal. They can be viewed here.

To support the scrutiny process I have today published two documents. The first sets out how I intend to monitor the NDF after its publication; and the second is a version of the schedules of changes document that has been laid in the format of the draft NDF document that was consulted upon last year. These documents are available to view here.

I will be tabling an amendable motion in government-time to provide an opportunity for the Senedd to express its views on (but not approve) the draft NDF. The debate will take place during the Senedd's 60-day consideration period so the Government can reflect on the issues raised together with any recommendations from Senedd Committees in a timely manner.

During last year's consultation on the draft NDF, Senedd members expressed to me the importance of everyone being able to understand what the NDF was and what it would mean for them. Some thought the name 'national development framework' did not set out what the NDF was or would do. I have reflected on this and asked Children in Wales to help develop a new title. They suggested the name 'Future Wales – The National Plan 2040'. On publication, the NDF will be known by this new name and referred to in short as Future Wales. You will see this new name appearing on some of the documents that will support the scrutiny process.

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I look forward to working with the Senedd on the completion of Future Wales, our first National Development Framework.

Yours sincerely,

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: RE/316/20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee

21 September 2020

Dear Mick,

Thank you for your letter regarding the Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020.

You have asked whether the Welsh Government could consider providing further justification for the rationale behind the policy changes introduced by the Regulations, specifically in the context of human rights.

In the interests of transparent government and accountability, the Welsh Government is always mindful of the need to explain fully the reasons behind any decision it takes. In the case of these Regulations, the rationale behind the changes is clearly set out in the Purpose and Effect section of the Explanatory Memorandum. In addition, the Costs and Benefits section of the Regulatory Impact Assessment within that same document explores the basis on which the Welsh Government balanced the arguments for and against making the changes. We are satisfied the Regulations are compatible with the Convention as set out in the above documents and have nothing further to add.

I would, though, like to draw the Committee's attention to the summary of the integrated impact assessment that has been published, in case this provides further detail that is useful to you. The integrated impact assessment can be found at the link below:

https://gov.wales/amendment-assured-and-assured-shorthold-tenancies-integrated-impact-assessment

Yours sincerely,

Rebecca Evans.

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

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Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee

The Rt Hon Simon Hart MP, Secretary of State for Wales

18 September 2020

Dear Simon

UK Internal Market Bill

I am writing to seek the UK Government's understanding of the application of the Sewel Convention to the UK Internal Market Bill.

Paragraphs 87-89 and Annex A of the Explanatory Notes to the UK Internal Market Bill provide that legislative consent is required for every Part of the Bill and that it has been sought. As such, we would expect that the UK Government would not seek to pass the Bill without the consent of the Senedd.

To inform our consideration of the Bill and our wider inquiry on Wales' changing constitution, we would be grateful if you could confirm whether you share this assessment and confirm that, if the Bill remains with the same intention as introduced, this position will not change.

We raise the latter point because of the evidence you gave to us on **9 March** when you thought that, in the context of the European Union (Withdrawal Agreement) Bill, "in this particular instance, 'not normal' emerged as the theme as it became more obvious that the LCM wouldn't get through this place, and indeed through the Scottish Parliament."

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If you do not share our assessment, we would be grateful if you could tell us when and on what basis the UK Government will be able to advise whether the Bill, for the purpose of the Sewel convention, is “normal” or not.

Yours sincerely,

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

cc.
Rt Hon Alok Sharma MP, Secretary of State for Business, Energy and Industrial Strategy
David Rees MS, External Affairs and Additional Legislation Committee, Senedd Cymru
Bruce Crawford MSP, Finance and Constitution Committee, Scottish Parliament
Colin McGrath MLA, Committee for the Executive Office, Northern Ireland Assembly
Rt Hon Stephen Crabb MP, Welsh Affairs Committee, House of Commons
William Wragg MP, Public Administration and Constitutional Affairs Committee, House of Commons
Rt Hon the Baroness Taylor of Bolton, Constitution Committee, House of Lords

Northern Ireland Assembly

Committee for the Executive Office

The Rt Hon Simon Hart MP
Secretary of State for Wales
secretary.state@ukgovwales.gov.uk

24 September 2020

Dear Simon

UK Internal Market Bill

At its meeting on 23 September 2020, the Northern Ireland Assembly Committee for the Executive Office considered a copy of correspondence to you, dated 18 September 2020, from Mick Antoniw MS, Chair of the Welsh Parliament Legislation, Justice and Constitution Committee, seeking the UK Government's understanding of the application of the Sewel Convention to the UK Internal Market Bill.

The Committee for the Executive Office is also keen to know the UK Government's understanding on this issue and has requested that it is copied into your response to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely

Colin McGrath MLA
Chairperson, Committee for the Executive Office

cc. Mick Antoniw MS, Chair of Legislation, Justice and Constitution Committee

Committee for the Executive Office
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Senedd Cymru
Welsh Parliament
Finance Committee

David Rees MS
Chair of the External Affairs and Additional Legislation Committee

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

24 September 2020

Dear David and Mick,

Scrutiny of EU withdrawal arrangements

Further to the **correspondence** from the Counsel General and Minister for European Transition dated 20th July, the Finance Committee have been considering how the substantial changes as a result of Brexit will impact on funding available in Wales, and our role in scrutinising these changes.

It is clear changes to funding programmes, the internal market proposals and EU exit legislation have an impact on the remit of each of our Committees and I would like to consider how the work of Finance Committee can add value to the work you are undertaking. Additionally, it might be helpful for us to consider whether some joint scrutiny sessions may be an effective use of Committee and Ministerial time.

I'd welcome your views on whether joint working might be helpful or any other ways the work of the Finance Committee can work to compliment the work of your Committees.

Llyr Gruffydd AM
Chair of the Finance Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

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Agenda Item 7

Document is Restricted

LEGISLATIVE CONSENT MEMORANDUM

MEDICINES AND MEDICAL DEVICES BILL

1. This legislative consent memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before the Senedd if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.

2. The Medicines and Medical Devices Bill was introduced into the House of Commons on 13 February 2020. The Bill can be found at: https://services.parliament.uk/bills/2019-21/medicinesandmedicaldevices.html

Policy Objectives

3. The stated purpose of the Medicines and Medical Devices Bill is to replace the section 2(2) provision in the European Communities Act 1972, which will be repealed on the United Kingdom's exit from the European Union and creates powers to enable the continuation of the main arrangements for regulating human medicines, human clinical trials, medical devices and veterinary medicines post Brexit.

Summary of the Bill

4. The Bill is sponsored by the Department of Health and Social Care.

5. The Bill makes provision for:
    - Introducing targeted delegated powers in the fields of human medicines, veterinary medicines and medical devices, in anticipation of the UK's withdrawal from the EU;
    - A delegated power to establish one or more information systems in relation to medical devices;
    - Consolidating the enforcement provisions for medical devices and introduces sanctions; and
    - An information gateway to enable the sharing of information held by the Secretary of State about medical devices such as to warn the public about safety concerns.

Provisions in the Bill for which consent is required

6. The provisions within the legislative competence of the Senedd are contained in Clause 16 in the Commons Report stage version of the Bill, and Clause 16 in the House of Lords Bill which confers a delegated power on the Secretary of State for Health and Social Care to make regulations for a database of information in relation to medical devices to be established and managed by NHS Digital, which previously had no remit in relation to Wales.

7. The purpose of the provision identified above (clause 16) is to improve the safety and standards of medical devices by ensuring that better information can be captured and shared on the performance of implanted devices in order to identify risks of specific devices early on. This would apply to the NHS and private health providers in Wales. By improving the data available on medical devices as part of post-market surveillance, the Medicines and Healthcare products Regulatory Agency (MHRA), will be better able to take action earlier and more effectively as part of their regulation of devices in the UK, including Wales.

8. It would also mean that in the event of a recall, it would be possible to rapidly identify which devices had been implanted into specific patients. With the establishment of a registry a UK wide information depository holding data on a wider variety of cases reflecting a diverse range of clinical practices would be likely be more effective in generating learning than a smaller Wales focussed body.

9. The power to make regulations making broad provision about the establishment and operation of information systems is very broad. The power may be used for reserved matters, relating to regulation and safety of medical devices, but could also be used for health purposes not concerned with product safety and which are devolved, such as improving patient health care outcomes. On this basis, the purpose of clause 16 does relate to non-reserved matters. We therefore consider this provision to be within the legislative competence of the Senedd and as such it is considered that the consent of the Senedd is required in respect of it.

Reasons for making these provisions for Wales in the Medicines and Medical Devices Bill

10. The Welsh Government is supportive of the aims of the Bill and is generally supportive of the principles behind clause 16.

11. In relation to clause 16, the absence of data and information on those who have received surgical implants and experienced complications has been a significant recent issue in the case of a large number of Welsh women who underwent vaginal mesh procedures. The lack of relevant data resulted in the invisibility of the problem for a number of years and minimal remedial action until the Cumberlege review team in 2018 paused some mesh procedures until six conditions had been met including the provision of improved data on implanted devices and the setting up of a registry of implanted devices.

12. Welsh Government's officials have had some opportunity to input into DHSC's data collection proposals and it is considered the design and implementation of a Wales registry is highly unlikely to be feasible within a

reasonable timescale and at comparable cost. A Wales only registry would also not have the advantages in terms of breadth of available data and opportunities for learning, outlined at paragraph 8 above, which would be realised with a UK wide registry.

13. There is also no space in the Welsh Government's current Legislative Programme for a Bill making provision for Wales on these matters, nor is there any Bill in the programme to which such provisions could be included.

14. However, there are a number of outstanding concerns that have been raised with the UK Government. Work to resolve these concerns will be progressed as the Bill continues its Parliamentary passage and, if required, a supplementary legislative consent memorandum will be brought forward at the appropriate time.

Financial implications

15. The purpose of the Legislative Consent Memorandum is to inform the Business Committee and the Members of Senedd that the DHSC provisions impinge on the Welsh Ministers' powers and as such will have no direct financial implications. As the provisions in the Bill relating to the establishment of information systems are enabling powers the regulations will provide the detail of how the information systems will be established and operated and the role which the Welsh Government will have in relation to them. The Department's current plans envisage that the regulations will be discussed and drafted after the Bill has received Royal Assent, most likely in 2021.

16. The DHSC has floated a number of unquantified illustrative proposals for how the information systems could be funded including membership subscriptions, fees, and the sale of data to commercial bodies but nothing firm or authoritative has been shared or agreed with us. There could be financial implications in Wales should there be a requirement for the Welsh Government or health bodies to subscribe for membership of the Information Systems and various registries while the costs incurred by Wales' health bodies in collecting and transferring the data to the Information Systems on a regular basis might involve the need for additional staff resources in data services. Further financial assessment will be undertaken when the likelihood of costs are known and the detail will be provided in a future advice.

17. We currently have a revenue and capital budget for 1 year, 2020-21, the period for which we have a funding settlement from the UK Government. Costs falling within this current financial year will be managed within the HS MEG and any potential future funding will need to be considered within the context of the Comprehensive Spending Review anticipated to take place later in 2020 and investment prioritised within the HSS MEG, once indicative allocations are available.

18. The impact assessment revised for the clause is here: https://publications.parliament.uk/pa/bills/lbill/58-01/116/5801116-IA.pdf

Conclusions

19. It is the view of the Welsh Government that it is appropriate to deal with these provisions of clause 16 in the UK Bill as it would ensure that the arrangements needed to effectively monitor medical device implants would be in place sooner and at lower cost than if a bespoke Wales only approach could be available.

20. The establishment of a UK wide registry also has significant benefits in terms of the breadth of data collected and the opportunities for learning from that data.

21. There will be ongoing dialogue with the UK government in relation to the points of concern during the summer recess.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-P/VG/2171/20

Dr Dai Lloyd MS
Chair, Health, Social Care and Sport Committee

1 September 2020

Dear Dr Lloyd,

I refer to your letter of 23 July seeking clarification about the rationale for submitting a Legislative Consent Memorandum to the Senedd for the Medicines and Medical Devices Bill, which provides a power by regulation to enable the NHS in Wales to participate in a medical device information system (MDIS) operated by NHS Digital.

The amendment introducing the MDIS was approved by the House of Commons and incorporated as Clause 16 in the House of Lords' Bill, and if enacted would impinge on the Welsh Government's devolved powers relating to data collection, control and use in relation to health matters.

There is clear benefit to Wales participating in the UK-wide MDIS. It is a response to the Independent Medicines and Medical Devices Safety Review, chaired by Baroness Cumberlege, which looked at how the health system responded to reports from patients about harmful side effects from medicines and medical devices. A large number of Welsh women were adversely affected by the two medicines and mesh devices the review team examined.

The intention is that the information system would be established to support the efficiency and safety of medical devices and patients who have received or been tested with a medical device, or into whom the medical device has been implanted. The information system by identifying when the outcomes of medical device use fall below the expected performance would provide an impetus for prompt investigations and follow-up action leading to the recall of the devices, their improvement or changes in the clinical techniques employed. It would also enable patients and clinicians to identify the risks associated with specific devices early on enabling them to select the best treatments and provide patients with the type and quality of information required to enable them to give their informed consent to clinical procedures. The Bill's provisions requires the data to be provided by both the NHS and private health providers.

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In summary , the capturing of data identifying a specific medical device and data from a patient's information record (such as clinician details, location, device information) means that in future we will be better able to track and trace medical devices if a safety concern arises and also recognise, at an early stage, issues relating to patient safety.

Your letter questions why the arrangements in the Bill should not be introduced separately for Wales using Welsh Government legislation rather than UK legislation. The reasons for preferring a UK-wide approach rather than one limited to Wales include:

- the higher patient numbers and range of clinical techniques involved would enable more meaningful and useful comparisons to be made enhancing the potential for learning;
- facilitating the sharing of costs, expertise, and the development of common data standards and procedures for collecting, sharing and analysing the data. In addition, utilising UK bodies such as registries which are unavailable in Wales. The design and implementation of an equivalent Wales only medical device information system would be highly unlikely within a reasonable timescale and at comparable cost.
- the opportunity to "piggy back" on the policy, modelling and practical implementation work that DHSC has devoted to delivering its proposals, including the finding of Parliamentary legislative time .

As I mentioned in the Legislative Consent Memorandum I have a number of concerns about the provisions in the Bill. I am concerned that DHSC intend to extend NHS Digital's remit to Wales and the other nations of the UK, where it currently has no locus. I believe that the MDIS should be collectively owned and subject to four nations' governance, with accountability and reporting to the Ministers of Health in each of the four nations.

I also believe that the MDIS should have the power to "request" rather than "require" data from health bodies in the nations of the UK. Ideally, the information should be collected by each nation, in Wales' case by NHS Wales' Informatics Service (NWIS) from LHBs, and transferred to NHS Digital. This would ensure that Wales retained its data, which could, if required, be incorporated in a Wales implant registry.

On a related point, I have concerns about the ownership of the data, in particular whether NHS Wales would have access to all the data, including that of the other nations, to undertake its own analyses. I understand that NHS Digital currently propose that although Wales could retain its own data, it would not have direct access to the raw data from England and the other nations of the UK to undertake its own analyses, but would have to rely instead on NHS Digital's "insights" into the data. I am also uncertain how Wales would benefit should there be any commercial sales of the data, either directly by NHS Digital or via another organisation such as the MHRA. There is also the related question of whether the economic development benefits resulting from the data source would be equally accessible to all UK nations' health science sectors.

Finally, there is only a general duty to consult on the associated regulations within the Bill. There is no specific requirement to consult with the other national governments of the UK, nor the health bodies that will be impacted by the MDIS provisions, and engagement during the Bill process constitutes consultation. Officials, along with those from the other nations of the UK, have been pursuing with the DHSC an amendment to strengthen the commitment to engagement and consultation.

I wrote to Lord Bethell, the DHSC's Parliamentary Under Secretary of State, who is leading on the Bill in the House of Lords about my concerns on 7 July but have not yet received a response from him. I have asked my officials to liaise with officials from the other nations of the UK, who have similar concerns.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

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

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LEGISLATIVE CONSENT MEMORANDUM

DOMESTIC ABUSE BILL

1. This legislative consent memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.

2. The Domestic Abuse Bill 2019-21 ("the Bill") was introduced in the House of Commons on 3 March 2020. The Bill can be found at: https://publications.parliament.uk/pa/bills/lbill/58-01/124/5801124_en_1.html .

Policy Objective(s)

3. The purpose of the Bill is to raise awareness and understanding of domestic abuse and its impact on victims, to further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse and their children provided by other statutory agencies.

Summary of the Bill

4. The Bill is sponsored by the Home Office and the Ministry of Justice.

5. The Bill makes the following provisions:

- **Part 1** provides for a statutory definition of domestic abuse which underpins other provisions in the Bill.
- **Part 2** creates the office of Domestic Abuse Commissioner, sets out the functions and powers of the Commissioner and imposes a duty on specified public authorities to cooperate with the Commissioner.
- **Part 3** provides for a new civil preventative order regime - the Domestic Abuse Protection Notice ("DAPN") and Domestic Abuse Protection Order ("DAPO").
- **Part 4** places new duties on tier one local authorities in England in respect of the provision of support to domestic abuse victims and their children in refuges and other safe accommodation.
- **Part 5** confers on victims of domestic abuse automatic eligibility for special measures in the criminal courts; and prohibits perpetrators of certain offences from cross-examining their victims in person in the family courts in England and Wales (and vice versa) and gives family courts the power, in certain circumstances, to appoint a legal representative to conduct the cross-examination on behalf of the prohibited person.

- **Part 6** extends the extraterritorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.
- **Part 7** makes miscellaneous and general provision. In particular, this Part enables domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody; places the guidance supporting the Domestic Violence Disclosure Scheme on a statutory footing; ensures that persons with secure or assured lifetime tenancies are granted a secure lifetime tenancy where the new tenancy is being granted by a local authority for reasons connected to domestic abuse; and confers a power on the Secretary of State to issue statutory guidance.

Provisions in the Bill for which consent is required

6. The following provisions of the Bill are within legislative competence of the Senedd:

- **Clause 3** (Children as victims of domestic abuse). This recognises that children who witness domestic abuse in the home are also victims as a result of witnessing that abuse and, as such, any reference to a 'victim of domestic abuse' within the Bill includes such a child.

- **Clause 65** (Consent to serious harm for sexual gratification not a defence). This amendment legislates for the principle (established in the case of R. v. Brown [1993] 2 All ER 75), that consent to serious harm for sexual gratification would not be a defence and, by extension, nor would consent apply where such sexual activity resulted in the victim's death.

- **Clause 66** (Offences against the person committed outside the UK: England and Wales), is one of the Part 6 clauses inserted into the Bill in furtherance of the UK's ratification of the 'Council of Europe Convention on Combatting Violence Against Women and Domestic Violence' (the "Istanbul Convention") by the United kingdom. Clause 66(1) of the Bill extends the scope of particular offences against the person so that:

    - if such an offence is committed outside of the UK by a UK national or a person who is habitually resident in the UK, and

    - the act constitutes an offence under the law in force in that country, and if it were done in England and Wales, would constitute an offence in England and Wales,

  then the person is also guilty in England and Wales of that offence. The offences covered by clause 66(1) are: murder, manslaughter, offences under sections 18, 20 or 47 (offences relating to bodily harm or injury) of the Offences Against the Person Act 1861 and offences of administering poison under sections 23 or 24 of that Act.

- **Clause 68** (Amendments relating to offences committed outside the UK) as with Clause 66 is included in furtherance of the UK's ratification of the Istanbul Convention. Clause 68 of and part 1 of Schedule 2 to the Bill amends the Protection from Harassment Act 1997, the Sexual Offences Act 2003 and the Serious Crime Act 2015 so as to achieve the same effect as clause 66(1) in relation to the offences of putting people in fear of violence, stalking involving fear of violence or serious alarm or distress, certain sexual offences listed in Schedule 2 to the Sexual Offences Act 2003, and coercive or controlling behaviour in an intimate or family relationship.

- **Clause 73** (Power of the Secretary of State to issue Guidance about domestic abuse, etc). This is a power to issue guidance about the effect of any provision made by or under Parts 1 to 5 of the Bill, section 66 or Part 1 of Schedule 2, or sections 69 - 72, and on other matters relating to domestic abuse in England and Wales. In particular the Secretary of State (SoS) must issue guidance about the effect of domestic abuse, the particular kinds of behaviours that amount to domestic abuse and the effect of domestic abuse on children. Clause 73(6) requires the SoS to consult with the Welsh Ministers insofar as the guidance relates to a devolved Welsh authority.

7. It is considered that the Senedd's consent is required for all of the above provisions.

Reasons for making these provisions for Wales in the Domestic Abuse Bill

8. The Bill seeks to improve the prevention of abuse and the protection of victims. The Welsh Government believes that the measures in relation to reserved authorities will support the work already underway in Wales through the Violence Against Women Domestic Abuse and Sexual Violence (Wales) Act 2015.

9. Clause 65 delivers significant and important changes as it legislates for the principle that consent to serious harm for sexual gratification would not be a defence, it is imperative that it is implemented across the jurisdiction of England and Wales at the same time.

10. Clause 66 and 68 of the Bill are included to fulfil the UK's obligations under article 44 of the Istanbul Convention. Whilst the Senedd could pass legislation to implement international obligations, the Welsh Government is unable to unilaterally ratify the Istanbul Convention because it is not a Nation State and must rely on UK Government for this purpose. The Welsh Government is supportive of measures being taken in collaboration with the UK Government which will permit ratification.

11. It is the view of the Welsh Government that clause 73, (as it is currently drafted), significantly encroaches on the executive functions of the Welsh

Minister's and the legislative competence of the Senedd. Officials will work closely with the UK Government to seek an amendment to the clause to ensure it accurately reflects and respects the devolution settlement.

12. Furthermore, there is no space in the Welsh Government's current legislative programme for a Bill making provision for Wales on these matters, nor is there any Bill in the programme to which such provisions could be added.

Financial implications

13. While there are no direct financial implications for the Welsh Government or the Senedd Cymru arising from the powers under the Bill, there may be future financial implications for Wales in terms of the overall effect should a differing approach be taken.

Conclusion

14. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, the Welsh Government considers that legislating via a UK-wide Bill is the most effective and proportionate legislative vehicle for raising awareness of domestic abuse matters.

Jane Hutt, MS
Deputy Minister and Chief Whip
August 2020

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA LG 2505 20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament

6 August 2020

Dear Mick

BASIC PAYMENT SCHEME AND RURAL SUPPORT LEGISLATIVE FRAMEWORK FROM 2021 – Consultation 31 July 2020 to 23 October 2020

On 31st July, I published a consultation which sets out proposals to establish an interim regulatory framework to provide agricultural support from the end of the EU withdrawal agreement implementation period (31 December 2020) until new powers are introduced through the proposed Agriculture (Wales) Bill. These proposals would give effect to the powers we are proposing to take through schedule 5 of the UK Agriculture Bill.

Please find a link to the consultation document here: https://gov.wales/sustainable-farming-and-our-land-simplifying-agricultural-support

The consultation proposes a number of minor but impactful amendments to the retained (EU) regulatory framework governing the Basic Payment Scheme and Rural Development Programme in Wales. Responses will inform the scope for the Welsh legislation required to deliver those replacement domestic schemes after 2020, subject to UK Government confirming the available budgets.

Following EU Exit in January I was planning to consult in late spring. However, timings slipped due to the Covid-19 pandemic. Legislation is required by 31 December 2020 to ensure all aspects of the schemes are in place, in particular, enforcement of environmental and animal health and welfare standards through

Cross Compliance from 1 January 2021. I am mindful the proposals may generate significant interest so am proposing a full 12 week consultation, which requires the consultation to open now.

As outlined in the Legislative Consent Motion concerning the UK Agriculture Bill, powers are being taken for Welsh Ministers as a temporary measure to allow us to continue supporting farmers in Wales and to ensure agricultural sectors across the UK can operate effectively once we leave the EU and the consultation, which runs till 23 October 2020, is consistent with this.

I look forward to receiving the Committee's views on the proposals, which are an important element of the preparations for departing the EU and provide much needed continuity and stability for Welsh agriculture, during this period of unprecedented uncertainty and before a formal transition to the proposed future Sustainable Farming scheme.

Regards

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

Agenda Item 11

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